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

**CWP No.15835 of 2020
Date of Decision: 30.09.2020**

Sumit Miglani and another

..... Petitioners

Versus

State of Haryana and others

..... Respondents

CWP No.15863 of 2020

Opendar Gupta alias Upender Gupta and another

..... Petitioners

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Ashish Aggarwal, Senior Advocate assisted by
Ms. Malika Aggarwal, Advocate,
for the Petitioners (in both the cases).

SUDIP AHLUWALIA, J. (ORAL)

These are two writ petitions, in which, the Petitioners pray for quashing of the impugned order dated 21.09.2020, Annexure P-6 (Annexure P-7 in CWP-15863-2020), passed by Respondent No.4/Commissioner, Municipal Corporation, Karnal, and also for a direction upon the Respondents to stay operation of the aforesaid order and to de-seal the premises of the Petitioners by opening up the locks of the same, during pendency of their application dated 22.09.2020, Annexure P-7 (Annexure P-8 in CWP-15863-2020). For the sake of convenience, the facts which are

almost identical in both the cases are extracted from CWP No.15835 of 2020.

[2]. Notice of motion.

[3]. Mr. Narender S. Behgal, Assistant Advocate General, Haryana to accept notice on behalf of Respondent Nos.1 and 2.

[4]. In view of the order this Court intends to pass after hearing Ld. Counsel for the Petitioners, notice upon Respondent Nos.3 and 4 need not be issued at this stage, since Respondent No.2, in his capacity as the Appellate Authority under the Haryana Municipal Corporation Act, 1994 (hereinafter referred to as the 'Act'), would be competent to pass an appropriate order concerning those Respondents, in the appeal pending before him.

[5]. The Petitioners claim to be the Owners and in occupation of the disputed property, in respect of which they had received an Order, under Sections 261, 263A (1) and 350 of the Act, from Respondent No.4, passed on 15.01.2020 (Annexure P-2). They filed their Statutory Appeal under Section 263A (4) before the Appellate Authority. i.e., Divisional Commissioner (Respondent No.2), on the very next date, i.e., 16.01.2020. After filing of the said appeal the Appellate Authority vide his order dated 17.01.2020 (Annexure P-5) had stayed demolition of the premises, in question, till the next date i.e. 17.02.2020. Thereafter, the appeal remained pending and for a long time, and no effective hearing could take place due to the Covid-19 lockdown, and also no explicit order either extending or discontinuing the initiative interim order dated 17.01.2020, was passed by Respondent No.2. In such a situation on 21.09.2020, which was 3 days before the date fixed by the Appellate Authority for further

hearing/proceedings in the pending appeal, i.e., 24.09.2020, officials from Respondent No.3 came to the premises and forcibly removed the Petitioners and their staff therefrom and sealed the premises by affixing the impugned order of sealing, and also put their own locks on the gates, thus, leaving the Petitioners high and dry. The Petitioners claim to have suffered an irreparable injury by this unwarranted action of the Respondents, and have suffered great financial losses for extreme difficulties since their entire stocks and materials had been locked inside the premises by the aforesaid act of Respondent No.3.

[6]. Consequently, on the very next day, the Petitioners filed an application under Section 263A(3)(b) read with sub-section 4 of the Act before the Ld. Divisional Commissioner praying for an order to remove sealing of the premises immediately, and to further stay operation of the impugned order. The said application was fixed to be taken up with the main appeal already pending for the 24.09.2020, but on that scheduled date, Respondent No.2 told the Petitioners' counsel that due to the present Covid-19 Pandemic, only dates are given and no case is being heard and he has posted the above application filed by the Petitioners for 08.10.2020. The Petitioners in this manner have contended that while Respondent Nos.3 and 4 had acted illegally in sealing their premises in spite of issuance of the original stay order passed by the Appellate Authority, which was never explicitly revoked, but could not otherwise be similarly extended explicitly as proceedings in the interregnum were not taken up regularly due to onset of Covid-19 Pandemic, the inaction on the part of Respondent No.2 in passing an order on merits as warranted on their application dated 22.09.2020 (Annexure P-7), has effectively sabotaged their pending appeal

and rendered it redundant for no fault of the Petitioners.

[7]. This Court does find merit in the aforesaid submission raised on behalf of the Petitioners, and is of the view that no pending legal proceeding can be permitted to be rendered infructuous simply because hearing in the same is not done, or the authority acts in a mechanical manner by not resorting to appropriate action as warranted in the circumstances at the right time, if otherwise the proceeding by such inaction stands to be rendered infructuous.

[8]. For the aforesaid reasons, this writ petition is disposed off with a direction upon Respondent No.2 to pass an appropriate speaking order on the Petitioners' application dated 22.09.2020 (Annexure P-7), on the date already fixed before him, i.e., 08.10.2020, and the proceedings on that date shall not be mechanically adjourned simply because of prevalence of the Covid-19 Pandemic.

30.09.2020

Bhumika

**(SUDIP AHLUWALIA)
JUDGE**

1. Whether speaking/reasoned: Yes/No

2. Whether reportable: Yes/No