

**207 IN THE HIGH COURT OF PUNJAB AND HARYANA
 AT CHANDIGARH**

**COCP No. 2498 of 2015(O&M)
Date of decision: 3.03.2016**

Vinod Malik

.....Petitioner

versus

Sajjan Kumar and another

.....Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Gunjan Mehta, Advocate
 for the petitioner.

Mr. P.P.Chahar, DAG, Haryana.

Mr. Rajinder Goyal, Advocate
 for the respondent.

Rakesh Kumar Jain, J.(Oral)

This petition is filed under Section 12 of the Contempt of Courts Act, 1971(for short, 'the Act 1971') for the alleged willful and deliberate disobedience of the Order dated 9.10.2013(Annexure P-1) passed by this Court in CWP No. 21876 of 2011.

In short, the aforesaid writ petition was filed by the petitioner with the prayer for issuance of direction to the respondents arrayed therein, not to allow the haphazard construction within the municipal limits by allowing construction of commercial building/shops in the residential area, which is against the Rules, Notifications and procedures as adopted by the State by virtue of The Haryana Development and Regulation of Urban Areas Act, 1975 and the Haryana Municipal Act, 1973(in

short, 'the Act 1973) causing public nuisance at large. As a matter of fact, the said petition was a public interest litigation in which the petitioner had quoted the example of construction being raised by the present contemnors/respondents No. 3 and 4, namely Ashok Bansal and Sarla Devi. In the said case, a status report was filed by B.N.Bharti, Executive Officer, Municipal Council, Kaithal with C.M. No. 12362 of 2013 in which he categorically averred that *“one Smt. Sarla Devi and one Shri Ashok Bansal got sanctioned their building plans for residential purposes over a site adjacent to the house of the petitioner in Guru Teg Bhadur Colony. However, they started construction of a building for commercial purposes in the form of 24 small shops. The Municipal Council, Kaithal, upon coming to know the said fact, issued a notice dated 27.01.2012 and directed them to stop and remove the construction work. The sanction of the building plan was also revoked vide letter dated 27.01.2012.”* It was also averred in the Status Report that *“the Municipal Council, Kaithal also got these 24 semi-constructed shops demolished, Photographs duly showing the demolished construction over the site in issue are enclosed herewith as Annexure R-3/1)”*.

In view of the Status report, the aforesaid writ petition was disposed of with the following orders:-

“The status report shows that necessary action has been taken by the respondents, a fact which is not disputed by the learned counsel for the petitioner. However, the respondents are required to take care in future by carrying out the following further actions:-

i) *Remove the malba lying at site and it is*

open to the respondents to recover the costs of demolition from the offending party in accordance with law;

ii) Ensure that reconstruction does not take place; and

iii) If any third party brings to their notice any activity/constructions, to act forthwith qua the same.

The petition accordingly stands disposed of.”

Since the contemnners/respondents No. 3 and 4 did not stop the activity of construction over the land in question, the petitioner served a legal notice on 15.09.2015 to the Deputy Commissioner, Kaithal and Executive officer, Municipal Council, Kaithal that some persons have started reconstruction of shops without taking prior permission of Municipal Council. In pursuance, of the legal notice, the Municipal Council, Kaithal served a notice dated 30.09.2015 to respondents No. 3 and 4 that they have deliberately violated the order passed by this Court in CWP No. 21876 of 2011, by again raising construction of the commercial nature which is a contemptuous act on their part and they were asked to demolish the illegal structure immediately. Respondents No. 3 and 4 replied through their advocate on 5.10.2015 and admitted that the construction is being raised but it is not of commercial nature rather it is as per the sanctioned plan dated 12.01.2012. It was further averred in paragraph 6 of the said reply :

“my clients have deposited development charges vide receipt no. 809 dated 4.01.2012

before M.C.Kaithal for raising construction over the property in question and there after the site plan has been sanctioned by M.C.Kaithal on 12.01.2012 but the construction could not be raised as Smt. Raj Kumari got an ad-interim injunction against my clients in civil suit No. RBY No. 51 of 2015 and now after dismissal of the said civil suit my clients are raising the construction. It is further made clear that no commercial activity shall be done in the building nor construction of any commercial building shall be raised without the prior permission of the M.C.Kaithal and the construction to be raised is purely residential.”

