
(2014) 05 SHI CK 0082
In the High Court Of Himachal Pradesh
Case No : CWP No. 1917 of 2014

Om Prakash

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 31-05-2014

Acts Referred:

Citation : (2014) 05 SHI CK 0082

Hon'ble Judges : Mansoor Ahmad Mir, Acting C.J.; Tarlok Singh Chauhan, J

Bench : Division Bench

Advocate : H.S. Rangra, Advocate for the Appellant; Shrawan Dogra, Advocate General, Mr. Romesh Verma and Mr. V.S. Chauhan, Additional Advocate Generals, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J.—The petitioner by medium of this writ petition has claimed the following substantive reliefs:-

a) That the impugned order of the respondents No. 3 to 4 annexed as P-5, P-7 be declared null and void and not binding upon the petitioner.

b) That the respondents be directed to consider the demarcation report annexed as P-8, and the report of Local Commissioner appointed by this Hon'ble Court be also taken on record and the petition be decided on the basis of these documents.

2. The precise case of the petitioner is that land bearing Khasra No. 3106/2944/1045 measuring 11-04 square yards, situated in Mohal Joginder Nagar/396, Tehsil Joginder Nagar, District Mandi, is recorded in his ownership and possession upon which he has constructed a shop in the year 1980. This land is adjacent to the National Highway commonly known as "Joginder Nagar-Sarkaghat-Ghumarwin" Highway. In the year 2001, the Assistant Engineer, HPPWD, filed a complaint against the petitioner alleging therein that the petitioner had started construction over RDs No. 0/138 to 0/143 in Khasra No. 1046/1, 1003/1, 366/1 and 366/2, measuring 11-1 square yards which was the

acquired width of the HPPWD. This complaint was preferred before the Sub Divisional Collector under the provisions of the Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971 (for short "the Act").

3. The Collector ordered the eviction of the petitioner vide order dated 19.06.2007 and this order was appealed against in the Court of Divisional Commissioner, Mandi, who vide his order dated 26.12.2013 dismissed the appeal. It is these orders which have been assailed in the present petition on the ground that the authorities have acted in a hasty manner while deciding the dispute. The authorities have further ignored the specific provisions for conducting the demarcation of the land as per the provisions of the H.P. Land Record Manual and the instructions issued by the Financial Commissioner from time to time. It is claimed that the proceedings have been launched by the authorities of the PWD only on the basis of the false complaint made by Bhal Chander (now deceased). The orders were further challenged on the ground that the petitioner had not raised any new construction and his shop over the land was existing ever since its construction in the year 1980.

4. The respondents No. 1, 3 and 4 i.e. the Principal Secretary (Revenue), Divisional Commissioner, Mandi and Sub Divisional Collector, Sub Division, Joginder Nagar, have filed common reply wherein it has been averred that since the petitioner had raised question about demarcation, therefore, the land in question was got demarcated from the Tehsildar, Joginder Nagar and the petitioner had accepted the demarcation given on the spot on 25.05.2007. They have also annexed the copy of the demarcation report submitted by the Tehsildar along with copy of the statement made by the petitioner on the said date. It is further averred that all the issues raised by the petitioner were taken into consideration and the impugned orders were passed after appreciating the evidence placed on record. It was highlighted that due cognizance was taken of the orders passed by this Court and the case was decided in accordance with the directions and also within the time frame given by this Court, on 25.04.2007 in CWP No. 1249/2001, titled "Bhal Chander versus State of Himachal Pradesh and others, wherein and whereby, all encroachments on the roadside of the PWD and action taken report was required to be submitted to the Registrar General of this Court.

