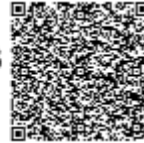


2025:PHHC:036870-DB



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

**CWP-6511-2023 (O & M)
Reserved on: 24.02.2025
Pronounced on: 17.03.2025**

UMED SINGH AND ORS.

.....Petitioners

Versus

STATE OF HARYANA AND OTHERS

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI**

Argued by: Mr. Vineet Kumar Jakhar, Advocate
for the applicants/proposed respondents.

Mr. Dushyant Godara, Advocate and
Mr. Darpan Bansal, Advocate for
Mr. Vivek Suri, Advocate
for the non-applicant(s)/petitioner(s).

Mr. Ankur Mittal, Addl. A.G., Haryana with
Ms. Svaneel Jaswal, Addl. A.G., Haryana
Mr. P.P.Chahar, Sr. DAG, Haryana
Mr. Saurabh Mago, DAG, Haryana
Mr. Gaurav Bansal, DAG, Haryana and
Mr. Karan Jindal, AAG, Haryana.

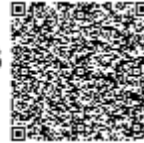
Mr. Parvindra Singh Chauhan, Advocate
Mr. Ankur Mittal, Advocate and
Ms. Vasundhra Asija Bhandari, Advocate
for respondents No. 2 and 3 - HSVP.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioners herein
pray for the hereinafter extracted reliefs.

*“Civil Writ Petition under Article 226/227 of the
Constitution of India for issuance of a Writ in the nature of*

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Mandamus for seeking action against the respondents for not taking action on the illegal construction being raised upon the Government land bearing No.51/11, 20/1, 20/2, 21 situated in village Para, Tehsil and District Rohtak inspite of the fact that the notices have been issued to the illegal encroachers who have raised construction and forcibly occupied the acquired land in connivance with the officials of the respondents No. 2 and 3 and with a further prayer that the respondents be directed not to protect the illegal encroachers and also to demolish the construction which has been made on the acquired land...”

Sequence of Events.

2. When the instant writ petition was listed for hearing on 28.03.2023, the hereinafter extracted order was passed.

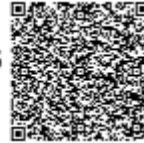
“xxxx In the light of the averments made in the writ petition, let a detailed status report be filed by the Administrator, Rohtak, within a period of six weeks with an advance copy to the counsel for the petitioner.

It should not only highlight the encroachments, if any being made, but should also indicate the steps which have been taken for removal of such encroachments..”

3. In terms of the said passed order, the respondents filed a detailed reply, relevant contents whereof are extracted hereinafter.

3. That the respondents are quite concerned about the removal of encroachment from the HSVP land. Notices under provision of HSVP Act are issued to the encroachers as and when the issue of encroachment came to the knowledge of HSVP. The same practice was followed in case of killa no. 51/11, 20/1, 20/2, 21 situated in village para, Rohtak. The notice under u/s 18 (i) was issued to the

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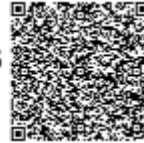
encroachers vide dated 05.05.2023. Copy of the said notice is annexed as Annexure R1.

4. That the encroachers namely Mandeep Hooda, Savitri, Shakuntla, Krishna Devi Ahlawat, Surjeet Singh, Neelam Sheokand, Vitender Kumar and Seenu filed civil suits No. 264/2021, 276/2021, 270/2021, 290/2021, 5/2021, 4/2021, 6/2021 and 3/2021 respectively for getting ad-interim injunction restraining HSVP officials from carrying out the adverse proceedings. The Ld. Civil Court vide interim order dated 16.03.2022 granted interim relief to all the plaintiffs restraining HSVP officials from taking any adverse action in furtherance of notices. But later on, vide order dated 13.09.2022 the stay was vacated by the Ld. Civil Court after apprising the Hon'ble Civil Court about the facts regarding the details and position of released land and acquired land by HSVP/State.

5. That to remove the encroachments on the HSVP Land, the District Magistrate, Rohtak was requested by the respondent no. 3 vide memo no. 1540 dated 03.05.2023 (Annexure R-2) for deputing duty magistrate and for providing adequate police force for encroachment removal drive on dated 25.05.2023. But due to some administrative reasons, the duty magistrate and police force could not be provided. Now, again District Magistrate, Rohtak has been requested vide memo no. 2309 dated 27.06.2023 (Annexure R-3) for deputing the Duty Magistrate and adequate police force for maintaining law and order situation during the encroachment removal drive on killa no. 51/11, 20/1, 20/2, 21 scheduled on 07.07.2023 at Sector 6, Rohtak.

6. That it is respectfully submitted that there is no inaction on the part of the respondents in removing the

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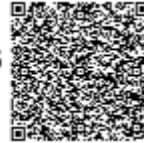
encroachments on HSVP Land as the adequate police force could not be provided by District Administration due to the ongoing G20 Summit. The District Magistrate, Rohtak will be requested again for deputing Duty Magistrate as well as Police Force for encroachment Removal Drive.

