

THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.4135 of 2024
Date of Decision: 22.02.2024

Deepak Ghudaiya and others
..... Petitioners

Versus

State of Haryana and others
..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Ashish Gupta, Advocate
for the petitioners.

RAJESH BHARDWAJ, J. (ORAL)

Present writ petition has been filed for directing the respondents not to initiate any coercive measures against the petitioners till the decision of reply filed by the petitioners dated 11.01.2023 (Annexure P-2) in pursuance to the order under Section 408-A(2) of the Haryana Municipal Corporation Act, 1994 dated 09.01.2023 (Annexure P-1).

It has been contended by learned counsel for the petitioners that the petitioners are residing at the place of dispute from last about 20 years. He has submitted that the respondent authorities on the earlier occasion also issued the notice for eviction to the similarly situated persons, who had approached this Court by way of filing CWP Nos.1424, 1436 and 2746 of 2020 which were disposed of by this Court vide order dated 05.02.2020. He has submitted that this Court had disposed of these petitions with a direction to decide the representations/applications filed

by the petitioners under the second proviso to Section 164(c) of the Haryana Municipal Corporation Act 1994 within four weeks and the Municipal Authorities were directed not to give effect to the orders passed against the petitioners under Section 408-A of the Haryana Municipal Corporation Act. He submits that father of the petitioners was issued the impugned notice dated 09.01.2023 whereas their father had already expired on 30.11.2022 i.e. prior to the issuance of this notice. He submits that the petitioners are also at par with the petitioners in above-mentioned CWP Nos.1424, 1436 and 2746 of 2020 and deserve the same protection.

Notice of motion.

On asking of the Court, Ms. Upasna Dhawan, AAG, Haryana appears and accepts notice on behalf of respondents No.1 and 5.

Mr. B. R. Mahajan, Senior Advocate with Mr. Piyush Bansal, Advocate has appeared and filed memorandum of appearance on behalf of respondents No.2 to 4 today in the Court and the same is taken on record. He has opposed the submissions made by learned counsel for the petitioners. He has submitted that the notice dated 09.01.2023 (Annexure P-1) which has been impugned in the present petition is not the notice but the same is order of demolition issued by the respondent-Municipal Corporation. He submits that first notice under Section 408-A(1) of the Haryana Municipal Corporation Act was issued to the petitioners by providing them the opportunity to file reply to the same but they never filed the reply and thus, the present order was issued for demolition as the petitioners failed to file any reply to the first notice. He

submits that even otherwise this order is assailable by way of filing an appeal before the Commissioner, Municipal Corporation Gurugram i.e. respondent No.2 which the petitioners have not availed and thus, the present petition is not maintainable.

Learned counsel for the petitioners has submitted that as the father of petitioners had already expired prior to the issuance of notice thus, neither they could file the reply nor the appeal. He has submitted that the petitioners be allowed to file an appeal before respondent No.2 i.e. the Commissioner, Municipal Corporation Gurugram.

In view of the above, the present petition is disposed of with liberty to the petitioners to avail their remedy by filing an appeal against the impugned notice dated 09.01.2023 within a period of one week from the date of receipt of certified copy of this order. However, respondent No.2 i.e. the Commissioner, Municipal Corporation Gurugram before whom the appeal would be filed would deal with the same in accordance with law. The appeal filed would be decided after providing opportunity of hearing to the petitioners in accordance with law expeditiously preferably within a period of two months thereafter from the date of its filing.

In the meantime, no coercive action would be taken against the petitioners before the decision of the appeal filed by the petitioners.

(RAJESH BHARDWAJ)
JUDGE

22.02.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No