5. The respondents No. 2, 5 and 6 i.e. Secretary (PWD), Executive Engineer and Assistant Engineer, HPPWD, filed their common reply wherein they raised preliminary objection regarding maintainability of the petition and also stated that the petitioner had constructed a wooden "Khokha" adjoining the acquired width of the road. However, in the year 2001, the petitioner after removing the "Khokha" constructed a pucca structure of double storey by making encroachment over land bearing Khasra No. 1003/1, 1046/1, 366/1 and 366/2 which belonged to the PWD. On 27.11.2001, a notice was issued to the petitioner by the Extra Assistant Engineer whereby the petitioner was intimated to stop the construction over the government land. The petitioner did not bother for the

notice which constrained the Assistant Engineer to issue yet another notice on 1st December, 2001. Even this notice too did not have any impact upon the petitioner and he continued raising illegal construction over the land of the PWD and finally notice dated 14.12.2001 was issued by the Executive Engineer, National Highway and the petitioner was requested to stop the construction work over the PWD land from RD Nos. 0/135 to 0/143. Since the petitioner did not pay any heed to the repeated requests of the department, therefore, proceedings under the Act were initiated against him before the Sub Divisional Collector, Joginder Nagar. It is further alleged that though a stay order was granted by the said Court on 20.12.2001 and duly intimated to the petitioner, but despite of this, the petitioner did not stop the construction work and raised construction forcibly. The copies of the notices and stay order have been annexed with the reply.

6. It is further averred that during the pendency of the proceedings before the Sub Divisional Collector, the land was got demarcated on 25.05.2007 in presence of both the parties which report, as observed earlier, was accepted by the petitioner. In this report, it was pointed out that the petitioner had raised construction of his shop over the land bearing Khasra No. 1003/1, 1046/1, 366/1 and 366/2, measuring 11-1 square yards. Having accepted the demarcation report, the petitioner, according to the respondents, was not entitled to file and maintain the present petition.

7. The petitioner has filed common rejoinder to the replies filed by the respondents wherein he has stated that the land in question was earlier owned and possessed by the father of the petitioner and in the year 1980 there was shop/khokha standing on the land which was renovated/reconstructed into a two storey pucca shop in the year 1982 which fact could be verified/certified from the record of the learned Sub Judge, Mandi, who was appointed as Local Commissioner. It was further stated that the respondents were habitual of initiating such proceedings against the petitioner and this would be clear from the notices issued to the petitioner on different occasions annexed as P-9 to P-11 respectively which clearly prove on record that the shop in question existed over the land possessed by the petitioner since the year 1980. It was further claimed that no demarcation was conducted to identify the land and it was on account of this plea that the respondents got demarcation conducted in a very hasty manner which was never accepted by the petitioner nor had been finalized by any competent Court of law.

8. We have heard Shri H.S. Rangra, learned counsel for the petitioner and Shri Shrawan Dogra, learned Advocate General assisted by Shri Romesh Verma and Shri V.S. Chauhan, learned Additional Advocate Generals and have carefully and meticulously gone through the records of the case.

9. At the outset, it may be observed that footpaths, street, pavement, acquired width of the Highways are public properties which are intended to serve the convenience of the general public. They are not for private use and their use for

private purpose frustrates the very object for which they are carved out from portions of public roads. The future expansion of the roads gets stalled and frustrated. The encroachment of acquired width of land of the road results in permanent obstruction to free passage of traffic and even the pedestrians safety and security is put to stake. Therefore, the acquired width of the land cannot be permitted to be used for any private purpose.

10. In similar situations when there was unauthorized encroachment of pavements, the Hon"ble Supreme Court in Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan and others, observed as under:-

8. It is for the court to decide in exercise of its constitutional power of judicial review whether the deprivation of life or personal liberty in a given case is by procedure which is reasonable, fair and just or it is otherwise. Footpath, street or pavement are public property which are intended to serve the convenience of the general public. They are not laid for private use and indeed, their use for a private purpose frustrates the very object for which they are carved out from portions of public roads. The main reason for laying out pavements is to ensure that the pedestrians are able to go about their daily affairs with a reasonable measure of safety and security. That facility, which has matured into a right of the pedestrians, cannot be set at naught by allowing encroachments to be made on the pavements. The claim of the pavement-dwellers to construct huts on the pavement or road is a permanent obstruction to free passage of traffic and pedestrians" safety and security. Therefore, it would be impermissible to permit or to make use of the pavement for private purpose. They should allow passing and repassing by the pedestrians. No one has a right to make use of a public property for their private purpose without the requisite authorization from the competent authority. It would, therefore, be but the duty of the competent authority to remove encroachments on the pavement or footpath of the public street obstructing free flow of traffic or passing or repassing by the pedestrians.