4. Further, the hereinafter extracted order was made by this Court on 18.04.2024.

“In response to the order dated 15.04.2024, learned Additional Advocate General, Haryana, on instructions, submits that vide communication dated 16.04.2024, the respondent-HSVP has requested the District Magistrate, Rohtak, to deploy a Duty Magistrate, so that the government land, that has been encroached, is retrieved. Accordingly, he submits that a formal order dated 17.04.2024 has been passed, whereby a Duty Magistrate has been deputed to oversee the demolition drive, which is slated for 22.04.2024. Additionally, he asserts that a complaint qua the encroachers has also been sent on 16.04.2024 to the Superintendent of Police, Rohtak. And in the event, any unjustifiable obstruction is caused, necessary action, in accordance with law, shall be taken. Further, the Administrator has issued instructions that in case any officials/officers of the respondent-HSVP connive with the encroachers and try to obstruct the process, strict action shall be taken against them.”

5. In compliance to the aforesaid order, respondents No. 2 and 3, filed status report before this Court, relevant contents whereof become extracted hereinafter.

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“2. That in compliance of above stated order, the District Magistrate, Rohtak was requested to depute Duty Magistrate as well to deploy adequate police force for removal of encroachment on the 45 mtr. wide road heading towards Delhi Hisar Highway for 24.09.2024. Accordingly, in the presence of Duty Magistrate, police force, officials of LAO, Rohtak and Estate Office, HSVP, Rohtak, demolition drive was started on 24.09.2024. Due to aggressive protest by the mob on the site, situation became tense and almost out of control. So the encroachment removal drive was suspended to maintain the law and order. The proceeding of the encroachment removal drive dated 24.09.2024 is annexed herewith as Annexure – R1 for kind perusal of this Hon'ble Court.

3. That the deponent is respectfully submitting that respondents are quite committed to remove the encroachment from HSVP land and tenders unconditional apology for delay in removal of encroachment on HSVP land. The delay is not intentional but it occurred due to aggressive protest by the mob. The next encroachment removal drive will be scheduled after the ongoing legislative assembly election in State of Haryana.”

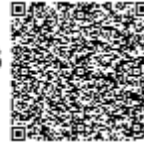
Inferences of this Court.

6. For making a judicious adjudication upon the instant writ petition, it is necessary to extract hereinafter, the relevant provisions embodied in Section 18 (1) of the Haryana Urban Development Authority Act, 1977 (hereinafter for short called as the HUDA Act). The said provisions envisage, that the Collector concerned, becomes solitarily empowered to evict any person, who is in unauthorized occupation of any land of the *Pradhikaran*, wherebys the civil Courts are barred to take cognizance in such type of matters.

18. [Power to evict persons from premises/land of [Pradhikaran] or building constructed thereon.

(1) If the Collector or any officer authorised by him is satisfied-

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(a) *that any person authorised to occupy any premises of the [Pradhikaran] has -*

(i) *not paid rent lawfully due from him in respect of such premises for a period of more than two months; or*

(ii) *sublet, without the permission of the Estate Officer, the whole or any part of such premises; or*

(iii) *otherwise acted in contravention of any of the terms expressed or implied, under which he is authorised to occupy such premises; or*

(b) *that any person is in unauthorized occupation of any land of the [Pradhikaran] or building constructed thereon - the Collector or any officer authorised by him may, notwithstanding anything contained in any law, for the time being in force, by notice served by post and if a person avoids service, or is not available for service of notice, or refuses to accept notice, then by affixing a copy of it on the outer door or some other conspicuous part of such premises/land or building or in such other manner as may be prescribed, call upon any person, who has committed a breach of the provisions of this Act or the rules framed thereunder, to vacate the said premises/land or building constructed thereon or demolish unauthorised 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 this Act or the rules framed thereunder, as the case may be, and if such person fails to show cause to the satisfaction of the Collector or any officer authorised by him within a period of seven days, the Collector or any officer authorised by him shall pass an order requiring him to vacate such premises/land or building constructed thereon or demolish unauthorised construction and restore to its original state or to bring it in conformity with the provisions of this Act or the rules framed thereunder, as the case may be, within a further period of seven days.*

(2) xxxx

(3) xxxx

(4) xxxx

(5) xxxx

(6) xxxx

(7) xxxx

7. A perusal of the records reveal that though notices under Section 18 (1) of the HUDA Act, became issued but the said notices were not preceded by a valid demarcation being conducted of the subject lands.

8. The jurisdiction which has been exclusively conferred upon the Collector concerned, through the supra extracted provision though is to be solitarily exercised by the Collector concerned, but prior thereto the same is to be foisted upon a validly drawn demarcation

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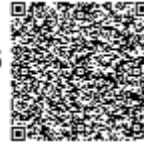


report by an empowered revenue officer, as therebys an inference qua a close application of mind would emanate vis-a-vis the person against whom a show cause notice is to be issued, rather for explaining his unauthorized occupation over the disputed premises, whereupon, the said show cause notice, thus would assume validation.

