
(2015) 03 P&H CK 0303
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 3762 of 2015 (O&M)

Ujagar Singh and Others	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 30-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab Municipal Corporation Act, 1976 — Section 246, 246(1), 246A, 246-A, 246A(1)

Citation : (2015) 03 P&H CK 0303

Hon'ble Judges : Ajay Kumar Mittal, J; Rekha Mittal, J

Bench : Division Bench

Advocate : Sunil Chadha, Senior Advocate and Manipal Singh Atwal, for the Appellant

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.—Prayer in this petition filed under Articles 226/227 of the Constitution of India is for quashing the order dated 11.2.2015, Annexure P. 12 passed by the Additional District Judge, Ludhiana and identical final demolition orders dated 17.10.2014, Annexure P. 10 passed by respondent No. 4 - Assistant Town Planner, Zone D, Municipal Corporation, Ludhiana under Section 246-A of the Punjab Municipal Corporation Act, 1976 (in short, "the Act"). Direction has also been sought to the respondents to regularize the possession of the petitioners over the land in question or in the alternative, before uprooting them from the present site, they be rehabilitated at some other nearby place in terms of the order/judgment dated 1.10.2014, Annexure P. 14 passed by this Court.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioners are the residents of New Prem Nagar, near Rose Garden, Ludhiana. They constructed their respective houses almost four and a half decades back i.e. in the year 1969-70 and since then they are living there with their respective families. They have been provided all the basic amenities such as water supply and electric connections. Ration cards of

the petitioners have also been made on the addresses where they are living. Some of the petitioners have even been released telephone connections. Voter I Cards, Aadhaar Cards, bank account, PAN cards etc. have also been issued at the said addressees to the petitioners. In the year 1999, the petitioners alongwith other residents of the locality were sought to be dispossessed by respondent Nos. 2 to 4 from their aforesaid respective houses. Aggrieved by the action, the present petitioners alongwith 23 other persons filed CWP No. 16409 of 1999 (Ujagar Singh and others vs. Municipal Corporation, Ludhiana) before this Court in which notice of motion was issued on 29.11.1999 for 27.1.2000 and in the meantime, status quo was directed to be maintained in respect of the property in dispute and the petitioners were directed not to make any new/further construction. The respondents were directed not to carry out further demolition. Vide order dated 22.11.2001, Annexure P. 2, the said writ petition alongwith other connected writ petitions was admitted and interim order was made to continue till the final disposal of the writ petitions. In another connected petition i.e. CWP No. 15140 of 1999 (Balwinder Singh and others vs. Municipal Corporation and another), the auction of the property in dispute was stayed so that in case the State Government takes a decision to regularize the illegal occupation of the long duration, the petitioners may not be left without remedy. The above stated writ petitions were finally decided by this court vide judgment dated 19.1.2011, Annexure P. 3. While setting aside the demolition order dated 14.10.1999, the petitioners were given liberty to file objections to the show cause notices dated 7.10.1999 within three weeks before the competent authority who was directed to pass appropriate order after considering the objections, if any, preferably within a period of three months. Accordingly, notices were issued under Sections 246(1) and 269(1) of the Act to the petitioners. The petitioners filed objections on 3.3.2011, Annexure P. 5. Vide order dated 22.8.2014, Annexure P. 6, respondent No. 3 held that illegally/unauthorized occupants of the land had no legal right to hold unlawful possession on the municipal land and consequently request made by the petitioners to regularize their possession was rejected. The petitioners before the passing of the order also prayed that since the land in question was to be used for residential purpose only, they be allowed to keep their houses as it is and the same be regularized. After the order dated 22.8.2014, only 16 persons were served with demolition orders on 22.9.2014, Annexure P. 7 under Section 246 of the Act. The said 16 persons filed appeal before the District and Sessions Judge, Ludhiana. While issuing notice of the said appeal to the respondents on 26.9.2014, Annexure P. 8 for 14.10.2014, the court also directed to maintain status quo regarding existing position at the spot till the next date of hearing. On the said date, respondent No. 4 took the plea that the demolition orders dated 22.9.2014 had been inadvertently issued under section 246 of the Act which were to be issued under Section 246-A of the Act. Respondent No. 2 also decided to withdraw the notices dated 22.9.2014 and to issue fresh notices under Section 246-A of the Act. In view of the said statement, the aforesaid 16 persons withdrew their appeal vide order dated 14.10.2014, Annexure P. 9. Subsequent

