
(2017) 01 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 1356 of 2017

Surinder Kumar

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 27-01-2017

Acts Referred:

Haryana Municipal Corporation Act, 1994 — Section 263

Citation : (2017) 1 LawHerald 502 : (2017) 3 RCRCivil 84

Hon'ble Judges : Mr. Amit Rawal, J.

Bench : Single Bench

Advocate : Mr. Parminder Singh, Advocate, for the Petitioners

Final Decision : Disposed Off

Judgement

Mr. Amit Rawal, J. (Oral) - The contention of the petitioner is that vide notice dated 13.12.2016 (Annexure P-11) , the Municipal Corporation, Karnal called upon him to immediately stop further construction and remove the existing construction within a period of three days and also to appear in person on 20.12.2016. Reply to the aforementioned show cause notice was submitted on 28.12.2016 (Annexure P-12).

2. It is contended that the notice dated 13.12.2016 was received on 22.12.2016 and immediately the reply was filed but without giving any opportunity of hearing, a notice purported under Section 263 and 263-A of Haryana Municipal Corporation Act, 1994 dated 04.01.2017 (Annexure P-14) was served with a direction to submit proof of sanction within 7 days from receipt of notice otherwise building in question would be sealed or demolished in due course of procedure at the risk and cost of the petitioner whereas the aforementioned notice did not indicate passing of the order on the notice vide Annexure P-11.

3. The aforementioned notice had also duly been replied on 06.01.2017 (Annexure P-15). He submits that Section 263-A of the Haryana Municipal Corporation Act, 1994 has been inserted into the aforementioned Act by Act

No.12 of 2013 whereby the Commissioner is vested with power that he may, at any point of time, before or after making the order under Section 261 or 262, order for sealing of the premises but the same cannot be ordered to be removed without affording an opportunity to the owner under sub-section 2(a) and the aforementioned order is appealable under sub-section 4. In view of such unriddled power of the Commissioner, the petitioner is apprehensive that without calling upon the petitioner and passing any order on the reply, much less, spot inspection, his premises may be sealed wherein he is carrying the business of vegetable vending and repair of motor cycles.

4. After going through the contents of the notice and reply of the petitioner, I am of the view that the notice (Annexure P-14) does not reflect any order being passed in pursuance of the notice dated 13.12.2016 (Annexure P-11). Moreover, vide Annexure P-15, the petitioner is stated to have already filed the reply. In my view, an opportunity of hearing should be given to the petitioner to rebut the averments in the impugned notice by placing on record materials and thereafter, an appropriate order shall be passed thereon. In case, the authorities are satisfied with the reply, there shall be no further orders. If otherwise, in case of any adverse order, the petitioner shall be given at least 7 days time to challenge the aforementioned order in accordance with law.

5. The writ petition stands disposed of with the aforementioned observations. The petitioner shall approach the Municipal Corporation with this order on 30.01.2017. Till that date, there shall be no order of sealing. On receipt of this order, the Municipal Corporation shall comply with the directions contained herein.

6. A copy of this order be given under the signatures of Reader attached to this Court.