

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.26370 of 2015

Date of Decision:-18.12.2015.

Brij Khanna

.....Petitioner

Versus

Municipal Corporation, Ludhiana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE P.B. BAJANTHRI**

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?

Present: Mr. Atul Goyal, Advocate for the petitioner.

SURYA KANT, J. (ORAL)

1.) The petitioner is a hotelier in Ludhiana. He seeks quashing of the show cause notice dated 9.4.2015, final demolition order dated 15.4.2015 as well as the order dated 9.12.2015 passed by the learned Additional District Judge-cum-Appellate Authority whereby his appeal and miscellaneous application have been dismissed.

2.) The controversy pertains to the construction of a hotel on the plot measuring 2030 square yards situated in Sukhdev Nagar, Ferozepur Road, Ludhiana. The construction was required to be carried out as per the Building Plans sanctioned on 29.4.2010. The

petitioner is said to have completed the construction in the year 2013 and since he made some 'minor alterations' in violation of the sanctioned building plan, a compounding fee of ₹ 5,00,000/- was statedly deposited with the Municipal Corporation on 11.6.2013.

3.) The petitioner was served with a show cause notice dated 9.4.2015 (P-3) alleging *inter alia* the following illegalities in the construction of hotel:-

“1. Basement Floor-(Level-20'6”) which was not got sanctioned in the Sanctioned map.

2. Basement Floor – (Level -11' 6”) That 3260.22 Sq. Ft. area is more than that of Sanctioned map.

3. Lower Ground Floor That 1707.22 Sq. Ft. area is more than that of Sanctioned map.

4. Fifth Floor – 6605 Sq. Ft. for which the plan has not been sanctioned by you.

Apart from this, you have got sanctioned the height 70'6” in the approved map, whereas at spot the height of the same is 74 Ft.”

4.) Thereafter a final demolition notice was given on 15.4.2015, against which he approached this Court in CWP No.8484 of 2015. The interlocutory order passed by this Court on May 1, 2015 reveals that the petitioner questioned the competence of the Authority who had issued the show cause notice and further claimed that the solitary violation was that of the height of the building which could not exceed 70 feet 4 inches but actually it was 74 feet.

5.) The writ petition was finally dismissed as withdrawn on 31.7.2015 but the orders passed by this Court firstly on 30.7.2015

and then on 31.7.2015 need to be referred to. The first order dated 30.7.2015 is reproduced in the second order dated 31.7.2015 which reads as follows:-

“On 30.7.2015, the following order was passed by this Court:-

“Short reply on behalf of respondents No. 1 and 2 filed along with the application is taken on record, subject to all just exceptions. Office to tag the same at appropriate place.

When the Bench has expressed its opinion to pronounce the order regarding dismissal of petition with costs of ₹ 5 lacs, it was prayed by learned counsel for the petitioner that he may be allowed to withdraw the petition with liberty to the petitioner to avail alternative remedy. Though, apparently we are not inclined to accept the same but the prayer for withdrawal of the writ petition was accepted without making any observation with regard to availment of any remedy subject to payment of ₹ 5 lacs in the shape of a demand draft in the name of Member Secretary, Legal Services Authority, Union Territory, Chandigarh.

Learned counsel for the petitioner states that demand draft for the aforesaid amount shall be produced in Court on 31.7.2015. It is observed that in case demand draft is not produced, the writ petition shall be dismissed with costs of ₹ 5 lacs by passing a detailed order.

Adjourned to 31.7.2015.”

2. In compliance to our order dated 30.7.2015, learned counsel for the petitioner has

produced demand draft No.001136 dated 30.7.2015 drawn in favour of the Member Secretary, Legal Services Authority Chandigarh for the sum of ₹ 5 lacs. Photocopy of the same has been taken on record.

3. *Registry is directed to forward the original demand draft to the quarter concerned and also place another photocopy of the demand draft in the second paper book.*

4. *In view of the above, learned counsel for the petitioner states that he may be allowed to withdraw the writ petition.*

5. *Dismissed as withdrawn."*

6.) The petitioner thereafter filed a statutory appeal before the District Judge under the Municipal Corporation Act, 1976.

