

*Before Daya Chaudhary and Sudhir Mittal JJ.*

**JITENDER AJAD AND OTHERS—Petitioner**

*versus*

**STATE OF HARYANA AND OTHERS—Respondents**

**CWP No.17790 of 2018**

July 02, 2019

***Haryana Municipal Act, 1973—S.208—Tehbazari—Only a temporary license by Public authority for use of public space—Can be revoked at any time—Has ended in the State of Haryana on 08.01.2015—Payment of tehbazari does not create any indefeasible right to carry on business or raise construction in the concerned location—Petition dismissed.***

*Held that*, the acceptance of *Tehbazari* does not clothe the present petitioners with any indefeasible right to carry on business from the concerned location or to raise temporary/permanent construction thereupon. *Tehbazari* is only the grant of a temporary licence by the public authorities permitting citizens to utilize certain open public spaces temporarily. Such a concession can be revoked anytime. The petitioners have not denied the fact that the system of *Tehbazari* has come to an end in the State of Haryana with effect from 8.1.2015. Moreover, a perusal of Section 208 of the Act, clearly shows that it is a provision where-under the Municipal Authority had been granted the power to direct demolition of unauthorized construction. Such construction is that which is raised without sanction of prior building plans or in contravention of the building byelaws. This necessarily presupposes that the land on which the construction is being raised belongs to the citizens and is not a case of licence or encroachment.

(Para 4)

Vivek K. Thakur, Advocate,  
*for the petitioners.*

Pritam Saini, A.A.G., Haryana.

**SUDHIR MITTAL, J.**

(1) The petitioners (8 in number) are aggrieved by demolition of their shops/khokhas allegedly without issuance of any show cause notice.

(2) It has been alleged that the petitioners have been running their shops in khokhas constructed about 50 years back. The market which had been so established had the approval of the respondent-Municipal Council as the shopkeepers paid '*TEHBAZARI*'. Certain '*TEHBAZARI*' receipts have been placed on record. Officials of the respondent-Municipal Council came to the spot one fine day and demolished the khokhas without any prior notice. Reliance has been placed on Section 208 of the Haryana Municipal Act, 1973 (hereinafter referred to as 'the Act') to argue that issuance of show cause notice was a legal necessity. Accordingly, a prayer has been made to direct the respondents to permit the petitioners to carry on running their business after raising khokhas and the erring officials be directed to pay damages. Support has also been derived from a Division Bench judgment of this Court in *Santosh* versus *State of Punjab*<sup>1</sup> and *Nagar Parishad, Kailaras* versus *State of M.P. and others*<sup>2</sup>

(3) A detailed written statement has been filed on behalf of the respondent-Municipal Council. It is admitted therein that the land in dispute was given on *TEHBAZARI*. However, no permission was granted to construct khokhas and thus, the petitioners were guilty of raising unauthorized construction. System of *TEHBAZARI* came to an end vide direction dated 8.1.2015 issued by the Director, Urban Local Bodies, Haryana and, thus, the petitioners could not even claim to run their business from the land in dispute even without raising khokhas. A general direction was, thus, issued to remove the unauthorized possession and the demolition was carried out after granting an opportunity of hearing to the petitioners. The Deputy Commissioner, Narnaul had directed the petitioners to be present in his office on 5.6.2018. A meeting was held in the presence of the Sub Divisional Magistrate, Narnaul, members of the media, representatives of respective wards and other reputed persons of the area. Directions were issued to the petitioners to remove the khokhas. Thereafter, on 18.6.2018, again a meeting was called and instructions were issued to remove the unauthorized occupation. The petitioners had agreed to remove their encroachment but did not do so physically. The announcements were also made through loudspeakers and only thereafter the demolition was done on 5.7.2018. The applicability of Section 208 of the Act, has been denied on the ground that the same is applicable only to unauthorized construction raised on private land.

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<sup>1</sup> 1999 (4) RCR (Civil) 129

<sup>2</sup> 2014 (16) RCR (Civil) 321

(4) The acceptance of *TEHBAZARI* does not clothe the present petitioners with any indefeasible right to carry on business from the concerned location or to raise temporary/permanent construction thereupon. *TEHBAZARI* is only the grant of a temporary licence by the public authorities permitting citizens to utilize certain open public spaces temporarily. Such a concession can be revoked anytime. The petitioners have not denied the fact that the system of *TEHBAZARI* has come to an end in the State of Haryana with effect from 8.1.2015. It has also not been denied that meetings were called by Deputy Commissioner concerned on the dates mentioned in the written statement and that public announcements were also made through loudspeakers. Thus, it cannot be claimed that the principles of natural justice have been violated. Moreover, a perusal of Section 208 of the Act, clearly shows that it is a provision where-under the Municipal Authority had been granted the power to direct demolition of unauthorized construction. Such construction is that which is raised without sanction of prior building plans or in contravention of the building byelaws. This necessarily pre-supposes that the land on which the construction is being raised belongs to the citizens and is not a case of licence or encroachment. Thus, the said provision cannot apply to the case of the petitioners. Moreover, from the reply of the respondents, it is evident that the demolition was necessitated as it was resulting in impediment in the free flow of traffic. The space was also required for construction of a new drain for disposal of waste water. Public interest thus, necessitated the removal of the khokhas.

(5) The judgment in *Santosh* (supra) is distinguishable on facts. In the said case, the petitioner therein was the owner of the land in which the shops had been constructed. The case of *Nagar Parishad, Kailaras* (supra) is also distinguishable. In the said case, shops had been leased out by the Nagar Parishad itself and the same had been demolished by the Public Works Department and the dispute was between a local body and the State.

(6) For the aforementioned reasons, there is no merit in the writ petition and the same is dismissed.

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*Payel Mehta*