

CWP No.5984 of 2016

[1]

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.5984 of 2016
Date of decision:10.07.2017**

Amarjeet Kaur and another

...Petitioners

Versus

State of Haryana and another

..Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. M.S.Khillan, Advocate,
for the petitioners.

Mr. S.S.Mann, Sr. DAG, Haryana.

Mr. Prateek Mahajan, Advocate,
for respondent no.2.

Rakesh Kumar Jain, J.

The petitioners have challenged the order dated 23.07.2015 passed by respondent no.2, by which the property of the petitioners has been sealed under Section 263A of the Haryana Municipal Corporation Act, 1994 (hereinafter referred to as the “Act”) and prayed for issuance of a direction to respondent no.2 to open the seal and regularize their property in terms of the order dated 08.07.2013 passed by the Chief Judicial Magistrate, Karnal.

In short, the property bearing No.7B-556/97, Imambada, Sadar Bazar, Karnal, was owned by Gurdial Singh @ Gulzar Singh, predecessor-in-interest of the petitioners. He had raised construction of a godown of 11' x 40'

for storing wood for commercial purposes in the area falling in the residential zone, without obtaining proper approval of the concerned authorities. He was served with a notice dated 15.10.2007 to demolish the illegal building within 7 days, failing which he was asked to pay fine. He did not respond to the said notice and, thus, a Complaint No.66/08, under Section 208 of the Haryana Municipal Act, 1973 (hereinafter referred to as the “Act of 1973”), was filed before the Chief Judicial Magistrate, Karnal on 27.11.2007 against the illegal commercial construction raised in the residential zone. While that matter was pending, the respondent-corporation returned the building plans submitted by the owner, in original, vide Memo No.1015 dated 26.05.2008, asking him to remove the defects and re-submit the same. The owner, namely, Gurdial Singh @ Gulzar Singh (since deceased) suffered a statement before the Chief Judicial Magistrate, Karnal, that he is ready to compound the unauthorized construction as per the Rules of the Municipal Committee and hence, the said complaint was withdrawn, as recorded in the order dated 08.07.2013.

Thereafter, one Ashok Maggu, who is residing in the adjoining house to the unauthorized commercial building of the petitioners, filed a complaint to the Chief Minister through Chief Minister Grievance Redressal and Monitoring System, alleging apprehension of danger to his life due to construction of commercial godown in a narrow 8 feet wide road situated in a fully residential colony. On the said complaint, the respondent-corporation inspected the site and found that the violation was still in continuation. Thus, a notice dated 19.01.2015 under Section 261 of the Act was served upon petitioner no.2, asking to demolish the unauthorized construction and restore the same to its original condition within a period of 10 days, otherwise the

same was ordered to be demolished by the Corporation, at their risks and costs. Since the petitioners did not take any action, therefore, another notice dated 04.02.2015 was issued to them to demolish the unauthorized construction within a period of 48 hours. After the receipt of the aforesaid notices, the petitioners submitted the letters dated 05.02.2015 and 11.02.2015 stating therein that they are ready to compound the unauthorized construction as per the statement given before the Court of Chief Judicial Magistrate, Karnal on 08.07.2013. Thereafter, they were given another opportunity to convert their commercial construction into residential one and get the same compounded within 10 days vide letter dated 03.04.2015. The petitioners submitted the building plans on 13.04.2015, which was sent to the District Town Planner for the comments vide letter dated 16.04.2015. The District Town Planner, after examining the issue, observed as under:-

- “1. Hall and kitchen are not habitable as they are under lit and the proper ventilation is required. As per rules of ventilation, it is required to provide rear set back.
2. The toilet is proposed under stairs & elevation of proposed toilet is not shown so that the clear height of toilet can be ascertained.”

Since the aforesaid violations were non-compoundable, therefore, the petitioners were directed to re-submit the plans after removing the said violations, within a period of 15 days, along with documents pertaining to clear title of land in their favour vide memo no.3768 dated 08.06.2015. The aforesaid period of 15 days was expired on 23.06.2015 but the petitioners did not take any action and on 21.07.2015, submitted the rough sketch plans, claiming to have made alterations in the building. The said letter was examined by the officials of the Corporation and found that the petitioners had

not altered the building as per the bye-laws even though they had submitted the rough sketch plan. The violations were non-compoundable and, thus, the building plan submitted by the petitioners could have been considered only after the necessary alterations were made by the petitioners, after removing the violations in the building, as per the bye-laws. Thereafter, a notice dated 23.07.2015 was served upon the petitioners, asking them to re-submit the building plan after removing the violations and making alterations in the construction, as per Rules, within a period of 3 days, failing which the premises would be sealed under the relevant provisions of the Act. Though the petitioners had again submitted the amended building plans but on inspection, it was found that the petitioners had not altered the building as per the bye-laws. It was, thus, recommended that the building may be sealed under Section 263A of the Act and the said recommendations were also approved by respondent no.2 on 30.07.2015. Thereafter, the premises of the petitioners were sealed on 13.08.2015 with the assistance of the Duty Magistrate and police force deputed by the Deputy Commissioner, Karnal.

