

Civil Writ Petition No.11264 of 2014 (O & M)
Date of Decision: *August 27, 2015*

Jaswant Singh

..... PETITIONER(S)

VERSUS

State of Punjab & others

..... RESPONDENT(S)

. . .

CORAM: **HON'BLE MR. JUSTICE SURYA KANT**
 HON'BLE MR. JUSTICE JASPAL SINGH

. . .

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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PRESENT: - Mr. Munish Bhardwaj, Advocate, for the petitioner.

Mr. Rajesh Bhardwaj, Additional Advocate General, Punjab.

Mr. Balwinder Singh, Advocate, for respondent Nos.3 and 4.

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Surya Kant, J (Oral)

1. The petitioner impugns orders dated 16.7.2003, 4.5.2011 and 13.9.2013 (P-4, P-6 and P-12 respectively) whereby the allotment of MIG House No.691-B, Phase 11,

Sector 65, SAS Nagar Mohali was cancelled and his appeal and revision petition against that orders have also been dismissed.

2. The above stated dwelling unit was offered vide Letter of Intent dated 9.11.1989 (P-1) under the Self Financing Scheme. The aforesaid letter describes the covered area of the flat to be 617 square feet on the ground floor and 700 square feet on the 1st floor. The accommodation in the flat is also described in Column 4 of the table to the following effect:-

Type & Location of Scheme	Eligibility of Monthly Income	Covered Area	Accommodation	Cost	Mode of Payment
1	2	3	4	5	6
MIG (PSFS) Phase – XI	Rs.1500 to Rs.2500	G.F. = 617 F.F. = 700	One bed room, One living room, kitchen, bath, w.c., Verandah, Front & rear courtyard. Future Provision On G.F. = 135 Sft. On F.F. = 337 Sft.	Rs.160571/-	Rs.5000/- with the application form. Rs.20000/- on allocation and Rs.20000/- on possession. Remaining in easy installments with interest in 13 years.

3. The Letter of Intent followed the Letter of Allotment dated 21.12.1991 (P-2).

4. The petitioner has admittedly constructed one room on the 1st floor over the garage which is on the ground floor. Some more construction has been raised on the 2nd floor over including on the roof of the room constructed on the garage.

5. The authorities issued more than one show cause notices dated 4.9.2002, 1.12.2002, 29.1.2003 and 21.3.2003 to

the petitioner besides opportunity for personal hearing. It is alleged that he neither filed any reply nor appeared in person. Consequently, the allotment was cancelled vide order dated 16.7.2003.

6. The petitioner filed appeal against that order after a delay of 7 years which was dismissed on merits as well as on delay vide order dated 4.5.2011. That order has been further upheld by the Revisional Authority.

7. We have heard learned counsel for the parties and gone through the record.

8. Before advertng to the petitioner's contention, it would be useful to reproduce the stand taken by the respondents in their written statement:-

“.....Though the allotment of the house had been cancelled due to unauthorized construction of a room over the roof of the garage but as per the latest report of the field staff, dated 18.07.2014, besides the room on the roof of the garage, the petitioner had raised the following unauthorized constructions on the second floor also:-

- (i) Constructed an additional room on the first floor measuring 7' – 10 ½" x 6' – 9" =53.156 Sq. Ft. which is not compoundable.
- (ii) Constructed a kitchen and veranda on the second floor measuring 92+69=161 Sq. Ft. which is compoundable.

Total covered area works out to 53.156 + 161 = 250.031 Sq. Ft. out of which only 40% i.e. 100 Sq. Ft. is compoundable.

The compounding fee payable by the petitioner works out to Rs. 16100/- @ Rs.100 per Sq. Ft. for 161 Sq. Ft. But it will be advisable to charge the

compounding fee only after the demolition of unauthorised construction. (It has since been deposited by the petitioner vide letter dated 01.04.2013).”

9. The petitioner’s grievance is that while declaring a part of his construction raised on the 1st floor to be ‘unauthorised’, the authorities have completely over-looked the permission accorded to him vide Letter of Intent dated 9.11.1989 (P-1) to construct 337 Square Feet area on the 1st floor in future. He submits that the construction raised by the petitioner on the 1st floor is hardly 60 Square Feet whereas the respondents themselves have admitted that the construction raised on the 2nd floor is ‘compoundable’. There is thus no ground to hold that the petitioner has made any unauthorised construction or that he is required to demolish the same. As regards to the construction on the 2nd floor, the petitioner submits that he has already applied for its compounding and the due charges have been deposited.

10. Having given our thoughtful consideration to the rival submissions, we are satisfied that the authorities have over-looked the permission already accorded to the petitioner to raise 337 square feet construction on the 1st floor in future. Since the said permission has a direct bearing on the validity of the room constructed by petitioner over the garage, the matter requires reconsideration at the hands of the authorities. To say it

differently, if the construction raised by the petitioner comprising a room on the garage is permissible as per Letter of Intent dated 9.11.1989, such construction cannot be termed 'unauthorised'. Similarly, if the construction raised by him on the 2nd floor is 'compoundable' and he is willing to get it compounded, then there is no necessity to compel him to demolish any part of the construction.

11. For the reasons aforesaid, the orders dated 16.7.2003, 4.5.2011 and 13.9.2013 (P-4, P-6 and P-12) are set aside. The petitioner is directed to submit a comprehensive representation alongwith copy of Letter of Intent etc., within two months from the date of receipt of a certified copy of this order, and make out a case that the construction raised by him on the 1st floor on the roof of the garage is permissible and the construction raised on the 2nd floor is compoundable.

12. It goes without saying that if the aforesaid contention of the petitioner is accepted, the construction stand regularised on deposit of the compounding charges, if any. However, if the authorities are still of the view that there is any unauthorised construction raised by the petitioner, an appropriate show cause notice describing such unauthorised construction shall be issued to which he may submit his reply.

The matter shall thereafter be decided in accordance with law.

13. Disposed of.

(Surya Kant)
Judge

August 27, 2015
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(Jaspal Singh)
Judge