9. This view was firmly laid down by this Court in Olga Tellis and Others Vs. Bombay Municipal Corporation and Others, thus: (SCC p.589, para 57)

....no person has a right to encroach, by erecting a structure or otherwise, on footpaths, pavements or any other place reserved or earmarked for a public purpose like, for example, a garden or a playground; that the provision contained in Section 314 of the Bombay Municipal Corporation Act is not unreasonable in the circumstances of the case.

10. The Constitution does not put an absolute embargo on the deprivation of life or personal liberty but such a deprivation must be according to the procedure, in the given circumstances, fair and reasonable. To become fair, just and reasonable, it would not be enough that the procedure prescribed in law is a formality. It must be pragmatic and realistic to meet the given fact-situation. No inflexible rule of hearing and due application of mind can be insisted upon in every or all cases. Each case depends upon its own backdrop. The removal of

encroachment needs urgent action. But in this behalf what requires to be done by the competent authority is to ensure constant vigil on encroachment of the public places. Sooner the encroachment is removed when sighted, better would be the facilities or convenience for passing or repassing of the pedestrians on the pavements or footpaths facilitating free flow of regulated traffic on the road or use of public places. On the contrary, the longer the delay, the greater will be the danger of permitting the encroachers claiming semblance of right to obstruct removal of the encroachment. If the encroachment is of a recent origin the need to follow the procedure of principle of natural justice could be obviated in that no one has a right to encroach upon the public property and claim the procedure of opportunity of hearing which would be a tedious and time-consuming process leading to putting a premium for high-handed and unauthorized acts of encroachment and unlawful squatting. On the other hand, if the Corporation allows settlement of encroachers for a long time for reasons best known to them, and reasons are not far to seek, then necessarily a modicum of reasonable notice for removal, say two weeks or 10 days, and personal service on the encroachers or substituted service by fixing notice on the property is necessary. If the encroachment is not removed within the specified time, the competent authority would be at liberty to have it removed. That would meet the fairness of procedure and principle of giving opportunity to remove the encroachment voluntarily by the encroachers. On their resistance, necessarily appropriate and reasonable force can be used to have the encroachment removed. Thus considered, we hold that the action taken by the appellant-Corporation is not violative of the principle of natural justice.

22. Empirical study of urban and rural population in India discloses that due to lack of civic facilities and means of livelihood people from rural areas constantly keep migrating to the urban areas resulting in mushroom growth of slums and encroachment of the pavements/footpaths etc. Every municipal corporation has statutory obligation to provide free flow of traffic and pedestrians' right to pass and repass freely and safely; as its concomitance, the corporation/municipality have statutory duty to have the encroachments removed. It would, therefore, be inexpedient to give any direction not to remove, or to allow the encroachments on the pavements or footpaths which is a constant source of unhygienic ecology traffic hazards and is risk-prone to the lives of the pedestrians. It would, therefore, be necessary to permit the Corporation to exercise the statutory powers to prevent encroachment of the pavements/footpaths and to prevent construction thereon. As held earlier, the Corporation should always be vigilant and should not allow encroachments of the pavements and footpaths. As soon as they notice any encroachment they should forthwith take steps to have them removed and not allow them to settle down for a long time. It is stated in their affidavit that they are giving 21 days' notice before taking action for the ejectment of encroachers. That procedure, in our view, is a fair procedure and, therefore, the right to hearing before taking action for ejectment is not necessary in the fact-situation. But the Commissioner should ensure that everyone is

served with a notice and as far as possible by personal service and if it is not possible for reasons to be recorded in the file, through affixture of the notice on the hutment, duly attested by two independent panchas. This procedure would avoid the dispute that they were not given opportunity; further prolongation of the encroachment and hazard to the traffic and safety of the pedestrians.

