

Sr.No.241

IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

CWP-4723-2012(O&M)

Decided on: March 01, 2016

Sneh LataPetitioner

vs.

Municipal Corporation, BathindaRespondent

Coram: Hon'ble Mr. Justice Mahesh Grover

Present: Mr. Ravi Kamal, Advocate for the petitioner.
Mr. V.K.Shukla, Advocate for the respondent.

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Mahesh Grover, J

The petitioner prays for a mandamus to be issued to the respondent to permit her to rebuild the second floor of her house which stood demolished by the respondents as it was not in conformity with the sanctioned plan.

It has been averred in the petition that on 17.02.2012, the respondent came and pulled down the structure which was as per the sanctioned plan. The petitioner on her own had demolished the unauthorized construction. The petitioner also prays that adequate damages be granted to her for the illegal act of the respondent.

The aforesaid allegations are strenuously denied by the respondent who have stated that a notice was issued to the petitioner to remove the unauthorized construction, pursuant to which she filed a civil suit for permanent injunction against the order of demolition dated 30.10.2009 and the suit was dismissed as withdrawn on 04.12.2009. Where after, the petitioner preferred an appeal under Section 269(2) of the Punjab Municipal Corporation Act, 1976 against the order dated 30.10.2009 before the Additional District Judge, Bathinda which was also dismissed on 12.09.2011. This order was challenged by the petitioner in CWP-18707-2011 which met the same fate on 04.10.2011. It is, thereafter, on 17.02.2012 that the petitioners executed the order dated 30.10.2009 which remained in *limbo* on account of the litigation initiated by the petitioner.

After hearing the learned counsel for the parties, I am of the view that the

issue of demolition of structure being in conformity of the sanctioned plan on her own as an allegation set up by the petitioner has been denied by the respondent and, therefore, these are issues centering around dispute of facts which need to be established on the basis of evidence. Similarly the issue of damages would also be contingent upon the first aspect of a wrongful demolition by the respondent.

In the exercise of jurisdiction under Article 226 of the Constitution of India, there would be visible constraints when the material reveals a dispute on facts.

The petition is, therefore, disposed off with the liberty to the petitioner to have recourse to civil remedies in accordance with law.

March 01, 2016

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(MAHESH GROVER)

JUDGE