

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

LPA No.597 of 2017 (O&M)

Date of Decision : 20.04.2017

Kamal Kishore

....Appellant

Versus

State of Punjab and others

....Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE DR.SHEKHER DHAWAN

....

Present: Mr. Ashok Sharma Nabhewala, Advocate
for the appellant.

.....

MAHESH GROVER, J. (Oral)

This appeal is directed against the judgment of the learned
Single Judge dated 20.03.2017.

The appellant claimed right to use some area behind his
shop measuring 19'-5" x 3'-4" .

The learned Single Judge declined interference as there
was absolutely no document or material to permit him a valid use of
the area in question.

Before us also learned counsel for the appellant has failed
to show any document issued by the competent authority entitling him
the use of the area. Except to claim description of user for a long
period of two decades, nothing else has been shown to us. The
learned Single Judge has noticed that none of the adjoining shops
have been permitted the use and none is using the area behind the
shops except the appellant.

Be that as it may, we are of the considered view that once the appellant failed to show his legitimate right to use the area behind the shop by producing any document entitling him to do so, we would have to construe him in unauthorised occupation. Even the documents relied upon by the appellant, i.e. the proceedings of the Municipal Council as also some legal opinion of a counsel, would indicate his illegal occupation, even though the learned counsel for the appellant states that these documents virtually condone his lapse, we would disagree in the wake of such a claim not being substantiated by any legal document entitling him use of the area.

In fact, it is a fit case where action ought to have been taken against the Municipal authorities to condone such a lapse even though temporarily.

Findings the appellant to be in unauthorised occupation, we would decline interference to order dismissal but with a mandate to the Deputy Commissioner, Amritsar to immediately ensure that the misuse is stopped forthwith. He shall submit a report to this Court within two weeks.

Appeal dismissed.

Office to list the matter after two weeks.

(MAHESH GROVER)
JUDGE

20.04.2017
dss

(SHEKHER DHAWAN)
JUDGE