

CM-11109-2016 in/and
CWP-10627-2016 (O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CM-11109-2016 in/and
CWP-10627-2016 (O&M)

Date of decision: 07.09.2016

Orchid Garden Resident Welfare Association

..... Petitioner

Versus

The Director General, Town and Country Planning, Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Rakesh Khanna, Advocate with
Mr. GS Sullar and Ms. Nabhanya Sharma, Advocates
for the petitioners.

Mr. Saurabh Girdhar, AAG, Haryana.

Mr. Aashish Chopra, Advocate for respondent No. 3.

AJAY KUMAR MITTAL, J. (ORAL)

CM-11109-2016

Reply to the application bearing CM-10179-2016 and rejoinder to the reply filed by respondent No. 3 filed along with the application are taken on record, subject to all just exceptions. Office to tag the same at the appropriate place.

CM stands disposed of.

CWP-10627-2016 (O&M)

1. The petitioner has approached this Court under Articles 226/227 of the Constitution of India, *inter alia* seeking quashing of site plan dated 12.07.2013 (Annexure P-17), show-cause notice dated 02.02.2016

(Annexure P-22) and the order dated 17.05.2016 (Annexure P-32) passed by respondent No. 2 for demolition of the boundary wall in dispute.

2. At the outset, learned counsel for respondent No. 3 submitted that against the impugned action of respondents-Authorities, the petitioner has an alternative statutory remedy of appeal under Section 19 of the Haryana Development and Regulation of Urban Areas Act, 1975 (for short 'the Act') which is in the following terms:-

“19. Any person aggrieved by any order of the Director or any officer appointed by the Government, by notification in the Official Gazette, to exercise and perform all or any of the powers and functions of the Director may, within a period of thirty days of the date of communication of the order to him, prefer an appeal to the Secretary to Government, Haryana, Town and Country Planning Department, in such form and manner as may be prescribed:

Provided that the appeal may be entertained after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.”

3. It was not disputed by learned counsel for the petitioner that the remedy of appeal is available to the petitioner. However, it was submitted that the petitioner can still impugn the action of the respondents by way of writ petition.

4. After hearing learned counsel for the parties, in our opinion,

certain factual controversy is required to be resolved between the parties for

which the appellate forum would be appropriate. In such a situation, we dispose of the instant petition by relegating the petitioner to avail the alternative remedy of appeal under Section 19 of the Act, in accordance with law.

4. Learned counsel for the writ petitioner stated that an appeal shall be filed within a period of one month from today, but the same be not dismissed by the appellate authority on the ground of limitation. It was further submitted by learned counsel for the petitioner that an application for stay shall also be filed along with the appeal.

5. It is directed that in case, an appeal is filed within one month from today, the appellate authority shall not dismiss the appeal on the ground of limitation. Further, if an application for interim stay is also filed along with the appeal, the respondent-Authorities shall decide the same within a period of one month of the filing of the appeal. However, the interim order dated 25.05.2016 passed by this Court staying the demolition of wall in dispute shall continue for a period of one month from the date of filing of appeal.

6. Needless to say, the grant of interim stay vide order dated 25.05.2016 or continued vide this order, shall not be taken to be an expression of opinion on the merits of the controversy.

**(AJAY KUMAR MITTAL)
JUDGE**

September 07, 2016
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**(RAMENDRA JAIN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No