9. Now, since in the instant case, it appears that the show cause notices became not preceded by a valid demarcation report drawn by an empowered revenue officer concerned, therebys, the issuance of the show cause notices upon the encroachers upon the land owned by the HSVP, thus become completely vitiated, on the ground, that they suffer from lack of completest application of mind to the supra necessity.

10. It appears that though merely on the face of show cause notices, actions for removing encroachments have drawn against the encroachers concerned, but yet on a perusal of the supra extracted contents of the status report filed by the officers concerned, it is revealed that there has been an obstruction or resistance(s) rather on the part of the encroachers concerned. It appears that the said resistance, emanates from the factum, that either there are orders of injunction passed by the civil Courts concerned, or the officers concerned deputed to ensure removal of the encroachments purportedly made over the HSVP land, rather are proceeding to do so without a valid order becoming passed by the empowered Collector under the supra provisions.

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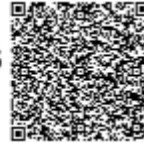


11. This Court though is required to be ensuring that encroachers are to be removed from the land owned by the HSVP, but the instant encroachment drive as has been launched at the instance of the HSVP and also under the directions of this Court, appears to remain unmindful of the trite factum, that unless there were binding and conclusive decrees of eviction passed by the competent Authorities, thereupons, no drive to remove the encroachments could become undertaken, as therebys there would be deviation from the procedure established by law.

12. Resultantly irrespective of what has been disclosed in the status report, and, irrespective also of the fact, that there has been a deep concern on the part of this Court, to ensure the removals of the encroachers upon the disputed lands, but to the considered mind of this Court, the fact that prima facie, there is no validly drawn demarcation report by an empowered officer in respect of the disputed lands, whereas, its being drawn and also becoming proven was a *sine qua non* for an effective decision becoming taken by the Collector concerned.

13. Furthermore, the resultant corollary thereof, but is that, the issuance of the said defective show cause notices was challengeable through a suit for injunction becoming filed by the persons concerned. The reason being that, though there is ouster of jurisdiction of the civil Court of competent jurisdiction to determine the issue appertaining to the making of an order for eviction of encroachers upon land owned by the HSVP, but when the show cause notice(s) are defective on the supra score. Resultantly, to the considered mind of this Court, to yet permit

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the Collector concerned, to assume jurisdiction under Section 18(1) of the HUDA Act, would be permitting him to ill assume jurisdiction especially when adjoining the land of the HSVP, thus lands of private land owners rather exist. In sequel, if in the supra situation, the imperative precursor to the issuance of a show cause notice, thus was a validly drawn demarcation report. In case, the said precursor remained unadhered, as such, the validity of the show cause notice(s) could yet be agitated before the civil Court. Moreover, therebys, the jurisdiction of the Civil Court of competent jurisdiction, to stay the operation of a defective notice, but is also to be declared to be preserved.

14. Reiteratedly, in the wake of the above, the assumption of jurisdiction by the authority concerned, through the makings of defective notices (supra) under Section 18 (1) of the HUDA Act, thus is an ill assumed jurisdiction. Moreover, reiteratedly if without a valid demarcation, thus preceding the issuance of the impugned notice(s), yet the notices (supra) are validated, wherebys, the alleged encroachment(s) made over the HSVP land, are also ordered to be removed, thereupons, the procedure established by law for vacating the encroachment(s) over the HSVP lands, rather would become transgressed.

15. In consequence, for ensuring that the procedure mandated by law is followed, which for reasons (supra) remains unadhered to, therebys this Court quashes the notices made under Section 18(1) of the HUDA Act, by the authority concerned, in respect of the subject lands. However, with a liberty to the respondents concerned to prior to the

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issuance of fresh show cause notices, to ensure that a valid demarcation of the disputed lands is made by an empowered revenue officer.

16. Lastly, the learned civil Courts concerned are however yet directed to ensure that a validly prepared demarcation report as becomes drawn by an empowered revenue officer, is forthwith placed on record, and in case thereins speakings are made that there are encroachment(s) over the Government land. As such, the learned Courts may proceed to refuse to exercise jurisdiction on such civil suits. Moreover, they also may in their discretion, deem it fit to relegate the aggrieved, to face the statutory show cause proceedings before Collector concerned, who however shall ensure, that the demarcation report as prepared, but is proven in accordance with law, and, subsequently shall pass lawful eviction orders. Only on such lawful eviction orders acquiring binding and conclusive effect, that therebys they be ensured to be executed, wherebys alone, the procedure established by law rather for ensuring the removal of encroachment(s) as made over Government lands, thus would become lawfully potentialized.

18. Disposed of with the observations aforesaid alongwith all pending applications, if any.

(SURESHWAR THAKUR)
JUDGE

(VIKAS SURI)
JUDGE

17.03.2025
kavneet singh

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