

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

105

CWP-22462-2021 (O&M).

Date of Decision: 05.04.2022.

Ram Ji Kumar and others

....Petitioners.

Versus

State of Haryana and others

....Respondents.

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

Present: Ms. Amrita Garg, Advocate and
Ms. Anjali Sheoran, Advocate
for the petitioners.

Ms. Priyanka Dalal, Advocate
for respondent No.3 (NHAI).

Mr. P.S. Chauhan, Additional Advocate General, Haryana
for respondent-State and for respondent No.4 (HSVP).

Mr. Satya Pal Jain, Additional Solicitor General of India, with
Ms. Sangeeta Srivastava, Advocate
for respondent No.6-UOI.

Amol Rattan Singh, J. (Oral)

By this petition, filed under the provisions of Article 226 of the Constitution of India, the petitioners are seeking issuance of a writ in the nature of mandamus directing respondents No.1 to 6 not to undertake any demolition at Rajiv Nagar Colony, until adequate rehabilitation of the residents.

On 23.12.2021 the following order had been passed:-

“During the course of resumed hearing today, Mr. P.S. Chauhan, Advocate representing HSVP would shed some light in the matter. He submits that the petitioners, who are 14 in number are presently encroaching on land which belongs to HUDA (now 'HSVP'). He further apprises us that the claim of the petitioners to be rehabilitated is under active consideration and for such purpose, a Committee has been constituted. The representation in such regard that has already been filed by the petitioners, would be taken up by the Committee and a final view would be taken within a period of six weeks.

Assurance is furnished that till such time, notices for demolition served upon the petitioners, would be held in abeyance.

Hearing in the instant writ petition is deferred to 07.03.2022.”

Thereafter, on 28.03.2022 the following order had been passed:-

“Today Mr. Chauhan, learned counsel for the respondent-HSVP, submits that in the survey conducted it was found that out of the 14 petitioners, 12 were found living there, with petitioner nos.4 and 14 not found to be living there; and with all 12 of them having been given forms by hand, to be filled for alternative allotment of flats for the economic weaker sections of society; but that only petitioner no.8 has applied, the others still not having applied.

Naturally, in that situation, we would find it very difficult to stay demolition any further, with the learned Addl. Solicitor General of India, as also Ms. Priyanka Dalal, Advocate appearing for the NHAI, submitting that the entire project of the Delhi-Mumbai Expressway has been stalled due to the illegal encroachment.

Adjourned to 05.04.2022, with it made clear that if counsel for the petitioners does not take positive instructions as to whether the petitioners are willing to shift or not to the flats that the respondent State of Haryana is willing to allot them, it would not be possible for this court to stay demolition of the illegal encroachment.”

Today CM No.5135-CWP of 2022 has been filed by the petitioners, seeking to place on record a copy of the reply filed by the petitioners to the public notice issued on 25.01.2022, such reply having been filed via e-mail, with photographs of the proposed rehabilitation site, i.e. Ashiana EWS Flats in Sector 56 to 56-A, Faridabad, also annexed.

Learned counsel for the petitioners submits that the photographs of the said site would show that it is in a very dilapidated condition and is unfit for living, the structure being more than ten years old.

Though undoubtedly a perusal of those photographs shows that as regards the outer face/*facade* of the flats, they are not in a good condition, however that would not necessarily mean that a ten year old structure would be unsafe for living.

Consequently, with the petitioners admittedly being squatters on land that does not belong to them and the said land being immediately needed to complete the Delhi-Mumbai Expressway, they are required to immediately vacate the said site and to move into alternative accommodation.

Mr. Chauhan, learned counsel appearing for respondent-State and HSVP, has very fairly assured us that in fact the condition of the said flats (which are stated to be a part of the Ashiana Scheme floated by the

Haryana Government), would be properly repaired and the petitioners, are unable to purchase the flats, they would be allowed to occupy them at a nominal rent of Rs.500/- per month.

We find that offer to be extremely fair with it to be noticed that Rs.500/- is actually the approximate daily wage of a labourer for one day.

Hence, this petition is disposed of with a direction to the petitioners to vacate the site in question within one month from today and with a further direction to the respondent-State to ensure that within that period, the safety of the structures in which the petitioners are to move, i.e. the flats of the Ashiana Scheme in Sector 56-A, Faridabad, is get examined; and if the structures are found to be unsafe (with a certificate of safety/non-safety to be issued by a competent person not below the rank of an XEN), the petitioners, who are only fourteen in number, would be accommodated at an alternate site immediately, within one month by the respondent-State.

Naturally, as a follow-up of the above directions, if the petitioners do not voluntarily move, the respondents would be at liberty to remove the petitioners forcibly from the site in question, immediately after a period of one month from today.

As regards the contention of learned counsel for the petitioners that the flats in question are about 25/26 kilometers away from the place of work of the petitioners, the petitioners would be at liberty to file an appropriate representation before the respondent-Government for accommodating them at an alternative site in terms of the judgment of the Supreme Court in **Olga Tellis and others Vs. Bombay Municipal Corporation and others, (1985) 3 Supreme Court Cases 545**, which

representation would be considered on its merits by the respondents, taking into account the aforesaid judgment and any subsequent law laid down on the subject, within a period of three months of the said representation being made.

It is made clear that even if the petitioners do not apply for alternate accommodation, that would not give them a right to continue living at the site in question after one month, with alternate accommodation of living offered to each of them. Whether they choose to occupy such accommodation thereafter or not, would obviously be their choice, but with them to be removed from the present site thereafter.

It is to be noticed that Ms. Priyanka Dalal, learned counsel appearing for respondent No.3 (NHAI), has specifically pointed to the importance of the ongoing project.

(AMOL RATTAN SINGH)
JUDGE

(LALIT BATRA)
JUDGE

05.04.2022

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Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No