(Emphasis supplied by us)

11. It cannot be denied that post-independence almost all the cities, big or small have seen an unplanned growth and the menace of illegal and unauthorized construction and encroachments have acquired monstrous proportions and everyone has been paying a heavy price for the same. In fact, on account of encroachments made on the road, there is frequent traffic congestion affecting the health of the road-users. The pedestrians and road-users are the worst victim of pollution which results in skin diseases of different types, asthma, allergy and even more dreaded disease like cancer.

12. At this stage, it will be apt to quote the observations made by the Hon''ble Supreme Court in *Shanti Sports Club and Another Vs. Union of India (UOI) and Others*, :-

74 In the last four decades, almost all cities, big or small, have seen unplanned growth. In the 21st century, the menace of illegal and unauthorized constructions and encroachments has acquired monstrous proportions and everyone has been paying heavy price for the same. Economically affluent people and those having support of the political and executive apparatus of the State have constructed buildings, commercial complexes, multiplexes, malls, etc. in blatant violation of the municipal and town planning laws, master plans, zonal development plans and even the sanctioned building plans. In most of the cases of illegal or unauthorized constructions, the officers of the municipal and the other regulatory bodies turn blind eye either due to the influence of higher functionaries of the State or other extraneous reasons. Those who construct buildings in violation of the relevant statutory provisions, master plan, etc. and those who directly or indirectly abet such violations are totally unmindful of the grave consequences of their actions and/or omissions on the present as well as future generations of the country which will be forced to live in unplanned cities and urban areas. The people belonging to this class do not realize that the constructions made in violation of the relevant laws, master plan or zonal development plan or sanctioned building plan or the building is used for a purpose other than the one specified in the relevant statute or the master plan, etc., such constructions put unbearable burden on the public facilities/amenities like water, electricity, sewerage, etc. apart from creating chaos on the roads. The pollution caused due to traffic congestion affects the health of the road users. The pedestrians and people belonging to weaker sections of the society, who cannot afford the luxury of air-conditioned cars, are the worst victims of pollution. They suffer from skin diseases of different types, asthma, allergies and even more dreaded diseases like cancer. It can only be a matter of imagination how much the Government

has to spend on the treatment of such persons and also for controlling pollution and adverse impact on the environment due to traffic congestion on the roads and chaotic conditions created due to illegal and unauthorized constructions. This Court has, from time to time, taken cognizance of buildings constructed in violation of municipal and other laws and emphasized that no compromise should be made with the town planning scheme and no relief should be given to the violator of the town planning scheme, etc. on the ground that he has spent substantial amount on construction of the buildings, etc....

(Emphasis supplied by us)

13. The menace of illegal and unauthorized construction coupled with the encroachments was judicially noticed by the Hon"ble Supreme Court in a decision in *Dipak Kumar Mukherjee Vs. Kolkata Municipal Corporation and Others*, in the following terms:-

2. In the last four decades, the menace of illegal and unauthorized constructions of buildings and other structures in different parts of the country has acquired monstrous proportion. This Court has repeatedly emphasized the importance of planned development of the cities and either approved the orders passed by the High Court or itself gave directions for demolition of illegal constructions as in *Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others*, , *Virender Gaur and Others Vs. State of Haryana and Others*, , *Pleasant Stay Hotel and Another Vs. Palani Hills Conservation Council and Others*, , *Chairman and Managing Director, SIPCOT, and Madras and others Vs. Contromix Pvt. Ltd. by its Director (Finance) Seetharaman, Madras and another*, , *Pratibha Co-operative Housing Society Ltd. and another Vs. State of Maharashtra and others*, , *Dr. G.N. Khajuria and others Vs. Delhi Development Authority and others*, , *Manju Bhatia (Mrs) and Another Vs. New Delhi Municipal Council and Another*, *M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others*, , *Friends Colony Development Committee Vs. State of Orissa and Others*, , *Shanti Sports Club and Another Vs. Union of India (UOI) and Others*, and *Priyanka Estates International Pvt. Ltd. and Others Vs. State of Assam and Others*, .