In the status report filed in the contempt petition, it is admitted by respondents No. 1 and 2 that they had filed a status report in the PIL bringing it to the notice of the High Court that the needful has been done, the ongoing construction has been stopped and notice has been issued on 27.01.2012, directing respondents No. 3 and 4 to stop and demolish the construction. It is also averred that 24 semi constructed shops were demolished and as such, the writ petition was disposed of. It is further alleged that respondents No. 3 and 4 were again raising construction and even after the receipt of legal notice and during the inspection of site conducted on 28.09.2015, it was found that the provisions of the Act, 1973 and also the order passed by the High Court were being violated. A letter was immediately, sent to Police Station, Sector 19, Kaithal to take necessary action and a separate notice was issued to respondents No. 3 and 4 regarding their unauthorized

constructions. Respondents No. 1 and 2 have also averred that another letter was sent to the SHO, Police Station, Sector 19, Kaithal seeking necessary help for demolition of construction which was being raised by respondents No. 3 and 4 but due to protest and non-availability of security/police help, already raised construction could not be demolished. On 6.10.2015, another letter was sent to the Deputy Commissioner, Kaithal for appointing Duty Magistrate for providing sufficient police force to do the needful.

After notice was issued in Contempt Petition, respondents No. 3 and 4 filed reply with CM No. 22267-CII of 2015 in which they have basically taken the stand that though the construction has been raised but it is as per the sanctioned plan and the construction is not of commercial nature. It is also alleged that even if the construction is de hors the sanctioned plan, it is still compoundable under Section 208 of the Act, 1973.

Counsel for respondents No. 3 and 4 has also submitted that respondent No. 3 purchased 500 sq. yards of plot on 23.04.2011 and respondent No. 4 purchased the same size of plot on 6.08.2011 situated at Patty Kayesth Seth, Guru Teg Bahadur Colony, Kaithal. In order to raise construction over the plots in question, the respondents submitted their building plans which are attached as Annexures R-3/1 and R-3/4, on 4.01.2012, necessary fee was deposited vide receipt No. R-3/2 and R-3/3 and the building plan was sanctioned on 12.01.2012 vide documents Annexures R-3/5 and R-3/6. He has also submitted that the case set up by the petitioner in the PIL was not on correct facts because the colony in question is not an exclusively residential colony rather it

is a mixed colony in which besides residential houses shops are also existing. It is further submitted that mother of the petitioner Raj Kumari had earlier filed a suit for permanent injunction on 22.03.2011 against the answering respondents, restraining them from raising any kind of construction over the land in question but the said suit was dismissed and a finding has been returned in that suit that the colony in question is a mixed colony. It is also submitted that during the pendency of the suit, the present petitioner who had appeared as GPA of his mother in the suit, without disclosing this fact that the suit is pending, filed the PIL in which the order alleged to have been disobeyed by answering respondents was passed in their absence. It is further submitted that the mother of the petitioner filed the appeal against the order of dismissal of the suit but there was no stay. The answering respondents also filed a civil suit Annexure P-10 for permanent injunction against the Municipal Council, Kaithal who was adamant to demolish the construction of the petitioner. In the said suit, stay was granted on 6.10.2015 which is still in operation. It is also argued by counsel for the respondents that respondents No. 1 and 2 have failed to bring on record the order by which the site plan sanctioned even of the residential property of the petitioner was cancelled on 22.01.2012 and the notice was issued under Section 208 of the Act on the same day.

Counsel for the respondents has been very fair in conceding that the answering respondents have no sanctioned site plan for the purpose of raising commercial property but at the same time, it is submitted that even if respondents have raised

construction without sanctioned site plan, they would be at the most liable for any punishment or otherwise under the provisions of the Act, 1973 and not under the Contempt of Courts Act, 1971.

Counsel for the Municipal Council/respondents No.1 and 2 has submitted that there is no lapse on their part as they have been repeatedly approaching the competent authorities either for the police help or for the purpose of demolition of the construction, raised by respondents No. 3 and 4, despite the order passed by this Court and issued relevant notices in terms of the provisions of the Act of 1973 but because of the stay granted by civil court their hands were tied. Even respondents No. 1 & 2 had also filed application for vacation of stay in the civil court but so far the stay is continuing.

In view of the aforesaid, the issue to be decided by this Court is as to whether respondents No. 3 and 4 are liable for wilful disobedience of the order passed by this Court or not?