to the order dated 14.10.2014, on 17.10.2014, Annexure P. 10, Respondent No. 4 issued final demotion orders under section 246-A of the Act to the petitioners and nine others. Feeling aggrieved, the petitioners filed appeal before the District and Sessions Judge, Ludhiana. Another set of appeal was filed by nine others who had also received similar demotion orders under section 246-A of the Act. Vide impugned judgment dated 11.2.2015, Annexure P. 12, the Additional District and Sessions Judge, Ludhiana dismissed the said appeal of the petitioners as well as the connected appeal preferred by nine others by placing reliance upon the order dated 4.9.2014, Annexure P. 13 passed by this Court in CWP No. 10359 of 2014 (Balwinder Singh and others vs. State of Punjab and others) which had been preferred by the said nine persons who had also received the notices dated 17.10.2014. Hence the instant writ petition by the petitioners.

3. We have heard learned counsel for the petitioners and perused the record.

4. Learned counsel for the petitioners submitted that since the petitioners have been in possession of the land for the last about four decades and all basic amenities have been provided to them, their possession be regularized or in the alternative, before uprooting them from the land in dispute, some suitable accommodation may be provided to them. Learned counsel further submitted that earlier notices were issued to the petitioners under sections 246 and 269 of the Act, which were withdrawn later on. Proceedings were again initiated under Section 246-A of the Act. The petitioners had filed detailed objections to the said notice which had been rejected without proper consideration by the appropriate authority.

5. Admittedly, the petitioners are in illegal possession of the land in dispute for the last about four and a half decades. The construction made by them is unauthorized. The objections filed by the petitioners against the show cause notices were dismissed by the Commissioner, Municipal Corporation, Ludhiana vide order dated 22.8.2014, Annexure P. 6 by passing a speaking order. Earlier notices were issued under Section 246 of the Act to the petitioners which were later on withdrawn and fresh notices under Section 246A of the Act were issued. The appeal filed by the petitioners before the Additional District Judge, Ludhiana was dismissed vide order dated 11.2.2015, Annexure P. 12. The findings recorded by the Additional District Judge, Ludhiana are as follows:-

"24. After hearing both the sides and going through the record, first of all some of the undisputed facts may be noted. Admittedly, the land on which the appellants have raised their construction belong to Municipal Corporation, Ludhiana in Khasra No. 360 of Village Rajpura. The said land was acquired by the Municipal Corporation, which was mutated in its name in the revenue record. The record further shows that earlier the corporation issued demolition orders dated 14.10.1999 against the appellants who preferred CWP No. 15140, 16409 of 1999 and 16476 of 2000 which were decided vide a common judgment dated 19.1.2011 by the Hon"ble High Court, vide which the demolition orders were quashed. The appellants were given liberty to file objections to the show cause

notices within three weeks before the competent authority, which was directed to pass appropriate orders after considering the reply or objections, expeditiously preferably within a period of three months. In compliance with the said directions, the appellants filed objections before the competent authority, who failed to pass the appropriate orders within the framework of time as ordered by the Hon''ble High Court. Though late, ultimately, it passed the order dated 22.8.2014, vide which the objections of the appellants were rejected and a detailed order was passed by holding that the appellants were illegal and unauthorised occupants of the land and had no right to hold unlawful possession on the Municipal land. Their request for regularization of their possession or allotment was also rejected. At this place, it may also be mentioned that the appellants again approached the Hon''ble High Court in CWP No. 10359 of 2014 decided on 4.9.2014 in which following order was passed:-

"Though it was expected of the Municipal Corporation, Ludhiana to pass an order within three months, but failure to pass an order within three months does not make the proceedings of eviction initiated by issuance of the show cause notices as redundant. Infact, delay in passing an order has benefited the petitioners who continued to be in illegal possession of the land in question, which was acquired way back in the year 1979 and vested with the Municipal Corporation free from all encumbrances."

25. The aforesaid order clearly holds that the appellants were in illegal possession of the land of the Municipal Corporation and the show cause notices issued against them were valid. Simply because the appropriate order was not passed within three months, it was no ground to make the show cause notices redundant.

