

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

CWP No. 15995 of 2016

DATE OF DECISION : 08.08.2016

Lt. Col. S.C. Bali and others

.... PETITIONERS

Versus

Chandigarh Housing Board and others

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Harmanjit Singh Sethi, Advocate,
for the petitioners.

* * *

RAMENDRA JAIN , J.

1. The petitioners, who are owners of separate dwelling units in Sector 43-B, Chandigarh, constructed and sold by the Chandigarh Housing Board (for short “the respondent Board”), have filed this writ petition under Articles 226/227 of the Constitution of India, for issuance of writ in the nature of certiorari to quash the notices dated 15.06.2011 and 17.05.2016 (Annexures P-1 and P-4) and notice/order dated 22.06.2016 (Annexure P-5), whereby the room, toilet, store room and stair step constructed in the back yard of their respective dwelling units, have been ordered to be demolished/removed without following the procedure prescribed under Section 15 of Capital of Punjab (Development and Regulation) Act, 1952 (for short “the Act”). A writ in the nature of prohibition has also been sought to restrain the respondents from demolishing the aforesaid construction.

2. The case of the petitioners is that the dwelling units purchased by them consisted of 3 bed rooms, one scooter garage on the ground floor, one back verandah with passage, one drawing dining, kitchen, varandha at front, with two bathrooms. Subsequently, they made need based changes in the form of a room by raising lintel over an approximate area of 6 x 6 feet, which do not affect air and light of any person. The said changes are permissible, which are not an encroachment on the public property or government land and do not cause any obstruction to any body. However, the respondents issued notice dated 15.06.2011 (Annexure P-1) to petitioner No.1 and similar notices to other petitioners, directing them to demolish one room, bathroom and stair case raised in the rear court yard of their respective dwelling units, in contravention of Rule 5 of the Capital of Punjab (Development and Regulation) Building Rules, 1952 (for short “the Rules”). The grievance of the petitioners is that since the said notice does not specify the period of time of six months of the construction having begun or having been completed by the petitioners, therefore, same is contrary to proviso to Section 15 of the Act, which provides that only those buildings can be demolished where owner is served with a notice within six months of its having begun or having been completed, as the case may be. Even otherwise, the said construction was completed much earlier to the issuance of the impugned notice and is need based change made by the petitioners without causing any inconvenience to any body or encroaching upon the public land. That being so, the petitioners approached this court by way of CWP No. 7617 of 2011 seeking direction to the respondents to consider their request for regularisation of certain illegal constructions

raised by them, after quashing the notices issued to them for demolition of those illegal constructions. The said petition along with eight other writ petitions filed by similarly situated owners of separate dwelling units was disposed of vide order dated 19.07.2013 (Annexure P-2) passed in CWP No. 22766 of 2010 (Sukhjot Singh and others vs. U.T. Administration and others). Without giving an opportunity of hearing to the petitioners, respondent No.2 issued a notice dated 17.05.2016 (Annexure P-4) to petitioner No.1 and similar notices to other petitioners asking them to appear before respondent No.2 on 24.05.2016. Again, in the said notice, no period within which the construction started or ended was mentioned. Hence, proviso to Section 15 of the Act was not complied with. Thereafter, vide notice/order dated 22.06.2016 (Annexure P-5) issued to petitioner and similar notices/orders issued to other petitioners, respondent No.2 allowed two months' time to the petitioners for removing the violations.

3. Learned counsel for the petitioners contended that the impugned notice dated 22.06.2016 (Annexure P-5) granting two months' time to petitioner No.1 for removing the alleged illegal constructions and similar notices issued to other petitioners are non-est in the eyes of law, being passed without following the principle of natural justice and adhering to Section 15 of the Act, which reads as under :-

“15. Penalty for breach of Rules : Except as other wise provided for in this Act, any contravention of any of the rules framed thereunder shall be punishable with fine which may extend to five hundred rupees, and in case of a continuing contravention, with an additional fine, which may extend to twenty rupees, for each

day during which such contravention continues after the first conviction; and the court while passing any sentence on conviction of any person for the contravention of any rule, may direct that any property or part thereof in respect of which the rule has been contravened, shall be forfeited to the Central Government.

Illustration : - Where an unauthorised structure has been constructed or any obnoxious material or substance is collected or heaped on site in any unauthorised manner or where an advertisement board has been set up in contravention of the Advertisement Control Order, such structure, material substance or board shall be liable to forfeiture, and not the site or building on which the same may be located or fixed ;

Provided that if a building is begun, erected or re-erected in contravention of any of the building rules, the Chief Administrator shall be competent to require the building to be altered or demolished by a written notice delivered to the owner thereof within six months of its having begun or having been completed, as the case may be. Such notice shall also specify the period during which such alteration or demolition has to be completed and if the notice is not complied with, the Chief Administrator shall be competent to demolish the said building at the expense of the owner.

Provided further that the Chief Administrator may, instead of requiring the alteration or demolition of any such building accept by way of compensation such sum as he may deem reasonable.”

