

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

104+122+227

2023:PHHC: 091439-DB

CWP No. 7631 of 2022 and other connected matters

Date of Decision: 20.07.2023

Marble Traders Welfare Association

.....Petitioner(s)

Versus

U.T., Chandigarh and another

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Puneet Bali, Sr. Advocate with
Mr. Aditya Shioran, Advocate,
Advocates for the petitioner (in CWP-7631-2022).

Mr. Ranbir Singh Rawat, Advocate,
for the petitioner(s) (in CWP-6004 and 6053-2023).

Mr. Sunil Kumar, Advocate,
for the petitioner(s) (in CWP-17923-2022).

Mr. Ashwani Kumar Chopra, Sr. Advocate,
with Mr. Vidul Kapoor, Advocate,
for the petitioner (in CWP-26367-2022).

Mr. Akshay Bansal, Advocate,
for the petitioner (in CWP-15393-2023).

Mr. Anil Mehta, Sr. Standing Counsel,
with Ms. Madhu Dayal, Addl. Standing Counsel,
Mr. Sumit Jain, Advocate,
and Mr. J.S. Chandail, Advocate,
for U.T., Chandigarh.

G.S.SANDHAWALIA, J. (Oral)

1. The present judgment shall dispose of 6 cases i.e. CWP-7631-2022 (O & M), CWP-17923-2022 (O & M), CWP-26367-2022, CWP-6004-2023, CWP-6053-2023, CWP-15393-2023 since the issue in consideration is

Welfare Association vs. U.T., Chandigarh and another.

2. The challenge in the present set of cases is to the demolition orders dated 28.03.2022 (Annexures P-15 and P-16) passed by respondent No.2 wherein, on account of the contravention of the provisions of Sections 5, 6 and 11 of the Punjab New Capital (Periphery) Control Act, 1952 as amended by Chandigarh Administration (Amended) Act, 1972, the construction raised in various khasra numbers in village Sarangpur etc. which is in the form of Tin Sheds measuring 50'x100' are sought to be demolished on account of the area being controlled area. The area of construction varies from notice to notice. The petitioners, to be noticed, primarily are engaged in the trade of sale of marble and the grouse of the Association was that there were around 190 members of marble traders doing their business in Dhanas, Sarangpur and Dadumajra for the last 30 years. Earlier the marble market existed over both sides of the dividing road of Sector 51 and Sector 52, Chandigarh and the market was removed by the respondents in the year 2004-05. Apparently, the said trading shifted to both sides of Milk Colony road leading to Mullanpur (Punjab) in the periphery area of villages Dadumajra, Dhanas and Sarangpur. A representation having been made to the Member of Parliament on 06.01.2016 regarding rehabilitation is the basis of the petition and the fact that land was acquired in Maloya for setting up of bulk material market in west of Sector 56, Chandigarh and the land was acquired on 04.04.2000 (Annexure P-2).

3. A perusal of the same would go on to show that the land was acquired for a public purpose namely for setting up of bulk material market for rehabilitation of marble dealers, Kabaris, furniture shops etc. Apparently,

draft lay out plan of the bulk material market was also prepared as per the draft lay out plan dated 28.12.2018. It is in such circumstances since demolition was being carried out, the petitioners have approached this Court for rehabilitating the marble market traders.

4. Vide order dated 08.04.2022 passed by a co-ordinate Bench, it was noticed that number of persons occupying the land in question were increasing day by day and it was noticed that the respondents had identified certain persons who were already existing in the site which is stated to be 192. Accordingly, keeping in view the fact that the market was to come up, observations were made that once the policy is formulated and a market for accommodating the bulk material sale purchase is established, the petitioner-association would participate in any process of sale/auction of plots etc. and move out within an absolutely limited time, failing which, the respondent-Administration would be free to take action against them. The relevant part of the order reads thus:-

“It is made clear that other than those persons whom the respondents had themselves identified to be already existing at the site in question (stated to be 192 before the demolition yesterday), if any other person attempts to set up any structure in violation of the provisions of the Act of 1952, the respondents would be free to take action against the said person as per law, immediately.

Learned senior counsel appearing for the petitioner-association has also submitted that once such policy is formulated by the respondents and a market to accommodate bulk material sale/purchase is established, the petitioner-association undertakes to participate in any process of sale/ auction of plots etc.,

and immediately thereafter move out within an absolutely limited time, failing which the respondent-Administration would be free to take action against them.”

