

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

CWP No. 6355 of 2016
Date of decision: 04.04.2016

Sandeep Kumar		Petitioner
	Versus	
State of Punjab and others		Respondents

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

Present: Mr. Deepak Arora, Advocate, for the petitioner.

Paramjeet Singh Dhaliwal, J. (Oral)

The instant petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ of mandamus directing respondent No.4 to take legal action against respondent No. 5-Jatinder Kumar and his associates for raising construction illegally, without any sanction of the site plan submitted by the petitioner and entered at Sr. No. 18 dated 05.08.2013 in the Registry of Nagar Panchayat, Talwara.

I have heard learned counsel for the petitioner and perused the record.

Section 193 of the Punjab Municipal Act, 1911 (for short 'the Act') read as under:-

193 Powers of committee to sanction or refuse erection or re-erection of building: -

(1) The committee (or the Executive Officer as the case may be), shall refuse to sanction the erection or re-erection of any building in contravention of any bye-law made under sub-section (1) of section 190 or in contravention of any scheme sanctioned under sub-section (3) or sub section (4) of Section 192 unless it be necessary to sanction the erection of a building in contravention of such a scheme owing to the committee's inability to pay compensation as required by section 174 for the

setting back of a building.

(1-a) When the erection or re-erection of a building is likely, in the opinion of the Committee (or the Executive Officer, as the case may be) to interfere with the enforcement of a scheme proposed under section 192, the Committee may refuse its sanction and in such case shall communicate its refusal in writing together with the grounds therefor, to the applicant within sixty days of the receipt of his application, and the applicant may thereafter by written notice require the committee to proceed with the preparation of the proposed scheme with all possible speed. The application shall be deemed to have been sanctioned if an order of refusal is not passed by the committee (or the Executive Officer as the case may be) within the time specified above, or if the proposed scheme has not received the sanction of the State Government within twelve months of the date of delivery of the applicant's written notice hereinbefore referred to:

Provided that should a resolution refusing such sanction be suspended under section 232, the period prescribed above shall commence to run afresh from the date of communication of final orders by the State Government under section 235."

Explanation:- A scheme shall be deemed to have been proposed under Section 192 if a requisition for its preparation has been received by the Committee from the Deputy Commissioner or if the preparation of the scheme is under the consideration of the committee.

(2) The Committee (or Executive Officer, as the case may be) may refuse, to sanction the erection or re-erecting of any building for any other reason, to be communicated in writing to the applicant, which it or he as the case may be, deems to be just and sufficient as affecting such building be if the land on which it is proposed to erect or re-erect such building is vested in the Government or in the committee and the consent of the Government concerned or, as the case may be, of the committee has not been obtained, or if the title to the land is in dispute between such person and the committee or any Government.

(3) Subject to the provisions of sub-Section (1) the committee or the Executive Officer, as the case may be may sanction the erection or re-erection of any building either absolutely or subject to such modifications in accordance with the bye-laws and rules as it or he, as the case may be, may deem fit.

(4) Notwithstanding anything contained in sub-section (1) or sub-section (2) but subject to the provisions of sub-Section (2) of Section 190 and sub-section (1-a) of this Section if the committee or the Executive Officer, as the case may be neglects or omits, within sixty days of the receipt from any person of a valid notice of such person's intention to erect or re-erect a building, or within one hundred and twenty days, if the notice relates to a building on the same or part of the same site, on which sanction for the erection of a building has been refused within the previous twelve months; to pass orders sanctioning or refusing to sanction such erection or re-erection, such erection or re-erection shall, unless the land on which it is

proposed to erect or re-erect such buildings belongs to or vests in the committee, be deemed to have been sanctioned, except in so far as it may contravene any bye-law, or any building or town planning scheme sanctioned under Section 192:

Provided that should a resolution conveying or refusing such sanction be suspended under Section 232, the period prescribed by clause (4) shall commence to run afresh from date of communication of final orders by the State Government under Section 235:

Provided further that if not less than one-fifth of the members present vote against a resolution conveying sanction, the sanction shall be deemed not to have been conveyed until after the lapse of fourteen days from the passing of the resolution.”

Perusal of Section 193 (1-a) of the Act shows that if no order of refusal to sanction the erection or re-erection of any building has been passed within 60 days of submission of the application for that purpose, it is to be deemed that sanction has been granted. It has not been averred in the petition that after submission of the site plan by Jatinder Kumar-respondent No. 5, the same has been declined by the Municipal Council within the stipulated period of 60 days of receiving the same for sanction. Therefore, the petitioner cannot allege the construction raised by respondent No. 5 to be illegal warranting any action against him. So far as the issue of partition of the property is concerned, the same can be determined *inter se* between the co-sharers in appropriate proceedings and the Municipal Council has nothing to do with the same.

Dismissed.

04.04.2016

PA

(Paramjeet Singh Dhaliwal)
Judge