

[408A. Power to evict persons from Corporation premises/land. — (1) If the competent authority is satisfied—

- (a) that any person authorized to occupy any premises of the Corporation has—
- (i) not paid rent lawfully due from him in respect of such premises for a period of more than two months; or
 - (ii) sublet, without the permission of the Commissioner or any other officer duly empowered to grant such permission, the whole or any part of such premises; or
 - (iii) otherwise acted in contravention of any of the terms expressed or implied, under which he is authorized to occupy such premises; or
- (b) that any person is in unauthorized occupation of any premises/land or building/structure constructed thereon, of the Corporation, the competent authority may, notwithstanding anything contained in any law, for the time being in force, by notice served upon him by post or by person and if such person avoids service or is not available for service of notice or refuses to accept notice, then by affixing a copy of it on the outer door or some other conspicuous part of such premises/land or building or by beating of drums or in such manner, as may be prescribed, call upon such person to appear and show cause why he should not be ordered to vacate the said premises/land or building/structure constructed thereon or demolish unauthorized construction and to restore to its original state or to bring it in conformity with the provisions of this Act or rules framed thereunder, as the case may be, within a period of seven days from the date of service of the notice.

(2) If such person fails to show cause to the satisfaction of the competent authority or fails to appear or refuses to appear before the competent authority, as the case may be, within a period of seven days, the competent authority shall pass an order requiring him to vacate such premises/land or building/structure constructed thereon or demolish unauthorized construction and restore to its original state or to bring it in conformity with the provisions of this Act or the rules framed thereunder, as the case may be, within a further period of seven days.

(3) If the order made under sub-section (2) is not carried out or complied with within the specified period, the competent authority at the expiry of the period so specified, shall evict that person from, and take possession of, the premises/land or building/structure constructed thereon or demolish unauthorized construction or restore to its original state or bring it in conformity with the provisions of this Act or the rules framed thereunder, as the case may be, and shall for that purpose use such force, as may be necessary and the cost incurred on such measures shall, if not paid on demand, being made to him, be recoverable from such persons as arrears of land revenue.

(4) Even before the expiry of a further period of seven days mentioned under sub-section (2), if the competent authority is satisfied that instead of vacation of premises/land or building/structure constructed thereon or demolition of unauthorized construction, as the case may be, the person continues with the contravention, the competent authority shall himself take such measures and use such force as may appear necessary to give effect to the order under sub-section (2) and the cost of such measures shall if not paid on demand being made to him, be recoverable from such person as arrears of land revenue.

(5) If a person, who has been ordered to vacate any premises/land or building/structure constructed thereon, under sub-section (2) in view of the conditions as specified under sub-clause (i) or (iii) of clause (a) of sub-section (1) within a period of seven days from the date of service of the notice, pays the rent in arrears or carries out or otherwise complies with the terms contravened by him, to the satisfaction of the competent authority, as the case may be, the competent authority shall, in lieu of the eviction of such person under sub-section (3) cancel the order made under sub-section (2) and thereupon such person shall hold the premises on the terms on which he held them immediately before such notice was served on him.

408B. Appeal. — (1) Any person aggrieved by an order of the competent authority under sub-section (2) of section 408A may, within a period of seven days from the date of the order under sub-section (2) of section 408A, prefer an appeal to the Commissioner.

(2) Where an appeal is preferred under sub-section (1), the Commissioner may stay the enforcement of the order of the competent authority for such period and on such conditions, as it deems fit.

(3) Every appeal under this section shall be disposed of by the Commissioner within a period of sixty days.

¹[181. **Punishment for immovable encroachment or overhanging structure over street.**-- (1) Whoever without the written permission of the Committee, makes any immovable encroachment on or under any street, on, over or under any sewer, or water course or erects or re-erects any immovable overhanging structure projecting into a street at any point above the said ground level shall be punishable with imprisonment for a term up to six months or with a fine which shall not be less than ²(two thousand rupees) and more than ³(ten thousand rupees) or both.

