

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

1. **CWP-7426-2017**
Date of Decision: August 29, 2018

Raj Kumar and othersPetitioners
Versus
Union of India and othersRespondents
2. **CWP-21339-2017**

Gurdev SinghPetitioner
Versus
Union Territory, Chandigarh and othersRespondents
3. **CWP-7970-2017**

Ram Sewak and othersPetitioner
Versus
Union of India and othersRespondents
4. **CWP-18300-2017**
Pritam SinghPetitioner
Versus
UT of ChandigarhRespondent
5. **CWP-20360-2017**
Kuldeep SinghPetitioner
Versus
UT of Chandigarh and othersRespondents
6. **CWP-20373-2017**
Jai SinghPetitioner
Versus
UT of Chandigarh and othersRespondent
7. **CWP-21273-2017**
Baljeet SinghPetitioner
Versus
Union Territory Chandigarh and othersRespondents
8. **CWP-21342-2017**
Gurjeet SinghPetitioner
Versus
UT of Chandigarh and othersRespondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA**

Present: Mr.M.L.Saggar, Sr.Advocate with
Ms.Armaan Saggar, Advocate for the petitioners in CWP-7426-2017 and CWP-7970-2017.
Mr.P.C.Dhiman, Advocate for the petitioners.
Mr.Suvir Sehgal, Sr.standing counsel for UT Chandigarh with
Mr.Prashant Gupta, Advocate for Mr.Suman Jain, Advocate
Mr.Arvind Rajotia, Advocate, Mr.Shaktipal Singh Mann,
Advocate for Mr.IPS Doabia, Mr.Namit Kumar and Alankrit
Bhardwaj, Advocates for UT, Chandigarh.
Mr.Rajesh Bhardwaj, Sr.DAG, Punjab.
Mr.Sandeep Moudgil, Addl.AG, Haryana.
Mr.Alankar Narula, Advocate for
Mr.Prateek Gupta, Advocate for Union of India.

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SURYA KANT, J.(ORAL)

Separate Replies filed on behalf of respondent Nos.2, 3 and 4 in
CWP Nos.7426 and 7970 of 2017 are taken on record.

[2] This order shall dispose of the above captioned writ petitions as
the point in issue involved in all the cases is common in nature. The facts
are extracted from CWP-7426 of 2017.

[3] The petitioners are residents of village Faidan Burail which fall
in Sector 47 of Union Territory, Chandigarh. They seek quashing of
demolition order(s) dated 20.09.2016 (endorsed on 27/28.03.2017) purported
to have been passed in exercise of powers under Section 12(2) of the Punjab
New Capital (Periphery) Control Act, 1952 (for brevity,'the 1952 Act'),
whereby their residential houses have been ordered to be demolished.

[4] It is not necessary to refer the facts in extenso as it suffice to
mention that as per the Show Cause Notice like dated 05.04.2006 (Annexure
P-2), the Noticee (Raj Kumar s/o Ram Kirpa) has allegedly raised

Chandigarh, though the said area has been declared as “controlled area” and thus, the construction raised was in violation of provisions of the 1952 Act. The Show Cause Notice made a pointed reference to Section 12 of the 1952 Act, which prohibits erection or re-erection of any building or to make or extend any excavation in contravention of provisions of Section 5 of the 1952 Act.

[5] The petitioners submitted their reply(ies) to the Show Cause Notices with the preliminary objection that the village being part of Union Territory, Chandigarh, the provisions of 1952 Act were not attracted. They claimed that the residential house(s) is/are in *abadi deh* of the village and consist old constructions.

[6] The Prescribed Authority, exercising the power of Deputy Commissioner, Chandigarh, nevertheless, passed the demolition order issued on 27.03.2017 (Annexure P-5 Colly), which are under challenge in these writ proceedings.

[7] The respondents have filed their written statement in the connected case, i.e. CWP-21339-2017 and it will be apt to reproduce the preliminary objection No.2, (relevant extracts only), which reads as follows:-

“2. That the Collector U.T., Chandigarh has issued orders vide notification no.DC/DRA/2011/4080 dated 08.03.2011 that Government of India, Ministry of Defence, New Delhi has issued a declaration SRO No.4 dated 13.01.2010 which was published in part II, Section 4 of Gazette of India dated 23.01.2010. This Gazette notification has been issued under Works of Defence Act, 1903. Vide this notification, it has been declared that no

building or structure shall be constructed, created or erected or no tree shall be planted on any land within the limits of 100 meter from crest of the outer parapet of Air Force Station, Chandigarh. Such land which falls in the revenue estate of village Tatarpur, Chahar Taraf Burail, Burail, Bair Majra, Hallomajra, Behlana, Karsan and Gaggar Majra. The copy of notification dated 08.03.2011 is appended herewith as **Annexure R-1**. It was further stated in the notification that since the land of village Burail, Karsan and Gaggar Majra is partly/fully acquired for urban development by Chandigarh Administration, the area falling under 100 meter from outer parapet of Air Force land/boundary also covered under this notice is to be kept free from buildings and other obstructions. Accordingly, the Deputy Commissioner, Union Territory, Chandigarh directed the Tehsildar Revenue to inspect the area falling under 100 meters from the outer parapet of Air Force land/boundary. 7 Patwaris of the Administration were deputed to carry out the survey of the said area. Upon survey, a list of 254 unauthorised structures present in the area falling under 100 meters from the outer effect of a force land/boundary was submitted to the competent authority on 03/03/2016. The name of the petitioner also figured in the said list containing unauthorised structures within an area falling under hundred meters from the outer parapet of Air Force land/boundary.”

[8] It may, thus, be seen that according to the official respondents, the constructions raised by the petitioners are in violation of the provisions of the Notification issued under Works of Defence Act, 1903 (for brevity, 'the 1903 Act') and their structures being situated within the radius of 100 meters from the outer parapet of Air Force land/boundary, are liable to

be demolished.

[9] It goes without saying that the 1903 Act is a self contained Act under which there is a procedure prescribed for prevention or demolition of construction raised in violation of the provisions of a Notification issued under the said Act. The 1903 Act also provides payment or compensation to the affected/expropriated owners.

[10] In the instant case, admittedly, neither the Show Cause Notices nor the impugned order of demolition have been issued/passed under the provisions of 1903 Act. On the other hand, the action has been taken under the provisions of 1952 Act, the applicability whereof appears to be debatable as the area in question forms part of Union Territory and is not located on the 'periphery' of Union Territory to which this Act applies. Be that as it may, the action was presumably contemplated against the petitioners under the provisions of 1903 Act, which are alleged to have been violated but no procedure prescribed thereunder has been followed.

[11] For the reasons aforestated, the writ petitions are allowed. The impugned Show Cause Notices as well as the final demolition orders are set aside. However, the respondent-authorities shall be at liberty to proceed against the petitioners or any other person in accordance with the provisions of the 1903 Act.

**(SURYA KANT)
JUDGE**

August 29, 2018
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**(SUDIP AHLUWALIA)
JUDGE**

- 1. Whether speaking/reasoned ?**
- 2. Whether reportable ?**

Yes/No
Yes/No