Thus, it was incumbent upon the respondents to mention the starting date of the alleged illegal constructions or the date of its completion. The alleged constructions raised by all the petitioners are quite old one being raised many years ago. No proper opportunity of hearing was provided to the petitioners before issuing the impugned notice/order dated 22.06.2016. The respondents also failed to consider the fact that the alleged construction raised by the petitioners was need based change and was carried within four corners of their respective dwelling units without encroaching upon the Government land/property. In support of his contentions, learned counsel relied upon decisions of this Court in Haryana Urban Development Authority vs. Hari Lal, 1996 (3) RCR (Civil) 203; and Hari Kishan vs. Union Territory, Chandigarh, 2001 (4) RCR (Civil) 767.

4. A perusal of the initial notice dated 15.06.2011 (Annexure P-1) issued by the Secretary of the respondent Board, exercising the powers of the Chief Administrator, Chandigarh, shows that despite affording opportunity of hearing to petitioner No.1 to remove his unauthorised construction within reasonable time, when the same was not removed, the SDE (Enforcement) was empowered to remove the unauthorised construction, which was categorically stated in the notice dated 22.03.2011, within a period of one week. It is pertinent to mention here that the petitioners had filed CWP No. 7617 of 2011 for regularisation of their alleged illegal constructions, which was disposed of along with eight other writ petitions filed by similarly situated owners of separate dwelling units, vide order dated 19.07.2013 (Annexure P-2) passed in CWP No. 22766 of 2010 (Sukhjit Singh and others vs. U.T. Administration and others), with a

direction to the respondent Board “to consider the violations made by the petitioners in accordance with the new policy and if permissible under the said policy, the same be regularised. The violations, which cannot be regularised even under the new policy, shall be liable to be demolished in accordance with law by giving notice to the concerned petitioner. Till claim of each and every petitioner is considered under the new policy and appropriate order is passed after providing opportunity of hearing, no demolition shall take place.” Pursuant thereto, respondent No.2 issued notice dated 17.05.2016 (Annexure P-4) to petitioner No.1 and similar other notices to the remaining petitioners, asking them to appear in person or through counsel before him on 24.05.2016 for hearing, for the violations made in their respective dwelling units, same being not covered under Need Based Changes approved by the respondent Board vide order No. 42 dated 18.02.2016. Alternatively, petitioners were advised to submit written replies by 24.05.2016. Accordingly, the petitioners appeared before respondent No.2 and voluntarily offered to remove violations/encroachments carried out by them in their respective dwelling units. Consequently, vide notice/ order dated 22.06.2016 (Annexure P-5) issued to petitioner No.1 and similar other notices issued to the remaining petitioners, as stated by learned counsel for the petitioners, respondent No.2 granted two months' time to the petitioners to remove the same. Without complying with the undertaking given by the petitioners to remove the violations/ encroachments, they have filed the instant petition, which is a flagrant abuse of the process of law.

5. The facts and circumstances of **Hari Lal's case** (supra), relied upon by learned counsel for the petitioners, are distinguishable from the

facts of the present case. In that case, the respondent filed a civil suit making an averment that the water tank above the roof of his Dhaba was constructed in the year 1983, while the notice for demolition was served in the year 1991, i.e. eight years after the said construction. Since there was concurrent finding of fact recorded by the trial court as well as the first appellate court, based on evidence, therefore, this Court finding no error in the judgments and decree of the courts below, affirmed the same, while dismissing the Regular Second Appeal of the defendant – HUDA, whereas in the instant case, no such finding based on evidence has come in favour of the petitioners. Similarly, in **Hari Kishan's case** (supra), the petitioner removed the basic violations, except the coverage of open Courtyard with RCC slab. In these circumstances, the resumption order was held to be not sustainable and the respondent – Union Territory, Chandigarh was directed to consider the case of the petitioner for regularisation of the existing violation upon his application. In the instant case, the petitioners have not removed the basic violations.

6. It was not disputed by the petitioners that there existed certain unauthorised construction in respect of which statement was made on 24.05.2016 for its demolition. The petitioners on that basis were given two months' time vide the impugned notice dated 22.06.2016 (Annexure P-5). Now, challenging Annexure P-5 by filing the instant petition is a clear cut abuse of process of law. Moreover, the plea regarding date of construction etc. would not arise in the present petition as the petitioners themselves had agreed for removing the illegal construction. In any case, the date of commencement and completion of the alleged illegal construction carried

out by them within the four-walls of their respective dwelling units, would be known to the petitioners alone. Therefore, while issuing the impugned notice dated 15.06.2011 (Annexure P-1), it was not possible for the respondents to mention the date of commencement/completion of the illegal construction raised by the petitioners. It was only the petitioners, who could disclose the date of commencement and completion of such construction, which they intentionally concealed. Therefore, by any stretch of imagination, it cannot be said that the respondents while issuing the impugned notices have contravened the proviso to Section 15 of the Act. More so, the petitioners are bound by their undertaking given to respondent No.2 to remove their illegal constructions.

For the reasons recorded above, since the present writ petition is an abuse of process of law, therefore, same is dismissed with exemplary costs of ₹ 50,000/-, to be deposited by the petitioners with the State Legal Services Authority, Union Territory, Chandigarh.

**(RAMENDRA JAIN)
JUDGE**

August 08, 2016
ndj

**(AJAY KUMAR MITTAL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes