

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

212

CWP-7428-2017

Date of Decision: 09.05.2023

Tejinder Singh and others

..... Petitioners

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Ms. Anju Arora, Advocate
for the petitioners.

Ms. Niharika Sharma, AAG, Punjab.

Mr. Aman Sharma, Advocate
for respondent No.3.

Mr. Naresh Gopal Sharma, Advocate, for
Mr. Mehardeep Singh, Advocate
for respondent No.4.

VINOD S. BHARDWAJ, J.(ORAL)

1. The present writ petition raises a challenge to the notice dated 07.02.2017 (Annexure P-6) vide which the petitioners have been asked to demolish the part of their buildings on Abohar Fazilka Road within a period of two days.

2. The petitioners claim to be running their business on the shops situated on Abohar Fazilka Road, Abohar, as per the site plan attached with the writ petition as Annexure P-1. They are aggrieved of the show cause notices issued to them by the respondents for demolishing of the shops in

question. The petitioners, however, claim themselves as owners in possession of the shops for last 30 years and running their business from the shops. The size of the plots claimed under possession of the petitioners is 60' x 55' and the length of the shops is 20' and the respondents had demolished the 17' frontage of the buildings of the petitioners and the shops have thus been razed completely.

3. Learned counsel for the petitioners further contends that demolition of the entire structure had been carried out without affording any opportunity or show cause notice to the petitioners and that they have demolished even beyond the unauthorized encroachment as determined by them.

4. Reply on behalf of respondents No. 2 & 5 have been filed on 13.11.2017, wherein it was stated as under :

“4. That the project of construction of four lane road at Abohar-Fazilka road Kms 375.800 to 382.00 at National Highway-10 was entrusted to the answering respondents which is of utmost public importance and duly approved by Government of India. In order to accomplish the project within the Specified Scheduled time and the time being the essence of the contract/project, the answering respondents initiated the pre- execution activities where it was found that the Government land(earlier within the Municipal limits) on both sides of the road has been illegally encroached upon by the residents of the Abohar city who are approx. 150 in numbers including the petitioners.

5. That the answering respondents being the Highway administrator and the officer authorized in this behalf conveyed the aforesaid facts to the 0/0 Tehsildar, Abahar vide letter dated 15.07.2016 and further requested to demarcate the Government land as per revenue records to enable them to

execute the public project without any obstruction or hindrances. A true translated copy (in English) of the letter dated 15.07.2016 is annexed as Annexure R-1.

6. That the answering respondents apprised the said facts to the Sub Divisonal Magistrate vide letter dated 13.12.2016 and requested to them to take up the matter with the Revenue department for demarcation and for providing police help for the removal of illegal encroachments. A true translated copy (in English) of the letter dated 13.12.2016 is annexed as Annexure R-2.

7. That the project for four laning of the road is in respect of National Highway, as such, the authorities were vested with the powers under The Control of National Highway (Land and Traffic) Act, 2002 for the execution of the work. Section 26 of the Act provides as:

26 Removal of unauthorized occupation-(1)XXXX

(2) When, as result of the periodical inspection of highway land or otherwise, the Highway Administration or the officer authorized by such Administration in this behalf is satisfied that any unauthorized occupation has taken place on highway land, the Highway Administration or the officer so authorized shall serve a notice in the prescribed form on the person causing or responsible for such unauthorized occupation requiring him to remove such unauthorized occupation and to restore such highway land in its original condition as before the unauthorized occupation within the period specified in the notice.

(3) The notice under sub-section(2) shall specify therein the highway land in respect of which such notice is issued, the period within which the unauthorized occupation on such land is required to be removed, the place and time of hearing any representation, if any. which the person to whom the notice is addressed may

make within time specified in the notice and that the failure to comply with such notice shall render the person specified in the notice liable to penalty, and summary eviction from the highway land in respect of which such notice is issued, under sub section(6).

(4) The service of the notice under sub-section(2) shall be made by delivering a copy thereof to the person to whom such notice is addressed or to his agent or other person on his behalf or by registered post addressed to the person to whom such notice is addressed and an acknowledgment purporting to be signed by such person or his agent or other person on his behalf or an endorsement by a postal employee that such person or his agent or such other person on his behalf has refused to take delivery may be deemed to be prima facie proof of service.

(5)XXXX

(6) Where the service of notice under sub-section(2) has been made under sub-section(4) or sub-section(5) and the unauthorized occupation on the highway land in respect of which such notice is served has not been removed within time specified in the notice for such purpose and no reasonable cause has been shown before the Highway Administration in this behalf for not so removing unauthorized occupation, the Highway Administration or such officer as the case may be, shall cause such unauthorized occupation to be UNDI removed at the expenses of the Central Government or State Government, as the case may be, and impose penalty on the person to whom the notice is addressed which shall be five hundred rupees per square meter of the land in unauthorisedly occupied and where the penalty so imposed is less than the cost of such land, the penalty may be extended equal to such cost.

