

157 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-12771-2025 (O/M)

Date of decision : 06.05.2025

Virender Kataria alias Virender Singh

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Ravinder Malik, Advocate
for the petitioner.

Ms. Upasana Dhawan, AAG Haryana.

-. -

-. -

HARSH BUNGER, J. (ORAL)

1. Prayer in this writ petition filed under Article 226 of Constitution of India, inter alia, is for issuance of a writ in the nature of certiorari for setting aside the order dated 13.02.2025 (Annexure P-14), passed by Commissioner, Municipal Corporation, Gurugram; order dated 28.07.2023 (Annexure P-4), passed by Joint Commissioner-II, Municipal Corporation, Gurugram and order dated 16.05.2024 (Annexure P-6), passed by Commissioner, Gurugram Division, Gurugram.

2. Vide order dated 13.02.2025 (Annexure P-14), petitioner has been directed to demolish the shop/construction raised by the petitioner. The relevant extract of order dated 13.02.2025 (Annexure P-14) reads as under :-

“ That as per the official records, it reveals that the respondent no. 7 in CWP No. 21747 of 2024 i.e., Sh.

Sandeep Kataria S/o Sh. Vikram Kataria had applied for and obtained approval for residential building plan through the HOBPAS Portal. The application was approved vide application no. HOBPAS-43630/21-22 on 22.02.2022 and the approval was valid until 21.02.2024.

However, as per the report submitted by the AE (Enf.)-II, it reveals that the construction raised on the site is for commercial purposes, which is not a permissible usage as per the approved plan. This constitutes illegal construction with 100% ground coverage which is a sheer violation of the approved building plan.

Whereas, show cause notices under section 261 (1) of the Haryana Municipal Corporation Act, 1994 were issued to the Sh. Virender Kataria/Sumit Kataria and Sandeep Kataria/Virender Singh as well as "To whom So Ever It May Concern" vide memo no. MCG/Enf./JC-II/2023/532 & MCG/Enf./JC-II/2023/647 dated 18.04.2023 & 15.05.2023. Vide which the Violators were directed to appear in the office of the Joint Commissioner-II, MCG for personal hearing and to stop further illegal construction.

Whereas the replies submitted by the violators were found to be unsatisfactory as the construction raised by the violators not according to sanctioned building plan, hence, Demolition order under Section 261 (1) of the Haryana Municipal Corporation Act, 1994 were issued to the violators vide memo no. MCG/Enf./JC-II/2023/996 & MCG/Enf./JC-II/2023/997 dated 28.07.2023 duly received by the violators, but the violators did not respond to the above said order and did not stop the construction work at site. Therefore, a sealing notice under Section 263A of The Haryana Municipal Corporation Act, 1994 was issued against the property in question vide memo no. MCG/Enf./JC-II/2023/1012-1013 dated 03.08.2023 and

accordingly the building in question was sealed by the MCG on 30.03.2024.

Whereas, the violators instead of removing the unauthorized construction have challenged the demolition orders and sealing orders before the Ld. Court of Sh. Ramesh Chander Bidhan, IAS, Commissioner, Gurugram Division, Gurugram vide case no. EA No. 89 of 2023 titled as Virender Singh V/s MCG & EA No. 90 of 2023 titled as Sandeep Kataria V/s MCG and the same were dismissed vide order dated 16.05.2024 and demolition orders issued by the MCG were upheld.

After considering all these facts and records, it is hereby directed to the AE (Enf.)-II to take action as per the already issued demolition orders by following due process of law.”

3. In para-6 of the writ petition, petitioner has clearly admitted that he has raised construction of shop without any plans being sanctioned and on the wrong advise of the Draftsman, the plans which were submitted and approved, were for a residential property.

4. Learned counsel for petitioner has raised two-fold arguments; firstly, that the petitioner had submitted an application dated 25.03.2024 (Annexure P-5) for regularization of a shop constructed on the plot instead of residential house, which stands allowed by authorities i.e. Municipal Corporation, Gurugram through District Town Planner, vide order dated 20.03.2025 (Annexure P-7) and secondly, that the entire exercise has been carried out against the petitioner at the instance of his (petitioner's) aunt (Mausi and Tai) with whom the petitioner is having a property dispute in respect of area in question.