8. What needs to be emphasized is that illegal and unauthorized constructions of buildings and other structures not only violate the municipal laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. The common man feels cheated when he finds that those making illegal and unauthorized constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. The reports of demolition of hutments and jhuggi jhopris belonging to the poor and disadvantaged section of the society frequently appear in the print media but one seldom gets to read about demolition of illegally/unauthorizedly constructed multi-storeyed structures raised by economically affluent people. The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made

by the State machinery when it is required to deal with those who have money power or unholy nexus with the power corridors.

14. Yet, again this menace of encroachment, illegal construction etc. was again noticed by the Hon''ble Supreme Court in a recent decision in Esha Ekta Apartments Co-operative Housing Society Ltd. and Others Vs. Municipal Corporation of Mumbai and Others, wherein it has been held as under:-

1. In the last five decades, the provisions contained in various municipal laws for planned development of the areas to which such laws are applicable have been violated with impunity in all the cities, big or small, and those entrusted with the task of ensuring implementation of the master plan, etc. have miserably failed to perform their duties. It is highly regrettable that this is so despite the fact that this Court has, keeping in view the imperatives of preserving the ecology and environment of the area and protecting the rights of the citizens, repeatedly cautioned the authorities concerned against arbitrary regularisation of illegal constructions by way of compounding and otherwise.

15. Now adverting to the present case, it would be seen from the records that Tehsildar, Joginder Nagar had conducted demarcation in order to find out the extent of encroachment, if any, made by the petitioner and submitted his report on 25.05.2007. After conducting the demarcation, he also recorded the statements of the petitioner as also one Rajiv Kumar, who had appeared in the capacity of Chairman, Nagar Panchayat, Joginder Nagar. The report of the Local Commissioner is in the vernacular and the translated copy of the same reads as follows:-

English version of Annexure R-II/T

From

Tehsildar Joginder Nagar

To

Ex-PW-4/A

Collector Joginder Nagar

Sd/- Collector, S.D.J. Nagar, Distt. Mandi.

Dated: 25.05.2007

Subject: Complaint under Public Premises Act, 1971 against Sh. Om Prakash Chauhan (Prop. Chauhan Studio) Joginder Nagar.

Sir,

With reference to your letter dated 23rd May, 2007 and in compliance thereof I reached on spot on 25.05.2007. Sh. Om Prakash Chauhan was already informed by the Patwari concerned regarding demarcation and he was present on spot. Sh.

Rajeev Kumar, Chairman Nagar Panchayat Joginder Nagar, Patwari & Field Kanungo were present.

Foremost verification of boundaries was done the present persons confirmed the recognized survey mark of latest settlement of Khasra No. 820 (46+78) East-South corner marked as "A" and Khasra No. 820 West-South corner as mark "B" and gate of PWD store i.e. Khasra No. 36 North East boundary i.e. 156+17 marked as "C". Statement of Sh. Om Prakash Chauhan regarding confirmation of recognized fixed survey mark was recorded and was placed in file. For confirmation of said recognized fixed point "A" was verified from South boundary i.e. 26 feet from Khasra No. 822 and South boundary of Khasra No. 821 i.e. 26 feet and i.e. 44+24+48 feet and East boundary of Khasra No. 820 i.e. 46 feet after proper measurement and point "A" was confirmed and was found correct. Point "B" was fixed from point "A" of Khasra No. 820 of South boundary that was 78 feet and was found totally correct. Thereafter for confirmation of point "C" boundaries of Giar Mumkin residence which was in Khasra No. 364 was measured which was found to be correct. From the North-East boundary of Khasra No. 364 i.e. 5+29 from point "E" to "C" that was confirmed after drawing perpendicular and was 24 feet as per spot and scale and was found correct one.

