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**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CWP No.22843 of 2016
Date of decision:07.11.2016**

Chopra Malhotra & Associates and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Vishal Sharma, Advocate for the petitioners.

RAMESHWAR SINGH MALIK, J. (Oral)

Present writ petition is directed against the order dated 20.09.2016 (Annexure P-14) passed by the learned Additional District Judge, Jalandhar, whereby appeal of the petitioners was dismissed and the order dated 09.03.2016, passed by Senior Town Planner, Jalandhar, directing the petitioners to remove their illegal encroachment was upheld.

Heard learned counsel for the petitioners.

It is a matter of record that petitioners have raised their construction without any sanctioned building plan. This fact has been fairly conceded by the learned counsel for the petitioners. Ownership of the Municipal Corporation, Jalandhar, is also not in dispute. As per the report prepared by the office of Deputy Commissioner as early as in the year 1966, the survey register revealed that the property in question was the ownership of the Municipal Corporation, Jalandhar. Opportunity of hearing was granted to the petitioners by the Senior Town Planner on 9.10.2015. Petitioners failed to place on record any relevant material to show that they

have not caused the encroachment on the public street. Having been left

with no other option, the Senior Town Planner, Municipal Corporation, Jalandhar, vide his impugned order dated 9.3.2016 (Annexure P-12), directed the petitioners to remove their illegal encroachment within a period of four weeks. Petitioners filed their appeal against the above-said order dated 9.3.2016 (Annexure P-12), which also came to be dismissed by the learned Additional District Judge, Jalandhar, vide his impugned order dated 20.9.2016 (Annexure P-14).

The contention, raised by the learned counsel for the petitioners that they were not granted due opportunity of being heard, has been found factually incorrect and illegally misconceived. They were granted due opportunity of being heard, before passing the impugned order dated 9.3.2016 (Annexure P-12). Two learned counsel appeared on behalf of the petitioners, before the learned Additional District Judge when the impugned order dated 20.9.2016 (Annexure P-14) was passed, thereby dismissing the appeal of the petitioners.

Learned Additional District Judge, Jalandhar, recorded cogent findings before dismissing the appeal of the petitioners. Relevant part of the impugned order dated 20.9.2016 (Annexure P-14) passed by the learned Additional District Judge, which deserves to be noticed here, reads as under:-

“By going through the above referred documents, especially the File Book prepared by the Municipal Corporation pertaining to the year 1966 in discharge of its official duties, reveals that the place in dispute is depicted as Public Street and thereafter, according to the Survey conducted by the Assistant Town Planner on 20.01.2014 and also by going through the survey Report forwarded by the Assistant Town Planner on 20.01.2014, corroborates the facts

mentioned in the file book that the street shown in red colour was encroached portion of the property of Municipal Corporation, Jalandhar.

By going through the Report dated 08.02.2016, it reveals that as per the Report of Tehsildar, it is specifically mentioned that the property in jamabandi for the year 1963-64 is the ownership of private persons but in the revenue record, no street was incorporated. However, the Municipal Corporation has relied upon the above referred documents which are prepared by them in discharge of their official duties and from the documents placed on file of the revenue record, it stands proved that there was no Private Street and the appellants have encroached upon the Public Street.

Moreover, after passing of the Punjab Municipal Corporation Act, 1976 the land in dispute along with other properties falling within the limits of Municipal Corporation falls under the possession of Municipal Corporation and is controlled and managed by the Municipal Corporation under section 4 of the Punjab Municipal Corporation Act, 1976 . Therefore, the khasra numbers or the revenue record becomes insignificant in view of the above referred Act.

The appellants in order to prove their possession over the property in dispute have placed on file the photocopies of the Water and Sewerage bills and the House Tax receipts but they have not placed on record any sanctioned Site Plan to prove that the construction was raised by them with the permission of the Municipal Corporation. Sanctioned Site Plan was one of the most important document which was withheld by the appellants. From the above referred Water and Sewerage bills and the House Tax receipts, it does not prove that the appellants have made construction legally and have not encroached the Public Street.

Resultantly, from all that has been discussed above, it can be safely gathered that there is Public Street and it was encroached upon by the appellants. The order passed by the

Senior Town Planner dated 09.03.2016 is legal and as per record. It does not suffer from any infirmity. The appeal is thus found without merit and is ordered to be dismissed. File of the present Civil Misc. Appeal be consigned to record room after due compilation.”

During the course of hearing, learned counsel for the petitioners could not point out any patent illegality or perversity in either of the impugned orders. Further, no prejudice of any kind, whatsoever, has been shown, which might have been caused to the petitioners, by passing the impugned orders, warranting interference, at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned orders have not been found to be suffering from any patent illegality or perversity, the same deserve to be upheld. Instant writ petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out

Resultantly, with the above-said observations made, the present writ petition stands dismissed, however, with no order as to costs.

07.11.2016
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No