5. Heard.

6. Concededly, petitioner has raised construction of a shop by raising illegal construction with 100% ground coverage on a site on which the building plans were approved for residential construction.

6.1 As regards the first contention of the petitioner that his application for regularization of shop stands allowed, vide order dated 20.03.2025 (Annexure P-7) is concerned, it would be relevant to extract the aforesaid order dated 20.03.2025 (Annexure P-7), which reads as under :-

“Your request for regularization of illegal sub-division of property area measuring 150 yd² (125.41 m²), bearing property ID no. IC2HKM98 (73C195U264), Khasra no. 1438 in the revenue estate of village Gurgaon, regularized colony Dayanand Colony, Gurugram has approved subject to the fulfilment of following conditions :-

- 1. That you will pay regularization charges amounting to Rs. 25085 @ Rs. 200 per sq. m of total plot area 125.41 sq. m.*
- 2. That you shall submit an Indemnity bond on Rs. 100/- stamp paper with attested by first Class Magistrate along the following conditions that :*
 - i. If there arise any ownership disputes from any quarter due to any reason, then sole responsibility/liability, shall be yours and in that case MCG/Govt./Competent Authority shall not be responsible/liable to compensate any loss or damage that may occur on this account. The expenditure on any such damage or litigation arising out of it shall be entirely borne by you.*
 - ii. That no legal proceeding/Hon'ble Court Order/directions from any quarter are pending against you at present in respect of the property.*

3. *That you shall submit an undertaking on the following conditions :*

- i. That you shall pay any deficient amount/fee/charges, if found at a later date, as and when demanded by the Competent Authority.*
 - ii. That you shall get the additional construction, if any, compounded and demolish the non-compoundable construction as per HBC 2017, within 60 days.*
 - iii. That you are using the subjected site for commercial activity, which is illegal until it is sanctioned by the competent authority. Therefore, you shall obtain the approval of commercial building plans as per DULB instruction dated 29.05.2018 & obtain Occupation Certificate thereafter as per Haryana Building Code-2017.*
4. *That you shall clear all the dues regarding property tax imposed by MCG and submit the property tax receipt, accordingly.*

In view of above, you are directed to fulfil the above conditions within a period of 30 days so that further necessary action may be taken in this regard towards issuing final permission letter accordingly. If you fail to fulfil the above mentioned conditions within 30 days, this letter shall stands withdrawn and permission shall be refused.

This issue with the approval of CTP, MCG vide order dated 19.03.2025.”

6.2 A perusal of aforesaid approval would show that the authorities have regularized the illegal sub-division of property measuring 150 sq. yards, comprised in Khasra No. 1438, falling in the revenue estate of village Gurgaon, in a regularized colony 'Dayanand

Colony, Gurugram'. Even in the said order dated 20.03.2025 (Annexure P-7), it has been clearly mentioned that the petitioner is using the subjected site for commercial activity, which is illegal until it is sanctioned by competent authority, therefore, the petitioner had been called upon to obtain the approval of commercial building plans as per Instructions dated 29.05.2018 and further to obtain occupation certificate, as per Haryana Building Code-2017.

6.3 Concededly, the petitioner has not produced any such approval of commercial building plans, as mentioned in the order dated 20.03.2025 (Annexure P-7). Further, the regularization is only in respect of sub-division of the property and not in respect of construction of shop/commercial activity. Accordingly, the aforesaid contention of petitioner is found to be without any merit and same is accordingly rejected.

6.4 As regards second contention of the petitioner that the authorities have proceeded against the petitioner at the instance of her aunt i.e. respondent No. 5 (Brihma Devi) is concerned, suffice it to say that even if there is a dispute between the petitioner and her aunt, that does not give a licence to the petitioner to raise illegal and unauthorized constructions, which are contrary to the prevalent norms/guidelines.

6.5 Hon'ble the Supreme Court in the case of '***M/s Royal Paradise Hotel Private Limited Versus State of Haryana***', 2006 (4) RCR (Civil) 289, held that the offending constructions, which are put up in a controlled area in defiance of the provisions of law; such constructions cannot be compounded.

7. Keeping in view the above, I do not find any merit in this writ petition and same is accordingly dismissed.

8. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

06.05.2025

sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No