

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 21.05.2015

CWP No.45 of 2014

Dharma

---Petitioner

versus

U.T. Administration Through its Advisor and another

---Respondents

CWP No.56 of 2014

Dhood Nath

---Petitioner

versus

U.T. Administration Through its Advisor and another

---Respondents

**Coram: Hon'ble Mr. Justice Ajay Kumar Mittal
Hon'ble Mrs. Justice Rekha Mittal**

**Present: Mr. Ashok Sharma Nabhewala, Advocate
for the petitioner(s)**

**Mr. Indresh Goel, Advocate
for the respondents**

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

Rekha Mittal, J.

C.M.No. 6825 CWP of 2015 in CWP No.45 of 2014

C.M.No. 6671 CWP of 2015 in CWP No. 56 of 2014

Rejoinder to the written statement in both the writ petitions
filed alongwith the application is taken on record subject to all just

exceptions.

Office to tag the same at appropriate place in the respective cases.

C.Ms. Stand disposed of.

CWP No.45 and 56 of 2014

This order will dispose of Civil Writ Petition Nos. 45 of 2014 titled “Dharma vs. U.T.Administration through its Advisor” and 56 of 2014 Dhoo Nath vs. U.T.Administration through its Advisor” as these involve identical questions of fact and law for adjudication. However, for brevity, the facts are taken from CWP No. 45 of 2014.

The present petition filed under Articles 226/227 of the Constitution of India lays challenge to orders dated 12.2.2007 (Annexure P-7), dated 5.11.2008 (Annexure P-9), dated 6.7.2010 (Annexure P-10) and dated 22.10.2013 (Annexure P-11). Further prayer has been made to regularize the need based changes made by the petitioner in the unit on payment of compounding fee, determined by the respondents.

The petitioner was allotted dwelling unit No. 3543 in Palsora, Sector-55, Chandigarh on 27.1.1995 by the Chandigarh Housing Board, Chandigarh (in short 'the Board') vide allotment letter Annexure P-1. The physical possession was given on 27.1.1995. A show cause notice dated 10.5.2000 (Annexure P-6) was issued for cancellation of allotment of said dwelling unit. On 12.2.2007, respondent No. 2 issued order of cancellation of allotment by referring to building violations enumerated in para 3 of the order. The appeals and revision preferred by the petitioner against order of cancellation were also dismissed.

Counsel for the petitioner would contend that out of 4 violations noticed in the show cause notice dated 10.5.2000, violations No. 2 and 4 have been removed whereas violation No. 1 is compoundable. On 8.9.2014, counsel for the petitioner undertook to remove violation No. 3 i.e. merging the government land as part of the premises allotted to the petitioner within one week and sought time to file an affidavit in this regard. It is argued that the petitioner has already removed violations No. 2 to 4 and violation No. 1 is compoundable, therefore, respondents may be directed to regularize violation No. 1.

It is further argued that on 11.5.2015, a press note has been issued regarding additional need based changes in the Board's dwelling units and in view of the persistent demands of various Residents Associations, the Board has been authorized by the Chandigarh Administration to amend Clause F(iv) of the order dated 23.3.2010 relating to need based changes and the owners of the dwelling units have been called upon to submit their requests for regularization of need based changes alongwith required documents by 31.12.2015. According to learned counsel, the petitioner is ready to file an appropriate application for regularization of need based changes in terms of the press note (Annexure P-16).

Counsel for the contesting respondents has not disputed issuance of press note dated 11.5.2015 (Annexure P-16) and the right of the petitioner to submit his request for regularization of need based changes in light thereof. However, without conceding to claim of the petitioner, it is argued that if violations made by the petitioner are amenable to

regularization in view of Annexure P-16, the petitioner may be relegated to his remedy in view of press note (Annexure P-16).

We have heard counsel for the parties and perused the records.

On May 04, 2014, the order passed by this court reads as follows:-

“Learned counsel for respondent No. 2- Chandigarh Housing Board, has produced the revised survey report dated 2nd March, 2015, in Court today, wherein, the following building violations of the Unit have been noticed:

- (i) Construction on Ground Floor not as per approved plan.*
- (ii) Govt. land on front encroached and covered.*
- (iii) Stair constructed on Govt. land with mummy.*
- (iv) RCC projection on front and side*
- (v) Bath/WC on Govt. land construction with RCC slab.*

2. According to the said report, the position of building violations/misuse are as follows:

- | | | | |
|----|--|---|--------------------------------|
| 1. | <i>Construction on Ground Floor not as per approved plan</i> | - | <i>Still exists</i> |
| 2. | <i>Govt. Land on front encroached and covered</i> | - | <i>Removed</i> |
| 3. | <i>Stair constructed on Govt. land with mummy</i> | - | <i>Not as per plan</i> |
| | | | <i>(stair portion covered)</i> |
| 4. | <i>RCC projection on front and side</i> | - | <i>still exists</i> |
| 5. | <i>Bath/WC on Govt. land construction with RCC slab.</i> | - | <i>Removed</i> |

The revised survey report dated 02nd March, 2015 is taken on record, subject to all just exceptions. Office to tag the same at appropriate place.

A copy thereof has been handed over to the learned counsel for the petitioner as well, who prays for time to seek instructions.

Adjourned to 21.5.2015. ”

As per revised survey report dated 2.3.2015 submitted by the Board, violations No. 1 and 4 were still existing and the stair constructed on government land with mumty is not as per plan. Counsel for the parties have not disputed press note dated 11.5.2015 whereby the Board has been authorized to amend Clause F(iv) of the order dated 23.3.2010 relating to need based changes. As per press note, the owner is entitled to submit his request for regularization of need based changes alongwith required documents with fee/charges for the purpose by 31.12.2015.

In view of the right given to the owner for regularization of need based changes, without meaning to express any opinion on the additions/changes made by the petitioner, the petitions stand disposed of with a direction to the respondents to consider case of the petitioner in the light of the latest decision of the U.T. Administration empowering the Board to regularize the need based changes. However, the petitioner shall approach the concerned authority within the stipulated period in compliance thereto.

In view of what has been discussed hereinabove, the petitions are disposed of in the aforesaid terms.

(Rekha Mittal)
Judge

(Ajay Kumar Mittal)
Judge

21.05.2015
PARAMJIT