

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

CWP-10124-2022

Date of Decision:12.05.2022

Raghbir Singh alias Raghuvir Chahal and others

.....Petitioners

Vs.

State of Haryana and others

....Respondents

**CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH
HON'BLE MR.JUSTICE LALIT BATRA**

Present: Mr. S.S.Dinarpur, Advocate
for the petitioners.

Mr. Aman Bahri, Addl.A.G., Haryana.

AMOL RATTAN SINGH, J. (Oral)

By this petition, the petitioners seek issuance of a writ in the nature of '*certiorari/mandamus*' directing the respondents to quash the impugned notices dated 18.01.2021 (Annexures P-17 to P-36) and subsequent impugned orders dated 30.07.2021 (Annexures P-38 to P-58), issued by respondent no.5.

They further seek that the impugned order dated 26.04.2022 (Annexure P-61) passed by respondent no.4, be set aside.

They also seek a direction to respondents no.1 to 4 to regularise constructions over their respective plots and to stay the operation of the aforesaid impugned notices.

As regards the order dated 26.04.2022 passed by respondent no.4, i.e. the Commissioner, Municipal Corporation, Hisar, the following is the operative part of the said order:-

“The construction on the remaining plots has not been regularised as per the notification dated 24.03.2009 therefore, the construction on the said plots still fall within the category of unauthorised construction. Hence, the notices already issued by the Municipal Corporation are duly valid. Therefore, I while exercising powers U/s 261 of Haryana Municipal Corporation Act 1994, pass the order for demolishing the said illegal constructions and I direct the illegal constructions holders to demolish their illegal construction at their own level within a period of 15 days from the receipt of the orders, failing which Municipal Corporation without giving any notice would demolish their illegal structures/constructions and in that event illegal construction holders would themselves be responsible for damages and expenses. A copy of the orders is sent to Building Inspector, Municipal Corporation, Hisar, and he is instructed to ensure that copies of the orders are served upon the illegal construction holders.”

Though learned counsel for the petitioners vehemently argues that the matter having been in litigation for a number of years, with various petitions earlier filed by identically placed persons as also the petitioners themselves, with the matter also having gone before the learned Tribunal constituted under Section 41 of the Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963, and therefore it is a fit case where this court should invoke jurisdiction under Article 226/227 of the Constitution of India and adjudicate upon the said order itself, however, Mr. Aman Bahri, Addl.A.G., Haryana, who is sitting in court, has assisted this

court to point out that the order itself has been passed under the provisions of Section 261 of the Haryana Municipal Corporation Act, 1994, as is obvious from the aforesaid reproduction itself and with sub section (2) of Section 261 reading as follows:-

261(2)- Any person aggrieved by an order of the Commissioner made under sub-section (1) may prefer an appeal against the order to the court of the Divisional Commissioner of the Municipal area within the period specified in the order for the demolition of the erection or work to which it relates.

Hence, in our opinion with an efficacious alternative remedy being available to the petitioners, there would be no cause to invoke such jurisdiction by this court.

However, Mr. Dinarpur further argues that as a matter of fact the show cause notices and the orders themselves are void *ab initio* as it would not be provision of the Haryana Municipal Corporation Act, 1994, as would be applicable but those of the aforesaid Act of 1963; and that the matter with regard to which Act would be applicable, is subjudice before the Supreme Court whereby the judgment of a Full Bench of this court has been stayed in the case of **State of Haryana and others vs. M/s Shiva Ice Factory**, (Appeal (Civil) CC-21651-2009).

In our opinion even that fact would obviously be brought to the notice of the appellate authority by written pleadings if necessary by the petitioners, and with the appellate authority to thereafter pronounce its order on any appeal filed by the petitioners duly taking into consideration all law applicable on the subject, by passing a very detailed speaking order.

Looking at what has now been argued by learned counsel, if the appellate authority eventually upholds the order of the Commissioner, Municipal Corporation, Hisar, demolitions will not take place for a period of only one week after the service of a certified copy of that order on the petitioners.

The petition is disposed of.

(AMOL RATTAN SINGH)
JUDGE

May 12, 2022

dharamvir

(LALIT BATRA)
JUDGE

Whether reasoned/speaking : Yes

Whether reportable : Yes