5. The interim order thereafter continued with the only exception that on 23.08.2022 it was noticed that the site of approximately 44 acres was required to be developed and the infrastructure was to be set up and the auction of the sites was to be held as per the Estate Rules, 2007. The clarification was also thereafter done that instead of 192, the number of identified persons in the survey was 182 and the respondents could take action to evict any person other than those identified in the survey.

6. Written statement of Sanyam Garg, Sub Divisional Magistrate (Central), U.T., Chandigarh has also been filed which is dated 28.03.2023. In the affidavit filed, it was noticed that the Administration held meetings on 14.07.2022 and 15.12.2022 in pursuant to the order dated 08.04.2022 and further affirmed that for developing the site in question, it will take at least one year since the total area to be developed was 44 acres and there were 182 illegal occupants at the site as per the survey conducted in the year 2018. It was also admitted that the land has been acquired by the Administrator for the purpose of establishing a bulk material market including marble, furniture etc. and the scheme has been prepared and the process of development has been initiated. However, it has been denied that any promise or assurance was given to the petitioners by the Administration for rehabilitation. Details of the sheds which were demolished on 27.12.2012, 18.02.2013 and 06.04.2022 have also been given. The factum of possession of the land for development having been handed over to the Chief Engineer, U.T., Chandigarh was stated

7. A perusal of the minutes of meeting held on 14.07.2022 (Annexure R-2) would go on to show that suggestions were put on the file that the shops must have a basement and three floors and there should be provision of loading and unloading of material and front and rear set backs should be given. Similarly, the minutes of meeting held on 15.12.2022 as such held under the Chairmanship of Deputy Commissioner would go on to show that initially there was a plan of 192 plots of one kanal area for marble traders and thereafter it was reduced to 152 plots of 1 kanal each and 20 plots of 2 kanal each. The fact that the 182 occupiers have been continuing and had been granted protection by this Court was also noticed.

8. It would be clear from the above sequence of events that once the site in Section 56 is developed and the plots are put to auction, the petitioner-Association and other similarly situated persons would all be entitled to apply for the said plots. There is apparently can be no vested right with any set of persons who were in occupation of the land in violation of the statutory provisions. There are some another set of persons who have not been identified in the survey of 2018 and who might not be entitled to now occupy or encroach upon the area in view of the interim protection granted but they are definitely entitled for applying and participating in the auction proceedings as and when the are held. It is for the Administration to take a call and lay down the eligibility criteria as to how persons would be considered eligible, which is a free market principle which would be governing once the property is put to auction. It cannot be restricted to any set of persons only on account of the fact that the survey was carried out at one point of time. The purpose of the protection as such given to those who

over the area and, therefore, the interim protection granted to those who figured in the survey and their names figure in Annexure R-1 would, thus, continue to be protected till the auction proceedings is complete and the site is developed. It would be for the Administration as such to fix up a cut off date as to when the said persons, if they are successful in the auction proceedings, will have to shift and clear the encroachments. The Administration would then be free to act against them also and the order as such cannot continue indefinitely in favour of the persons as admittedly there is violation of the statutory provision. In such circumstances, any such apprehension which is now raised that only a limited set as such was to be considered is being cleared. The criteria to be fixed for consideration for eligibility as such would also be transparent and modulated in such a manner that there are no multiple allotments in favour of the same set of persons. We are also been informed that there were some representations filed by certain set of persons who had been operating there and had been missed out in the survey for including their names in the list so that they can be protected from demolition.

9. Mr. Mehta submits that consideration has already been done and names of 12 persons have been added in the list of 182 persons tentatively and, thus, the Administration is still open to decide the representations on the basis of material produced, if duly received.

10. Accordingly, if any such representations are made within a period of two weeks from today, the same will be decided in accordance with law.

11. As noticed above, the said list of marble traders is only for the purpose of ensuring that the demolition is not done till the time the market is

shifted and set up. There is no preference to any of the traders identified in the survey as such for preferential allotment.

12. The writ petitions are accordingly disposed of with the abovesaid observations. It is expected that the Administration shall take steps to ensure that the infrastructure and the market is set up at the earliest and the auction proceedings are also conducted so that the shifting of the marble market can be done at the earliest to avoid inconvenience to the general public. Needless to say that if any show cause notice has been issued, the prescribed procedure would be followed and principles of natural justice would be adhered to before passing any order of demolition.

(G.S. SANDHAWALIA)
JUDGE

20.07.2023
shivani

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking	Yes
Whether reportable	No