Point No. "C" to "F" i.e. North-West corner of shop of Sh. Om Prakash Chauhan was confirmed by way of perpendicular i.e. 84 feet and was totally correct. From point "A" to point "G" that was North-East corner of shop of Sh. Om Prakash Chauhan was 80 feet which was confirmed by drawing perpendicular and was also correct. Point No. "F" to "B" was also confirmed by way of drawing perpendicular and was 39 feet which was also correct as per spot.

The present parties accepted the demarcation and got recorded their statements in this regard which was placed in file. As per demarcation, Sh. Om Prakash Chauhan has encroached by way of construction of shop on Khasra No. 1003/1, 1046/1, 366/1 and 366/2 land measuring 11-1 sq.yard i.e. land of Govt. of Himachal Pradesh and possessed by PWD. The map placed in file which was prepared by Field Kanungo/Patwari in this case was found correct one. Therefore, report is submitted for further action.

Dated: 25.05.2007

Sd/- Tehsildar Joginder Nagar

Enclosures

1. Spot map
2. Statement of present parties.

The statements of petitioner and Shri Rajiv Kumar again are in vernacular, however, the English version of the said statements has been placed on record which reads as follows:-

English version of Annexure R-III/T

Statement of Shri Rajiv Kumar, Chairman, Nagar Panchayat Joginder Nagar age 43 years.

Sh. Om Prakash Chauhan S/o. Girdhari Lal r/o Joginder Nagar age 52 years.

Today on dated 25.05.2007 Tehsildar Joginder Nagar along with Field Kanungo/ Patwari Halqua came on spot for demarcation and they demarcated the land under dispute from the fixed recognized survey mark of latest settlement by measuring properly and we are satisfied from the demarcation carried out on spot. We accept the demarcation given on spot. It is only our statement.

Sd/- Rajiv Kumar

Sd/- Om Prakash

Attested Sd-

16. During the course of arguments, the learned counsel for the petitioner was specifically confronted with these reports regarding not only their correctness but also regarding the correctness of its English translation. The learned counsel for the petitioner conceded that translation was in accordance with law and also that the statement as recorded (supra) was made by his client i.e. the petitioner. Therefore, once the petitioner admits to the correctness of the demarcation report, we are of the view that he is now estopped from challenging the correctness of the demarcation report.

17. Though this finding in itself is sufficient to dispose of the petition, however, at the insistence of the learned counsel for the petitioner, we would go into the correctness and validity of the order passed by the authority constituted under the Act. The Collector has given a detailed finding to come to the conclusion that the petitioner had encroached upon the property belonging to the respondents. In fact, the respondents had examined Assistant Engineer and also Officials/ Officers of the Revenue Department, who had duly proved on record the various notices issued to the petitioner along with extent of encroachment made by the petitioner. Whereas the petitioner led no evidence, save and except, examining himself as RW-1. Contrary to the facts pleaded here in this petition that the land originally was owned and possessed by the father of the petitioner from whom he inherited the same, he stated that he had purchased this land from one Upender and constructed the shop before 1986-87. He further claimed that even earlier complaint against him had been made under the provisions of the Act which was filed by the respondents in the year 1986 and decided in his favour on 17.03.1987. However, the petitioner did not place on record the copy of the alleged order dated 17.03.1987 whereby it could be established that the controversy inter se parties with respect to the encroachment of this very land was in issue and had been finally adjudicated and determined by a competent Court of law in his favour.

18. When the matter was carried in appeal, the learned Divisional Commissioner, Mandi, vide a detailed order has upheld the order passed by the Sub Divisional

Collector. Only three contentions were raised by the petitioner before the learned Divisional Commissioner, Mandi. First contention was with respect to the demarcation having not been carried out in accordance with the rules; second that he had constructed the shop before 1986-87 and complaint filed against him under the provisions of the Act had already been decided in his favour on 17.03.1987 and thirdly it was contended that evidence led by the petitioner had not been appreciated. All the three points have been dealt with by the learned Divisional Commissioner, Mandi, in the following manner:-

As regard the contention of the appellant that no demarcation in due procedure has been made, the demarcation report placed at leaf No. 60 to 64 of lower court reflects that the demarcation report on spot has been made by the Assistant Collector, 1st Grade (Tehsildar) Jogindernagar on 25.05.2007 in presence of present appellant and the appellant has accepted the demarcation and expressed his satisfaction. So, in view of his statement nothing remains to say on demarcation and he has been found to have encroached on the land in dispute. Moreover the demarcation made by the A.C. 1st Grade (Tehsildar) Jogindernagar is in due procedure of law.

