
(2020) 07 P&H CK 0008

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 9049 Of 2020 (O&M)

Nand Lal

APPELLANT

Vs

State Of Punjab And Others

RESPONDENT

Date of Decision : 02-07-2020

Acts Referred:

Punjab Municipal Act, 1911 — Section 11

Citation : (2020) 07 P&H CK 0008

Hon'ble Judges : Jaishree Thakur, J

Bench : Single Bench

Advocate : Abhishek K. Premi

Final Decision : Disposed Of

Judgement

Jaishree Thakur, J

The petitioner herein is aggrieved against the order dated 22.04.2020 by which the Director, Local Government, Punjab has issued directions to the

Executive Officer, Municipal Council, Rajpura to cancel the Khokha, which is on Tehbazari (rent) from the year 1982, as well as the order dated

22.06.2020 whereby the petitioner has been asked to remove the Khokha within a period of three days.

In brief, the facts are that the petitioner herein has been running a mobile shop under the name of "Neeraj Communication" in a Khokha, which

had been allotted to him under Section 173 of the Punjab Municipal Act, 1911 vide allotment letter dated 17.08.1982. The said Khokha was adjacent to

House No.1796, MLA Road, which is in occupation of Sushma Rani. The said Sushma Rani filed a Civil Writ Petition bearing No.32254 of 2019

alleging that respondent No.7, namely the petitioner herein, had encroached upon the land and sought removal of the said encroachment. The writ

petition was disposed of IN LIMINE by the High Court with a direction to consider and decide the case of Sushma Rani within a period of six weeks

by passing a speaking order.

Pursuant to the said order, the petitioner herein was asked to put in appearance before the Director, Local Government, Punjab where he represented

that he was not encroaching upon the land in question. It was stated that in fact, the site was allotted to him by the Municipal Committee, Rajpura and

that he was regularly paying the enhanced Tehbazari upto date. The petitioner further stated that the khokha was situated between the electricity pole

and the telephone pole, therefore, there was no encroachment. The Director, Local Government heard the parties, however, directed the Executive

Officer, Municipal Council to cancel the Tehbazari of the Khokha in question and remove the same, on the ground that there was an increase in traffic

volume and it would not be appropriate to allow the Khokha to continue on the road portion. Pursuant to the said order, the petitioner was given three

days time to remove the Khokha or the same would be removed by the Municipal Council on his cost. Aggrieved against the said order of demolition

and cancelling of the Tehbazari, the instant writ petition has been filed.

Learned counsel appearing on behalf of the petitioner herein would contend that the impugned order dated 22.04.2020 is in fact a non-speaking order

as it does not take into consideration that there is no encroachment on behalf of the petitioner herein. In fact, the petitioner was regularly paying

Tehbazari for the said Khokha, which had been allotted to him as far back as 1982. It is further contended that he was upto date in his payment

regarding the electricity bill as well.

He further argues that the very writ petition filed by Sushma Rani was on the false premise that the petitioner had encroached upon the land. It is also

argued that once he is a recognized tenant, question of encroachment would not arise, while further submitting that having been in possession since

1982, no reasonable opportunity has been given to him to seek an alternate site, which again is against the principles of natural justice.

Learned counsel appearing for the petitioner, in fact, very fairly submits that he would be satisfied if some reasonable time is granted to him to vacate

the said premises as he has been in occupation since 1982 and during COVID-19 pandemic, it is difficult to move his business within a short span of

three days.

Notice of motion.

On the asking of Court, Mr. TPS Chawla, DAG, Punjab, who is present through the medium of video conferencing, accepts notice for the official

respondents. It would be pertinent to note that a complete copy of writ petition has already been supplied to the office of Advocate General, Punjab.

I have heard learned counsel for the parties and propose to dispose of the writ petition IN LIMINE.

It is an admitted fact that the petitioner herein has not encroached upon the land, which was allotted to him by the Municipal Council itself as far back

as 1982 and he has been paying Tehbazari upto date. The Director, Local Government, Punjab has directed cancellation of the Tehbazari of the

Khokha in question only on account of the fact that there is an increase in the traffic volume and it would not be appropriate to allow the Khokha to be

run on the road portion. A perusal of the site plan attached with the writ petition and the photographs would reflect that the Khokha is 8â??x8â?? in

measurement and is situated between the electricity pole and the telephone pole on the corner of the road itself. Its location is such, that it would likely

cause a hindrance to the traffic.

However, keeping in view the limited prayer of the petitioner herein for granting reasonable time to the petitioner to vacate the said premises since

alternate arrangements have to be made, this Court deems it appropriate to allow the said prayer. The petitioner is not an encroacher since he is in

occupation of the Khokha in question after the same had been regularly allotted to him. The Municipal Council had allowed the petitioner to remain in

occupation till such time as a writ petition was filed by Sushma Rani alleging that there was an encroachment, which is factually incorrect. Reasonable

opportunity ought to have been granted to the petitioner herein to relocate, instead of the three days time allowed to him by the order dated 22.6.2020.

Therefore, keeping in mind that these are unprecedented times with COVID-19 pandemic raging, six monthsâ?? time is allowed to the petitioner to

shift out of the said premises, subject to him furnishing an undertaking with respondent No.4 within a period of one week from today that he will

vacate the said premises on or before 31.12.2020 and further that he will continue to clear all dues.

Before parting with this order it is also directed that in case the petitioner approaches respondent No.4 for allotment of an alternate site, the same

would be considered sympathetically and in accordance with law within a period of two months from the date of receipt of such application.

The writ petition stands disposed of in above terms.