As per Section 2(b) of the Contempt of Courts Act, 1971 “Civil Contempt” is *“wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court”*. Section 10 of the Act, 1971 deals with the *“Power of High Court to punish contempts of subordinate courts”* and Section 12 of the Act, 1971 with the *“Punishment for contempt of court”* which can extend to six months, or with fine which may extend to ₹ 2,000/-, or with both.

It is not disputed by counsel for respondents No. 3 and 4 that the order dated 9.10.2013 passed by the Division Bench was passed keeping in view the construction raised by them. In this

regard, the direction issued by this Court has to be read minutely in which the first direction was *“to remove the malba lying at the site and liberty was given to the respondents(official) to recover the cost of demolition from the offending party in accordance with law”*. Here offending party was respondents No. 3 and 4 who had to pay cost to the official respondents, arrayed in the writ petition, for the purpose of demolition and also removal of malba. The second direction was *“to ensure that reconstruction does not take place”*. The direction was to the official respondents that after demolition of the existing building raised by respondents No. 3 and 4 and removal of malba lying at the spot, they should ensure that respondents No. 3 and 4 should not reconstruct on the land in question. The third direction was that *“if any third party brings to their notice any activity/constructions, then they have to take action immediately”*. The status report filed by B.N.Bharti, Executive Officer, Municipal Council, Kaithal in the writ petition categorically said that the construction was raised illegally by respondents No. 3 and 4 of the commercial nature in the residential area which was ordered to be demolished by this Court. However, when respondents No. 3 and 4 restarted construction, the petitioner immediately sent a legal notice to the Municipal Council, Kaithal in terms of direction 3(i) of the aforesaid directions that respondents No. 3 and 4 have restarted construction. Respondents No. 1 and 2 also acted swiftly by intimating respondents No. 3 and 4 by their letter dated 30.09.2015 to stop their illegal activity of raising construction of commercial nature and told them that it is contemptuous. Respondents No. 3

and 4 however, sent a reply to the said notice in which they took a stand that they are not raising construction of commercial nature at the site in question rather they are raising construction as per sanctioned site plan dated 12.01.2012.

It is however, admitted fact that the sanctioned site plan, even if it is presumed that it has not been cancelled/revoked as alleged by respondents No. 1 and 2, was for the construction of residential building but there is a commercial building existing at the spot in the nature of shops constructed by respondents No. 3 and 4 which means that when they filed the reply through their advocate on 5.10.2015 they lied in their reply to mislead the authorities of respondents No. 1 and 2. Respondents No. 3 and 4 have now taken a U turn and submitted that even if they have raised construction, commercial in nature, it can be compounded in terms of the provisions of the Act 1973 and thus, they are not liable for any kind of punishment. This approach of respondents No. 3 and 4 is highly condemnable because they have been playing hide and seek with the courts as well as the municipal authorities who had tried their level best to stop the construction being raised by them and in that process, even went up to Deputy Commissioner, Kaithal. Respondents No. 3 and 4 in the garb of a civil suit filed by them continued with the construction and have been successful in their design. All these facts, narrated herein above, leads only to an irresistible conclusion that respondents No. 3 and 4 have scant respect for the law much less the order passed by this Court on 9.10.2013 and have been playing hide and seek through out with the process of law.

Thus, in view of the aforesaid facts and circumstances, I hold respondents No. 3 and 4 guilty of contempt of court and sentence both of them for six months simple imprisonment with fine of ₹ 2,000/-. In case of non-payment of fine of ₹ 2,000/- they would suffer imprisonment of one month more thereafter.

However, the operation of this order is stayed for a period of one month, allowing respondents No. 3 and 4 to avail their remedy of appeal. After the period of one month, in case the appeal is not filed or no stay is granted, this order shall be executed by the Chief Judicial Magistrate, Kaithal by taking both respondents No. 3 and 4 into custody for the purpose of serving sentence as ordered by this Court.

In so far as, the demolition of the building which has been illegally constructed by respondents No. 3 and 4 is concerned, as it is built without a sanctioned site plan, respondents No. 1 and 2 shall take immediate steps, in accordance with law.

Disposed of.

3rd March, 2016

Shivani Kaushik

**[Rakesh Kumar Jain]
Judge**