(7) Notwithstanding anything contained in this section, the Highway Administration or the officer authorized by such Administration in this behalf shall have power without issuing any notice under this section to remove the unauthorized occupation on the highway land, if such unauthorized occupation is in the nature of-

(a) XXXX

(b) Construction or erection, whether temporary or permanent, or

(c) xxxx

And in removing such occupation, the Highway Administration or such officer may take assistance of the police, if necessary, to remove such occupation by use of the reasonable force necessary for such removal

(8) xxxx

(9) The Highway Administration or an officer authorized by such Administration in this behalf shall, for the purposes of this section or section 27, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908(5 of 1908), while trying a suit, in respect of the following matters :-

(a) Summoning and enforcing the attendance of any person and examining on oath,

(b) requiring the discovery and production of documents,

(c) issuing commissions for the examination of witnesses,

(d) any other matter which may be prescribed.

and any proceedings before such Administration or officer shall be deemed to be judicial proceeding within the meaning of section 193 and 228, and for purpose of section 196, of the Indian Penal Code(45) of 1860) and the Administration or the officer shall be deemed to be a Civil Court for the purposes of section 195 and Chapter

XXVI of the Code of Criminal Procedure, 1973.

27 Recovery of Cost of removal of unauthorized occupation and fine imposed:-XXXX.

(A legible copy of Section 26 & 27 is annexed Annexure R-3) In the present case also, the answering respondents as afore-said, in exercise of their powers vested under the Act, issued the notices to the encroachers on 07.02.2017 (on the basis of demarcation made by the revenue department) directing them to remove the unauthorized structures/possession within two days failing which the same shall be removed at the Government expenses which will further be recovered from them. The said notices were duly received by the encroachers or by their authorized representatives including the petitioners and due opportunity was afforded to the parties. Since no conducive response was put forth by the encroachers nor any reasonable cause was shown by them, as such, another notice was issued by the answering respondents to the encroachers vide letter dated 17.03.2017(not disclosed by the petitioner in the petition) which was deliberately not received by the encroachers and the report of refusal was made by the official authorized in this behalf. A true translated copy of each of the notices report of Refusal is annexed as Annexure R-1 and Annexure R-5.

8. That since the encroached land was earlier under the Municipal limits, as such, the answering respondents took up the matter with the Estate Officer, Nagar Council Abohar also vide letter dated 22.02.2017. A true translated copy in English is annexed as Annexure K-6.

9. That the encroachers and the petitioners had not removed the illegal possessions/structures despite the issuance of notices and affording opportunities to them, as such, the matter was again taken up by the answering

respondents with the Deputy Commissioner, Fazilka vide letter dated 14.03.2017 for providing police assistance in removing the illegal encroachments which was further forwarded to Senior Superintending of Police, Fazilka by the O/o District Magistrate, Fazilka vide its letter dated 14.03.2017. A true translated copy (in English) of each of the letter dated are annexed as Annexure R-7&8.

10. That during this process some of the encroachers had removed or demolished their illegal structures/sheds themselves and those who had failed to remove the same were got removed by the authorities with the police assistance and in the presence of the Duty Magistrate (Naib-Tehsildar) and all the process was video graphed which can be produced at the relevant stage as per the directions of this Hon'ble Court.

11. That though the answering respondents had the powers vested in them to remove the structures even without issuing notices as explained supra under section 26 of the Act, yet the answering respondents in order to maintain the law and order afforded the opportunities to the wrongdoers and even issued the notices and apprised the fact to the public authorities to meet out the inconveniences obstructing the public project and further burdening the Govt. Exchequer. Thus, the every act of the State and its authorities is legal, justified, reasonable, within the four corners of the provisions of the Act and to meet out the exigencies of work entrusted to them which was of public importance."

5. The stand of the respondents was specific to the effect that there was an encroachment over the land qua which notices were issued, firstly on 07.02.2017 and thereafter on 17.03.2017, however, the petitioners did not remove the said encroachment. It is further averred that the demarcation of the encroached area was duly conducted with the help of

revenue staff before carrying out demolition and that various persons had also signed the said demarcation report, while some of the encroachers are not signatories to the demarcation report.

6. At this stage, learned counsel appearing on behalf of the petitioners, does not press the instant petition and prays for withdrawal thereof so as to avail the alternative remedy available to them in accordance with law for redressal of their grievances. Counsel for the respondents have no objection to the same. Hence, without commenting anything on the merits of the case, lest it may cause prejudice the rights of the respective parties, the present petition is disposed of as withdrawn with liberty to the petitioners to take recourse to alternative remedies, if so advised.

(VINOD S. BHARDWAJ)
JUDGE

09.05.2023

Satyawan

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No