



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.2373 of 2023 (O&M)

Reserved on 28.08.2024

Pronounced on: 09.09.2024

Manoj Kumar and another

....Petitioners

Versus

Union Territory of Chandigarh and others

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Vikram Singh, Advocate
for the petitioners.

Mr. Sanjeev Kumar Bawa, Advocate
for respondent No.5.

Mr. Sumit Jain, Addl. Standing Counsel
for the respondent-U.T. Chandigarh.

VIKRAM AGGARWAL, J.

1. The petitioners assail the demolition order dated 25.01.2023 (Annexure P-3) passed by respondent No.3 under Section 12 of the Punjab New Capital (Periphery) Control Act, 1952 (for short 'the Act') vide which the petitioners were called upon to remove the unauthorized construction raised by them on land comprised in Khasra No.555/55 situated in village Shahpur, Union Territory of Chandigarh.

2. It is the case of the petitioners that the said order is non-speaking and was passed without granting any opportunity of effective hearing to them or without permitting them to submit a detailed reply to the show-cause notice issued prior to the issuance of the said order.

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3. The facts, as set out in the writ petition, are that the petitioners claim to be in possession of land measuring 1 Kanal in Khasra No.52(6-6), 53(4-3), 54(4-1), 554/55 and 555/55, land measuring 0-6 Biswa in Khasra No.554/55 and 555/55, land measuring 1 Bigha 0.5 Biswa in Khasra No.52(6-6), 53(4-3), 54(4-1), 554/55 (1-6) and 555/55(4-7) and land measuring 0-3 Biswas in Khasra No.554/55(1-6) and 555/55(4-7) in Village Shahpur Cholian, Union Territory of Chandigarh.

4. A show-cause notice dated 30.11.2022 (Annexure P-1) was issued in the name of Snow White Car Wash, under Section 12(2) of the Act alleging that Snow White Car Wash had been constructed in violation of Sections 5/6/11 of the Act. An opportunity of hearing was fixed for 26.12.2022 at 2.30 P.M. Subsequently, another notice dated 12.01.2023 (Annexure P-2) was issued for personal hearing before respondent No.3 on 23.01.2023. Finally, order dated 25.01.2023 (Annexure P-3) was issued without granting any opportunity of hearing to the petitioners leading to the filing of the instant writ petition.

5. The order has been assailed on the ground that the same is non-speaking and is violative of the principles of natural justice, the same having been passed in a mechanical manner without granting any opportunity of hearing and having given perverse findings that 'despite valid service of notice', the unauthorized use had not been stopped. It has also been pleaded that the impugned order is also violative of the provisions of Section 12(2) of the Act as Section 12(2) provides that the Deputy Commissioner can order demolition of a construction after making appropriate enquiry and after affording opportunity of hearing to the person concerned. It has been

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pleaded that no enquiry had been conducted for establishing any contravention of Sections 5, 6 and 11 of the Act nor any spot inspection or survey was conducted as regards the alleged violation. It has also been alleged that the petitioners had appeared before the competent authority on 23.01.2023 but no submissions were noticed while passing the impugned demolition order.

6. The writ petition has been opposed by the respondents. In the written statement, certain preliminary objections have been raised. It has been averred that the petitioner has concealed the fact that they are running a Car Wash Centre in the name of Snow White Car Wash which in no manner can be said to be an activity subservient to agriculture. Photographs have been placed on record as Annexure R-1.

7. It has been averred that a complaint dated 16.11.2022 was received from the owner of the land in question namely Mr. Rohit as regards illegal construction and running of the Car Wash Centre. The complaint was marked to the concerned Officer after which a report was received that there was a structure on the site in violation of Act. Accordingly, a show- cause notice dated 30.11.2022 (Annexure P-1) was issued vide which the petitioners were called for personal hearing on 26.12.2022 which was duly received by one Vipin Yadav at the address of the petitioners. However, for the matter could not be taken up on 26.12.2022, it was posted for 12.01.2023 when no one appeared on behalf of the petitioners as a result of which the matter was adjourned to 23.01.2023. On 23.01.2023, the petitioners appeared before the authority and admitted that there was no permission with them as regards the construction raised by them after which the



demolition order was passed. Reference has been made to the provisions of Section 12 of the Act. It has also been averred that the action against the petitioner is based upon actual physical inspection carried out by the field staff on 17.11.2022 and after considering the report (Annexure R-2), the action was initiated. On merits, all averments made by the petitioners have been denied.

