

Gurbax Singh
2018-04-21 13:04

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

**CWP No. 7960 of 2018
Decided on : 02.04.2018**

Sunita Devi

. . . Petitioner

Versus

The Commissioner, Municipal Corporation, Gurgaon and others

. . . Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL**

PRESENT: Mr. Sahil Sharma, Advocate
for the petitioner.

AJAY KUMAR MITTAL, J.

1. Prayer in this petition filed under Article 226 of the Constitution of India is for a direction to the respondent authorities to demolish the illegal/unauthorized structure raised by the defaulters/respondents and take possession of the land acquired by the respondent authority i.e. Haryana Urban Development Authority (HUDA).

2. A few facts relevant for decision of the controversy involved as narrated in the petition may be noticed. The petitioner is a resident of Kanhai Village, District Gurgaon. She has been living here with her family for the last more than two decades. The offenders/defaulters are the residents of the same locality. Both the petitioner and the defaulters used to share amicable relations with each other in the past. Land measuring 10 Kanals - 5 Marlas belonging to the offenders/defaulters was acquired by

the HUDA, which was challenged by the offenders/defaulters in Civil Writ Petition Nos. 6129 of 1992 and 7079 of 1992. On the plea of the offenders, a Special High Powered Committee was formed by this court vide order dated 18.01.2011 under Sh. S.S. Dhillon, Principal Secretary to Govt. Haryana, Urban Estates Department. An undertaking was furnished by the offenders/defaulters on 14.12.2011 that no erection or re-erection shall be carried out on the released land i.e. 6 Kanals – 5 Marlas without the permission of the competent authority. In other words, to meet the future requirements, reconstruction or additional construction was to be done with the permission of the authorities. The petitioners also undertook not to challenge the order passed by this Court to release 6 Kanals – 5 Marlas of land in her favour. The petitioners in both the above-mentioned writ petitions undertook to hand-over the possession of the remaining land to HUDA for its utilization. The petitioner sought information under Section 19 of the Right to Information Act, 2005 (in short 'RTI Act'). Reply was given by the respondent authority to the effect that the respondents were raising the construction at Village Kanhai, Gurgaon without obtaining the necessary permission from the Commissioner, under the Municipal Corporation Act, 1994 (in short 'the 1994 Act') and thus, the said construction was unauthorized in nature. The Commissioner, Municipal Corporation, Gurgaon, issued an order dated 23.11.2012, stating that the respondents were raising unauthorized construction at Ward No.29, Village Kanhai. The notices were issued by the respondent authority under Section 261(1) of the 1994 Act to show cause as to why the construction carried by the aforesaid persons be not demolished and they were called upon to

appear in person before the Senior Town Planner, Municipal Corporation, Gurgaon to comply with the said order. The aforesaid persons appeared in person and submitted a reply dated 16.01.2013, which was found to be unsatisfactory, as they had not taken the requisite permissions required under Sections 250/254 of the 1994 Act. Thereafter, the Senior Town Planner, Municipal Corporation, Gurgaon, under Section 261 of the 1994 Act directed that the said construction be demolished. Show Cause Notice was again issued to the defaulters on 21.01.2016 on which basis proper opportunity of hearing was given to them on 29.01.2016. The reply submitted by them was found to be unsatisfactory because no permission/sanction for raising the construction was submitted by the offenders/defaulters. On 08.03.2016, demolition order was passed against the offenders-respondents. The Commissioner, Municipal Corporation, Gurgaon, issued a notice dated 17.06.2016 (Annexure P-7) to the Commissioner of Police of which copy was forwarded to the District Magistrate, Gurgaon and Executive Engineer DHVBNL with a request not to grant electricity connection and to disconnect the electricity connection, if already provided to the above unauthorized construction. The husband of the petitioner also filed a complaint dated 10.02.2016, stating that illegal construction had been carried out in Sectors 44/45 of the Kanhai Village, Gurgaon by the respondents. However, no action had been taken by the authorities. The petitioner had filed various complaints to the Commissioner, Municipal Corporation, Gurgaon on 29.01.2016, explaining the illegal/unauthorized construction raised by the offenders. Despite having evident proof and knowledge, no action was taken by the respondent

authority. The petitioner has received the reply on 03.03.2017 from the District Town Planner, wherein, it was clearly mentioned that the grievance had been examined and the unauthorized construction raised by the respondents came to the knowledge of the Enforcement Wing of the respondent authority and therefore, demolition notice had already been issued against all the unauthorized constructions raised by the defaulters. In the said letter, direction had also been given to the respondent authority i.e. Police Department as well to lodge an FIR against such illegal construction. However, no development had been witnessed as yet despite having notices/orders issued by the respondent authorities to the offenders. The petitioner got her house inspected from the Registered Structural Engineer, HUDA, who visited there twice and found that the building structure had developed cracks/gap in many walls due to settlement foundations, which had made the structure unsafe for occupants. The report was made in this regard on 19/20.05.2017. Hence, the instant writ petition by the petitioner.

3. We have heard learned counsel for the petitioner.

4. A perusal of the averments made in the writ petition and the annexures attached with the writ petition shows that the grievance raised by the petitioner had been examined by the authorities below and it had been observed that the petitioner had requested for taking action against the unauthorized constructions raised in Village Kanhai. The unauthorized constructions raised by the certain persons as detailed in Annexure P-9 came to the knowledge of the Enforcement Wing of the Municipal Corporation, Gurgaon during inspection. The necessary notices/demolition orders had already been issued against all the unauthorized constructions raised by the

abovesaid persons. The cases for lodging FIR against the said persons had also been sent to the Police Department. Thus, the action required under the law has already been taken by the respondent authorities against the illegal/unauthorized constructions.

5. In view of the above, no cause of action accrues in favour of the petitioner to invoke extraordinary jurisdiction of this Court under Articles 226/227 of the Constitution of India especially when the respondent-authorities are already taking action against the offenders/defaulters in accordance with law. The writ petition stands disposed of accordingly.

(AJAY KUMAR MITTAL)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

April 02, 2018

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Whether speaking/reasoned:

Yes

Whether Reportable:

Yes