

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.11370 of 2021(O&M)

Date of decision:06.07.2021

Mahesh Kumar and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Mobashshir Sarwar, Advocate, for
Mr. Madhur Jangra, Advocate
for the petitioners.**

Mr. Samarth Sagar, Addl.A.G., Haryana

ANIL KSHETARPAL, J.

The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

1. Through this writ petition under Article 226 of the Constitution of India, the petitioners pray for issuance of a writ in the nature of mandamus to direct the respondents to remove the illegal encroachment from public road in the city of Charkhi Dadri.

2. During the preliminary hearing, learned counsel representing the petitioners has disclosed that petitioner no.1 is a Municipal Councillor in Municipal Council, Charkhi Dadri which is a newly formed district headquarter. On account of permanent structures, the major part of a main road which belongs to PWD (B&R) has been encroached upon. It is pleaded that originally the road is 44 feet wide. However, due to encroachments, the width available for traffic has become narrow resulting in chaos and traffic jams.

3. In the writ petition, the petitioners have not disclosed the particulars of the road which has been encroached upon, however, from the reading of the writ petition, it becomes apparent that the encroachment is on the land comprised in Khasra Nos.1092 and 1060. A bare perusal of Annexure P-6 shows that the encroachment was found after demarcation of Khasra N0.1060. The petitioners have pleaded that around 5000 to 6000 vehicles pass through the road everyday which has main market on one side, whereas the residential area on the other side. The petitioners claim that the State of Haryana or its officials have failed to take any action.

4. It may be noted here that the petitioners have not disclosed the period from which the encroachment is continuing. From a bare perusal of the annexures, it becomes apparent that the Executive Engineer, Provincial Division, PWD (B&R) Branch, Charkhi Dadri wrote a letter to the Secretary, Municipal Council, Charkhi Dadri on 05.10.2018 requesting him to take steps for removal of the encroachment. Under Section 181(2) of the Haryana Municipal Committee Act, 1973 (hereinafter referred to as 'the 1973 Act'), the Executive Officer or the Secretary after giving show cause notice can get the unauthorized constructions removed. Section 181 of the 1973 Act is extracted as under:-

181.Punishment for immovable encroachment or overhanging structure over street. -

(1)Whoever, without the written permission of the committee, makes any immovable encroachment on or under any street on, over or under any sewer, or watercourse, or erects or re-erects any immovable over hanging structure projecting into a street at any point above the said ground level, shall be punishable with imprisonment for a term upto six months or with a fine which shall not be less than two thousand rupees and more than [ten thousand rupees] or both.

(2) Without prejudice to the provisions of sub-section (1), the committee, the executive officer or the secretary, as the case may be, may, by notice call upon any person

who has committed a breach of the provisions contained in the said sub-section, to stop the unauthorised construction forthwith and to remove or alter such immovable encroachment or over hanging structure as aforesaid within a period of seven days and if such person fails to show cause to the satisfaction of the committee, the executive officer of the secretary, as the case may be, within the said period of seven days, the committee, the executive officer or the secretary, as the case may be, shall proceed to remove the unauthorised construction and the cost of the such removal shall be recovered from the defaulter. If the defaulter fails to pay the cost of removal of unauthorised construction on demand within fifteen days, the cost shall be recoverable from such person as arrears of land revenue and the committee shall dis-connect the water supply and the sewerage connections

Provided that if a period of more than five years has elapsed from the completion of encroachment or overhanging structure, no prosecution shall lie under sub-section (1)".

5. Learned counsel for the petitioners has failed to draw the attention of the Court to any steps taken by the Municipal Council in this regard. Petitioner no.1 being a Municipal Councillor can move the House for passing a resolution accordingly, however, no such steps appear to have taken.

6. On a plain reading of Annexure P-6, it is apparent that the Executive Engineer of the PWD (B&R) Department issued notices to various shop keepers to hand over the vacant possession of the encroached area. The petitioners claim that thereafter no action has been taken. In this regard, it may be noticed that the State of Haryana has enacted the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 (hereinafter referred to as 'the 1972 Act') to get the unauthorised occupation of the public premises removed. The Collector after issuing show cause notice under Section 4 of the 1972 Act, can initiate proceedings to remove

the unauthorized/illegal encroachment. Section 4 of the 1972 Act is extracted as under:-

4. Issue of notice to show-cause against order of eviction. -

(1) If the Collector is of opinion that any persons are in unauthorised occupation of any public premises situate within his jurisdiction and that they should be evicted, the Collector shall issue, in the manner hereinafter provided, a notice in writing calling upon all persons concerned to show-cause why an order of eviction should not be made.

(2) The notice shall -

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the public premises, to show-cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than ten days from the date of issue thereof.

(3) The Collector shall cause the notice to be affixed on the outer door or some other conspicuous part, of the public premises, or the estate in which the public premises are situate, and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to all persons concerned.

(4) Where the Collector knows or has reasons to believe that any persons are in occupation of the public premises, then without prejudice to the provisions of sub-section (3), he shall cause a copy of the notice to be served on every such person by post or by delivering or tendering it to that person or in such other manner as may be prescribed.”

7. On a plain reading of Section 4, it is apparent that the Collector can initiate proceedings under the Act of 1972 in case he is of the opinion that any persons are in unauthorized occupation of the public premises situated within his jurisdiction. Sub-Section (4) further enables the Collector to initiate proceedings in case he comes to know or has reason to believe that some persons are in the unauthorized occupation of the public premises. The petitioners or the Municipal Council or the Executive

Engineer, PWD (B&R) can request the Collector in this regard. The petitioners while filing the writ petition, are stated to have sent a notice to the Chief Secretary, Haryana, on 05.07.2020 with copies to the various officials including the Deputy Commissioner, Charkhi Dadri. As per the provisions of the Act of 1972, the Collector can be the Deputy Commissioner of a district or he can be any other person as authorized by the State.

8. Keeping in view the aforesaid facts, this Bench is of the considered view that the remedy of writ petition is not panacea to each and every inaction on the part of the State officials. The jurisdiction under Article 226 of the Constitution of India is not meant to short-circuit or circumvent the alternative statutory remedies. The writ petition is an extraordinary remedy which can be invoked only after having attempted to get the desired relief by exploring all other options. It is a settled position of law that when the dispute relates to enforcement of a right or obligation and a specific remedy is provided under law, the High Court should not deviate from the general view and decline to interfere under Article 226 of the Constitution of India except in compelling circumstances. Ordinarily, writ jurisdiction cannot be invoked in the first instance.

9. Keeping in view the aforesaid facts, as noted above, the petitioners are relegated to the alternative remedy.

Disposed of accordingly.

06th July, 2021
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No