⁴((2) Without prejudice to the provisions of sub-section (1), the committee, the executive officer or the secretary, as the case may be, by

1. Substituted vide Haryana Act No.29 of 1988.

2. Substituted for the words "one thousand rupees" vide Haryana Act No. 14 of 2000.

3. Substituted for the words "five thousand rupees" vide Haryana Act No. 14 of 2000.

4. Substituted vide Haryana Act No. 14 of 2000.

notice, call upon any person who has committed a breach of the provisions contained in the said sub-section, to stop the unauthorised construction forthwith and to remove or alter such immovable encroachment or overhanging structure as aforesaid within a period of seven days and if such person fails to show cause to the satisfaction of the committee, the executive officer or the secretary, as the case may be, within the said period of seven days, the committee, the executive officer or the secretary, as the case may be, shall proceed to remove the unauthorised construction and the cost of such removal shall be recovered from the defaulter. If the defaulter fails to pay the cost of removal of unauthorised construction on demand within fifteen days, the cost shall be recoverable from such person as arrears of land revenue and the committee shall dis-connect the water supply and the sewerage connections:

Provided that if a period of more than five years has elapsed from the completion of encroachment or overhanging structure, no prosecution shall lie under sub-section (1)].

Comments

Code of Civil Procedure, 1908 (V of 1908), Order 39, Rules 1 & 2 – Encroachment on public street – Construction without sanction of Municipal Committee – Demolition of – Injunction – Contention that gali is not owned by the Municipal Committee and is also not a public street and as such the notice issued to her by the Municipal Council cannot be sustained – Held, Municipal Council would be competent to issue notice for demolishing of any building on the ground that the construction has been raised without obtaining sanction from the Council – Injunction rightly declined. *Gita Devi v. The Municipal Council, Jind, 2009(1) L.A.R. 333 (P&H).*

182. Power to permit occupation of public street and to remove obstruction.-- (1) The committee may grant permission in writing, on such conditions as may be approved by the Deputy Commissioner for the safety or convenience of persons passing by, or dwelling or working in the neighbourhood, and may at its discretion withdraw the permission, to any person to –

- (a) place in front of any building any movable encroachment upon the ground level of any public street or over or on any sewer, drain or watercourse or any movable overhanging structure projecting into such public street at a point above the said ground level,
- (b) take up or alter the pavement or other materials for the fences or posts of any public street,
- (c) deposit or cause to be deposited building materials, goods for sale, or other articles on any public street,
- (d) make any hole or excavation on, in or under any street, or remove materials from beneath any street, so as to cause risk of subsidence, or

- (e) erect or set up any fence, post, stall or scaffolding in any public street,

and may charge fees according to a scale to be approved by the Deputy Commissioner for such permission.

(2) Whoever does any of the acts mentioned in sub-section (1) without the written permission of the committee shall be punishable ¹[with a fine which shall not be less than two hundred rupees and more than two thousand rupees] and the committee or the ²[Secretary] of the committee or the Health Officer or any person authorised by the committee may -

- (i) after reasonable opportunity has been given to the owner to remove his material and he has failed to do so, remove or cause to be removed by the police, or any other agency, any such movable encroachments or overhanging structures and any such materials, goods or articles of merchandise and any such fence, post, stall, or scaffolding.
- (ii) take measures to restore the street to the condition it was in before any such alteration, excavation or damage.

(3) If the material specified in clause (i) of sub-section (2) has not been claimed by the owner within a fortnight of its having been deposited for safe custody by the committee, or if the owner shall fail to pay to the committee the actual cost of removal or deposit in safe custody, the committee may have the material sold by auction at the risk of the owner, and the balance of the proceeds of such sale shall after deduction of the expenditure incurred by the committee be paid to the owner, or if the owner cannot be found, or refuses to accept payment the balance shall be kept in deposit by the committee until claimed by the person entitled thereto, and if no claim is made within two years the committee may credit the amount to the municipal fund.

Explanation.- For the purposes of this section 'movable encroachment' includes a seat or settee, and 'movable overhanging structure' includes an awning of any materials.

183. Power of Deputy Commissioner.-- Notwithstanding anything contained in sections 181 and 182, the Deputy Commissioner may within his jurisdiction order any person responsible for any unauthorised encroachment as specified in sections 181 and 182 to remove or alter such encroachment within a specified time not exceeding two weeks and on non-compliance with such order may remove or alter such encroachment and realise all expenses thereby incurred from the person concerned as fine in a criminal court.