

103

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

CWP-20969-2021

Date of decision : 13.04.2023

M/s Rakshak Real Tech. Pvt. Ltd.

...Petitioner

Versus

Commissioner, Gurugram Division, Gurugram and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. D.S. Matya, Advocate for the petitioner.

Mr. Samarth Sagar, Addl. A.G. Haryana
for the respondents.

VIKAS BAHL, J. (ORAL)

1. This is a Civil Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of impugned order dated 28.09.2021 i.e., Annexure P-14 passed by respondent No.1. Challenge has also been made to the order dated 14.02.2019 (Annexure P-7) passed by the Executive Engineer-II, Municipal Corporation, Gurugram.

2. Learned counsel for the petitioner has submitted that the impugned order dated 14.02.2019 (Annexure P-7) which is a demolition order with respect to the property of the petitioner has been passed at the back of the petitioner. It is further submitted that the said fact is apparent

from the bare perusal of Annexure P-7 in which the said order has been addressed to one Rakesh Duaa who is nowhere related with the petitioner company as he is neither the Director nor the Ex-Director nor has ever been employed by the petitioner company. It is contended that in ground No.6G of the grounds of appeal filed before the Divisional Commissioner, Gurugram, by the petitioner, it has been stated that the impugned order is related to the property of the petitioner but has been issued in the name of some third person who is not the owner of the said property. It is stated that the said aspect has not even remotely been considered in the impugned order dated 28.09.2021. It is further contended that the proceedings before the authority have been carried out at the back of the present petitioner before passing the impugned orders.

3. Learned counsel for the petitioner has handed over a copy of grounds of appeal filed before the Divisional Commissioner, Gurugram which is taken on record and marked as Mark 'A'. It is further submitted that there are also other grounds of challenge to the impugned orders.

4. On 11.04.2023, this Court had passed the following order:-

“Learned counsel appearing for respondents No.2 and 3 is directed to get instructions as to whether the order dated 14.02.2019 (Annexure P-7) is the order which has been passed against the petitioner or there is some other order dated 14.02.2019, which was challenged in the appeal before the Commissioner and resulted in passing of the impugned order dated 28.09.2021. Learned counsel for respondents No.2 and 3 is also directed to get instructions on the aspect that as to whether the demolition has already been taken place or not.

Adjourned to 13.04.2023.

To be taken up after urgent matters.”

5. Learned State Counsel appearing on behalf of the respondents, in pursuance of the abovesaid order, has submitted on instructions from Vijay Kumar, Joint Commissioner-II, Municipal Corporation, Gurugram, that the order dated 28.09.2021 arises from the order dated 14.02.2019 (Annexure P-7) which has been passed against Rakesh Duaa and not against the present petitioner. He has, however, submitted that the petitioner was in constructive knowledge of the said proceedings.

6. This Court has heard learned counsel for the parties and has perused the paper book.

7. It is not in dispute that the petitioner company is the owner of the property which is sought to be demolished by virtue of order dated 14.02.2019 (Annexure P-7). The said order has been addressed to one Rakesh Duaa and not the present petitioner. The argument of learned counsel for the petitioner that the said Rakesh Duaa has nothing to do with the petitioner company could not be rebutted. In ground No.6G of grounds of appeal filed before the Divisional Commissioner, Gurugram, the petitioner has specifically raised the plea that the impugned order relates to the property of the petitioner/appellant therein but has been issued in the name of some third person and not the owner of the property. Ground No.6G of the said grounds of appeal is reproduced hereinbelow:-

“G. Because the impugned order is bad in law since it relates to the property of the appellant but have been issued in the name of some third person not the owner of the property.”

The said aspect has not been considered in the impugned order

dated 28.09.2021 (Annexure P-14). Apparently, the impugned order dated 14.02.2019 (Annexure P-7) which has prejudiced the rights of the present petitioner, is in violation of the principles of natural justice.

8. Keeping in view the abovesaid facts and circumstances, the present Civil Writ Petition is allowed and impugned orders dated 14.02.2019 (Annexure P-7) and 28.09.2021 (Annexure P-14) are set aside.

9. The present order would not come in the way of respondent authorities to proceed against the petitioner in accordance with law in case, the respondent authorities are of the opinion that there is any violation of law by the petitioner.

10. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

13.04.2023

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No