7.) The Appellate Authority has by a well reasoned order dated 9.12.2015 dismissed the petitioner's appeal. Suffice it would be to cull out the following conclusions drawn by the Appellate Authority:-

(i) The petitioner is using the basement in the lower ground floor as 'banquet hall' instead of using it for 'parking' purposes. The banquet hall was to be constructed on the first floor as per the sanctioned site plan but he is not using that floor for 'banquet hall' as well as the two basements for 'parking' purposes.

(ii) On the upper ground floor, the petitioner has constructed a 'restaurant' instead of 'banquet hall' and

the first floor is being used for hosting parties contrary to the sanctioned plan.

(iii)The height of *mumty* and the 'machinery room' constructed on the top floor is 20 feet, over and above the height of the building i.e. 75 feet 6 inches, whereas as per the sanctioned site plan the height of *mumty* and machinery room could be 10 feet only on the fifth floor.

(iv)The compounding fee of ₹ 5 lacs deposited by the petitioner was a result of his connivance with the then Building Inspector (Ravinder Singh Walia) who was neither competent nor authorized to compound the building violations. He has already been placed under suspension.

(v)The petitioner cannot rely upon the Building Bye-Laws of 2010 as the Building Plans were sanctioned before these Bye-Laws came into force.

(vi)The petitioner has failed to furnish 'No Objection Certificate' (for short 'NOC') from Forest and Fire Departments. Structural Certificate from IIT Delhi or GNE, Gill Road Ludhiana was also awaited. Similarly there was no NOC taken from the Environment Department.

(vii)As per the Building Bye-Laws, he was required to submit revised Building Plans duly approved by an

Architect to the extent of compoundable violations but that has also not been done.

8.) The petitioner has laid challenge to yet another order passed by the Appellate Authority on the same date i.e. 9.12.2015 whereby his application to direct the Municipal Authorities to place on record the files of receipts issued by Ravinder Singh Walia, the then Building Inspector since 11.6.2013, has been dismissed. The above stated application was moved apparently to urge that the receipts issued by the said Building Inspector in other cases were treated as valid proof of compounding the violations. It appears that the petitioner lent his shoulders to Ravinder Singh Walia who has been placed under suspension and might be interested to secure such files to defend and justify his *prima facie* illegal actions.

9.) We have heard learned counsel for the petitioner at a considerable length who contends that even as per the inspection report dated 8.4.2015 (P-18), the covered area of the petitioner's hotel is less than the permissible FAR hence, it cannot be said that he has violated the Building Bye-Laws or the norms prescribed thereunder. He further contends that as per 2010 Building Bye-Laws, there is no maximum height of a commercial building. According to him, no such height was prescribed even under the 1997 Bye-Laws.

10.) Having given our thoughtful consideration, we are not impressed by either of the submissions.

11.) The petitioner was obligated to construct the hotel site

strictly in accordance with the sanctioned building plans. The site plans were sanctioned in conformity with the Building Bye-Laws which was in force at the relevant time. Once the maximum height of the building was prescribed in the sanctioned Site-Plan, he ought not to have acted like a bull in China shop and raised the height at his own by assuming that no maximum height was prescribed in the Building Bye-Laws.

12.) Equally misconceived is the plea that no maximum height is prescribed for a commercial building in the 1997 or 2010 Building Bye-Laws. The permissibility of the floors to be constructed and consequential height is a decision to be taken by the experts like Architects and Engineers of the Corporation, keeping in view the location, size, width of the road, surroundings and the FAR norms prescribed for that particular area. If at all the petitioner had any grievance against imposition of restrictions on the height of the building, the only and the only recourse for him was to submit revised Building Plans or to challenge the action of the Municipal Corporation Authorities before an appropriate Forum.

13.) Further, it is not the case of a singular violation. The petitioner has brazenly breached one after the other conditions of the Sanctioned Building Plan, may be on the ill advise and/or with the connivance of the then Building Inspector. The reasons assigned by the Appellate Authority as summarized in para 7 of this order, sufficiently justify the impugned action taken against the petitioner's

building.

14.) Dismissed.

(SURYA KANT)
JUDGE

(P.B. BAJANTHRI)
JUDGE

December 18, 2015.
sandeep sethi