The case of the petitioners is that the order of sealing the building dated 30.07.2015 is patently illegal as the petitioners intend to compound the matter in terms of the statement made by them before the Chief Judicial Magistrate, Karnal on 08.07.2013.

On the other hand, counsel for the respondents has submitted that after the order dated 08.07.2013, much water has flown as the building has already been sealed on 13.08.2015 in terms of the order passed by respondent no.2 dated 30.07.2015 and the said order has not been challenged by the petitioners. It is submitted that the seal of the building cannot be removed

without the order of respondent no.2 and if the petitioners were aggrieved, they could have challenged the order dated 3.07.2015 passed under Section 263A of the Act by way of appeal under Section 263A(4) of the Act.

I have heard learned counsel for the parties and perused the available record with their able assistance.

The predecessor-in-interest of the petitioners, namely, Gurdial Singh @ Gulzar Singh did not pay heed to the notice issued by the respondents dated 15.10.2007 to demolish the illegal building within 7 days and hence, the respondents had to file the Complaint No.66/08 under Section 208 of the Act of 1973 before the Chief Judicial Magistrate, Karnal. The predecessor-in-interest of the petitioners suffered a statement before the Chief Judicial Magistrate, Karnal that he is ready to compound the unauthorized construction. The text of the said statement, as recorded in the order dated 08.07.2013, is reproduced as under:-

“M.C.Vs. Guljar Singh

Present: Complainant in person with Sh. Jitender Chahal, Adv.

Accused on bail with Sh. Manoj Singh, Adv.

Costs paid in District Legal Service Authority vide receipt no.091096. Today, the case was fixed for pre-charge evidence of the complainant. However, at this stage, accused Gulzar Singh suffered a statement that he is ready to compound the unauthorized construction as per the rules of the Municipal Committee. Separate statement of counsel for the complainant recorded to the effect that in view of the statement of accused, he does not want to proceed with the present complaint and the same be dismissed as withdrawn.

Heard. A perusal of case file shows that no pre-charge evidence has been led by the complainant. In view of the statement of accused and Id. Counsel for the complainant, the

present case is dismissed as withdrawn. The accused is discharged. Bail bond and surety bonds stand discharged. File be consigned to record room after due compliance.”

However, the petitioners did not take any action and a notice was issued to them to remove the unauthorized construction and ultimately, the matter reached upto the issuance of the memo dated 23.07.2015, which has been impugned herein, asking the petitioners to remove the violations, otherwise the respondents were constrained to seal the premises in terms of the provisions of Section 263A of the Act. The violations were still not removed and on the recommendations of the Corporation, respondent no.2 approved the sealing of the premises on 30.07.2015 and the building was sealed on 13.08.2015. The said order is though within the notice of the petitioners but it has not been challenged in this petition for the reasons best known to them, therefore, the petitioners are guilty of suppression of the material facts and have unnecessarily challenged the order dated 23.07.2015, which was only a notice. Even otherwise, the order of sealing has been passed under Section 263A of the Act, which is also reproduced as under:-

“263A. Power to seal premises.- (1) The Commissioner may, at any time, before or after making an order under section 261 or 262 may order to seal the premises.

(2) Where any premises has been sealed, the Commissioner, may order such seal to be removed for the purpose of -

- (a) allowing an opportunity to the owner to bring it in conformity with the sanctioned building plan as per the provisions of this Act, rules or bye-laws framed thereunder within a period, which shall not exceed three months; or
- (b) allowing the functionaries of the Corporation to bring it in conformity with the sanctioned building plan as per the provisions of this Act, rules or bye-

- laws framed thereunder at the cost of the owner; or
- (c) demolition, at the cost of the owner.
- (3) No person shall remove such seal except-
- (a) under an order made by the Commissioner under sub-section (2); or
- (b) under an order of the appellate authority.
- (4) Where any order of sealing has been passed under sub-section (1), the owner may file an appeal before the Divisional Commissioner concerned within a period of seven days of passing of such order. The Divisional Commissioner may either reject the appeal or stay the order to allow the owner to bring the premises in accordance with the sanctioned building plan as per the provisions of this Act rules or the bye-laws framed thereunder, with such conditions, including furnishing of a bank guarantee of an amount, as deemed fit. On failure of the owner to adhere to the conditions of the order, bank guarantee shall be revoked and the premises shall be liable for demolition, at the cost of the owner. Such cost shall be paid by the owner within a period of one month from the date of demolition of the said premises.
- (5) In the event of non-payment of the cost by the owner as per sub-section (3), the same shall be recoverable as arrears of land revenue.”

Section 263A(4) provides that in case of order of sealing, the appeal would lie with the Divisional Commissioner but no such appeal has been filed and rather the averment has been made in this petition that the petitioners do not have any right of appeal or revision except to approach this Court by way of the present writ petition.

This is again a wrong statement at the instance of the petitioners to mislead this Court.

Thus, the aforesaid facts and circumstances disentitle the petitioners to claim any kind of relief not only because of the reason that the petitioners have the alternate remedy under the statute, regarding which a false

statement has been made in the petition, but also the petitioners themselves are guilty of not removing the violations despite being afforded repeated opportunities by the respondent-Corporation.

With these observations, the present petition is found to be without any merit and hence, the same is hereby dismissed.

July 10, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No