Xx xx xx xx xx

28. As stated earlier, it is undisputed that the land in dispute is the ownership of the Municipal Corporation, Ludhiana, which is in illegal possession of the appellants. Earlier, the respondents had issued notices under Section 246 of the Act to the appellants, which was withdrawn by the respondents in appeal with liberty to file fresh notices under Section 246A of the Act. Accordingly, the impugned orders were served upon the appellants for removal of the illegal encroachments. Though in the order dated 22.8.2014 of the Commissioner of Municipal Corporation, it was not specifically mentioned for issuance of the impugned orders, but in the said order, the prayer for the appellants for regularization of their possession or allotment was rejected. Thus, the impugned orders were issued as further course of action against the appellants. Under Section 246A of the Act, Corporation has every power to remove the encroachment on expenses to be paid by the person, who caused the said encroachment. Under Section 3 of the Act, power to seize or attach or confiscate is in addition to the power under Section 246A(1) of the Act. Therefore, it is not mandatory for the Corporation to firstly initiate the confiscation proceedings before issuance of the notices for removal of the encroachments. Moreover,

under Section 246A(10) of the Act, an appeal lies to the District Judge only against the confiscation order. No appeal has been provided against the issuance of notice/order for removal of the encroachment. The Hon'ble Apex Court in case laws Jagpal Singh and Others Vs. State of Punjab and Others, AIR 2011 SC 1123 : (2011) 112 CLT 130 : (2011) 1 RCR(Civil) 912 : (2011) 2 SCALE 42 : (2011) 11 SCC 396 : (2011) 2 SCR 250 : (2012) AIRSCW 2574 : (2011) AIRSCW 990 : (2011) 1 Supreme 641 expressed its strong views against the unauthorised occupants of public land. In that case, the appellants had illegally encroached on the land of the Gram Panchayat and had built their houses, which was regularized by the Government. It was held that illegalities could not be regularized and the order of the Government permitting regularization was set aside further holding that common interest of the people in the public land could not be allowed to suffer merely because the unauthorised occupants had subsisted for many years. Similarly, in the last citation of our own Hon'ble High Court titled K.D. Sharma Vs. State of Haryana and Others, (2015) 1 RCR(Rent) 56 , it was held that where public land had unauthorisedly encroached upon, the encroachers should be summarily evicted therefrom.

29. In view of the reasons stated above, the impugned orders/notices issued to the appellants directing them to remove the encroachment made on the land of the Municipal Corporation do not suffer from any illegality. There is no merit in the appeals, which are dismissed. The status quo order stands vacated."

Two appeals were filed against the order of demolition, unauthorised possession and construction. One was filed by Balwinder Singh etc. and the other was filed by the present petitioners. The same were decided by one common order dated 11.2.2015, Annexure P. 12. Balwinder Singh and others had filed Civil Writ Petition No. 3048 of 2015 (Balwinder Singh and others vs. State of Punjab and others) in this Court against the order dated 11.2.2015 which was dismissed vide order dated 21.2.2015 (Annexure P. 17), holding them to be in illegal possession of public land. However, they were given three months time to hand over the vacant possession of the land in question to the Municipal Corporation. The relevant observations recorded therein read thus:-

"The petitioners are unauthorized occupants of land, since vesting with the Municipal Corporation. The petitioners have been ordered to be evicted in proceedings under Section 246-A of the Punjab Municipal Corporation Act, 1976. The appeal against the order of eviction has been dismissed by the Additional District Judge, Ludhiana on 11.02.2015. Still aggrieved, the petitioners invoked the writ jurisdiction of this Court by way of instant writ petition.

The petitioners are admittedly occupants of a public land. Thus, they have no right to continue in possession. Similar question has been examined by a Division Bench of this Court in CWP No. 9506 of 2001 titled "Swaran Singh and others Vs. State of Punjab and others" decided on 01.10.2014 in respect of same municipal limits.

In view of the reasons recorded therein as well as for the reasons recorded in the orders passed by the Authorities under the Act, we do not find that any ground is made out for interference in exercise of writ jurisdiction of this Court.

However, learned counsel for the petitioners at this stage seeks that the petitioners should be granted three months time to hand over the vacant possession of the land in question. Keeping in view the fact that the petitioners have constructed residential houses on the land vesting with the Municipal Corporation, we deem it appropriate to grant three months' time to the petitioners to hand over the vacant possession of the land in question to the Municipal Corporation provided they furnish an undertaking by way of an affidavit before this Court within a period of two weeks to the effect that they shall hand over the vacant possession and shall not induct any other person in possession of the property in question. If any of the petitioners does not file such an undertaking, the respondents shall be entitled to proceed further to take possession in accordance with law."

6. Learned counsel for the petitioners has not been able to show that the case of the petitioners was different from that of Balwinder Singh and others' case (supra). In view thereof, we do not find any illegality or perversity in the impugned orders. Consequently, finding no merit in the petition, the same is hereby dismissed.