8. Learned counsel for the parties were heard.

9. It was submitted by learned counsel for the petitioners that the action of the respondents in passing the impugned order is violative not only of the provisions of Section 12 (2) of the Act but also of the principles of natural justice, for, no effective hearing was granted before passing the order. Reference was made to the impugned order and various other documents annexed with the writ petition.

10. On the other hand, learned counsel representing the respondents opposed the submissions made by learned counsel for the petitioners and defended the action taken by the respondents. Reference was made to the impugned order and other documents annexed with the written statement.

11. We have considered the submissions made by learned counsel for the parties.

12. Section 12 (2) of the Act lays down as under:-

“12. Offences and Penalties:-

(1) Any person who-

(a) erects or re-erects any building or makes or extends any excavation or lays any means of access to a road in contravention of the provisions of section 5 or in contravention of any conditions imposed by an order under section 6 or section



7,

or

(b) uses any land in contravention of the provisions of sub-section (1) of section 11; shall be punishable with imprisonment of either description for a term which may extend to three years, and with fine which may extend to ten thousand rupees, and in the case of continuing contravention, with a further fine which may extend to five hundred rupees for every day after the date of the first conviction during which he is proved to have persisted in the contravention.

(2) Without prejudice to the provisions of sub-section (1), the Director may, by notice, served by post and if a person avoids service, or is not available for service of notice, or refuses to accept service, then by affixing a copy of it on the outer door or some other conspicuous part of such premises, or in such other manner as may be prescribed, call upon any person who has committed a breach of the provisions referred to in the said sub-section to stop further construction and to appear and show cause why he should not be ordered to restore to its original state or to bring it in conformity with the provisions of the Act or the rules, as the case may be, any building or land in respect of which a contravention such as described in the said sub-section has been committed, and if such person fails to show cause to the satisfaction of the Director within a period of seven days, the Director may pass an order requiring him to restore such land or building to its original state or to bring it in conformity with the provisions of the Act or the rules, as the case may be, within a further period of seven days.

(3) If the order made under sub-section (2) is not carried out, within the specified period, the Director may himself, at the expiry of the period of this order take such measures as may appear necessary to give effect to the order and the cost of the such measures shall, if not paid on demand being made to him, be



recoverable from such person as arrears of land revenue:

Provided that even before the expiry of seven days period mentioned in the order under sub-section (2), if the Director is satisfied that instead of stopping the erection or re-erection of the building or making or extending of the excavation or laying out of the means of access to a road, as the case may be, the person continues with the contravention, the Director may himself take such measures as may appear necessary to give effect to the order and the cost of such measures, shall, if not paid on demand being made to him, be recoverable from such person as arrears of land revenue."

13. It is the categoric stand of the respondents that a complaint was received from the owner of the land in question as regards illegal construction and running of a Car Washing Centre. A report dated 17.11.2022 (Annexure R-2) is stated to have been received from the concerned Patwari and was also subsequently verified by the concerned Tehsildar vide report (Annexure R-4). As per the report 'Snow White Service Station' was an old constructed building behind the Bajia Nursery. Accordingly, show-cause notice dated 30.11.2022 was issued. Pursuant to the same, the petitioners duly appeared before the authority on 23.01.2023 after the matter having been adjourned on a couple of occasions and admitted that they had no permission in pursuance to which the construction had been raised. Accordingly, the impugned order of demolition was passed. The stand taken by the petitioners that no opportunity of hearing was granted to them is devoid of merit as they duly appeared before the authorities and admitted that they did not have any permission to raise construction. Even the order dated 23.01.2023 (Annexure R-5) notices the presence of the

petitioners. It does not, therefore, lie in the mouth of the petitioners to state that no opportunity of hearing was granted to them. The whole case set up by the petitioners therefore falls to the ground the moment the respondents are able to prove that due opportunity of hearing was granted to the petitioners and the impugned order was passed in accordance with law. No interference is, therefore, called for.

In view of the aforementioned facts and circumstances, we do not find any merit in the present writ petition and the same is accordingly dismissed.

All pending applications stand disposed of.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

Pronounced on: 09.09.2024
Rekha

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No