Other contention of the appellant that he had constructed the shop before 1986-87 on the land purchased from Sh. Upender and that the complaint against him had been decided on 17.03.1987, this court is in conformity with the lower court that the appellant has not produced copy of any order dated 17.03.1987 and the fact of encroachment has proved on the basis of documentary as well as or evidence.

As regard the contention of the appellant that the evidence led by him has not been given credence, the perusal of the lower court file reflects that the evidence led by him has duly been considered and the lower court has gone into depth on every point and passed a well reasoned, speaking and valid order.

19. The findings recorded by the authorities constituted under the Act are pure findings of fact. That apart, these findings are based upon correct appreciation of the pleadings and the evidence led by the respective parties.

20. Needless to say that it would have been sufficient for the authorities to have rejected the claim of the petitioner solely on the basis of the demarcation report where the petitioner not only admitted to the encroachment, but even to the extent as had been complained of by the respondents themselves. Yet, the learned authorities below in order to be fair to the petitioner have painstakingly dealt with the matter in its correct perspective.

21. Another disturbing feature of the case is that when the petitioner in the year 2001 after removing the "Khokha" started construction of a pucca structure of double storey by encroaching the acquired width of the land of the respondents and repeated notices were issued by the respondents on 27.11.2001, 01.12.2001, 14.12.2001 to stop the illegal construction, he still persisted and carried on with the unauthorized construction. Not only this, even after the stay

order had been passed by the Sub Divisional Collector, the petitioner did not stop the construction and raised the construction forcibly. The construction, therefore, put is absolutely illegal and unauthorized and apart therefrom in defiance of law. As mandated by the Hon"ble Apex Court, it is duty of this Court to ensure that such defiers of law are not rewarded. This was so held by the Hon"ble Supreme Court in Royal Parasdis Hotel (P) Ltd. Vs. State of Haryana and Others, which reads as under:-

7..... Whatever it be, the fact remains that the construction was made in the teeth of the notices and the directions to stop the unauthorized construction. Thus, the predecessor of the appellant put up the offending construction in a controlled area in defiance of the provisions of law preventing such a construction and in spite of notices and orders to stop the construction activity. The constructions put up are thus illegal and unauthorized and put in defiance of law. The appellant is only an assignee from the person who put up such a construction and his present attempt is to defeat the statute and the statutory scheme of protecting the sides of highways in the interest of the general public and moving traffic on such highways. Therefore, this is a fit case for refusal of interference by this Court against the decision declining the regularization sought for by the appellant. Such violations cannot be compounded and the prayer of the appellant was rightly rejected by the authorities and the High Court was correct in dismissing the writ petition filed by the appellant. It is time that the message goes aboard that those who defy the law would not be permitted to reap the benefit of their defiance of law and it is the duty of the High Courts to ensure that such defiers of law are not rewarded. The High Court was therefore fully justified in refusing to interfere in the matter. The High Court was rightly conscious of its duty to ensure that violators of law do not get away with it.

(Emphasis supplied by us)

22. The necessary outcome of this petition is that not only the present petition is dismissed but the respondents are directed to demolish the unauthorized construction raised by the petitioner after affording him 15 days opportunity for removing his belongings. Needless to say that the construction so raised shall be demolished at the expense of the petitioner and compliance of the same be reported to this Court within three months.

Though this is a fit case where costs ought to be imposed, however, taking into consideration the fact that the illegal structure is to be got demolished at the expenses of the petitioner, we refrain from doing so.

23. Accordingly the present petition lacks merit and is dismissed in the aforesaid terms, leaving the parties to bear their own costs. The pending application(s), if any, also stands disposed of.