

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

**CWP No.8548 of 2015
Date of decision: 28.07.2016**

Vijay Kumar

... Petitioner

Vs.

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Amit Jain, Advocate
for the petitioner.

Mr. B.M. Vinayak, DAG, Punjab.

Mr. Sanjiv Soni, Advocate
for respondent No.2.

RAMESHWAR SINGH MALIK, J. (ORAL)

Present writ petition is directed against the impugned notice dated 22.07.2011 (Annexure P-2), impugned order dated 19.09.2014 (Annexure P-4) and also the appellate order (Annexure P-7).

Notice of motion having been issued, separate written statements were filed on behalf of the respondents.

During the course of hearing, it has transpired that although the Municipal Corporation issued the demolition order dated 29.08.2011, as recorded in the order dated 19.09.2014 (Annexure P-4) at page 35 of the paper book, but the demarcation at the site came to be carried out at a later point of time on 23.09.2011 by way of Annexure R-2/5. It would show that authorities of the respondent-Corporation acted in most arbitrary manner, while passing the demolition order before carrying out any demarcation with a view to ascertain the actual fact situation obtaining at the site. When the petitioner sought to place on record the demarcation report before the appellate authority at the time

of appearing in his statutory appeal, petitioner was not permitted to do so vide a separate order dated 19.09.2014 (Annexure P-7) passed by the appellate authority. Further, a bare perusal of the impugned orders would show that the same are cryptic and non-speaking orders, which cannot be upheld as such.

Ownership and possession of the petitioner was not in dispute, in view of sale deed dated 06.03.1979 (Annexure P-1) and Jamabandi for the year 1976-77 (Annexure P-8). Respondent-Corporation had been receiving house tax from the petitioner, which is clear from Annexure P-9 (colly.). In this view of the matter, it was least expected from the respondent-Corporation to carry out the demarcation at the site, before issuing the impugned notice and in any case before passing the demolition order. However, it was not so done, for the reasons best known to authorities of the respondent-Municipal Corporation. Such an arbitrary action of the respondent-Corporation cannot be approved by this Court.

When confronted with the abovesaid factual as well as legal aspect of the matter, learned counsel for the respondent-Corporation had no answer and rightly so, it being a matter of record. Having said that, this Court feels no hesitation to conclude that authorities of the respondent-Municipal Corporation proceeded on a wholly misconceived and perverse approach, while issuing demolition order even without ascertaining the true fact situation at the site, by carrying out a purposeful demarcation.

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 the impugned notice dated 22.07.2011 (Annexure P-2) as well as the appellate orders dated 19.09.2014 (Annexures P-4 and P-7) cannot be upheld and same are hereby set aside. Respondent-Municipal Corporation is directed to

carry out a fresh demarcation at the site with prior notice to the petitioner and associating him in the demarcation proceedings. Thereafter, petitioner shall be granted reasonable opportunity to put up his case. After hearing the petitioner, fresh order shall be passed by the competent authority of the Municipal Corporation.

With the abovesaid observations made and directions issued, instant writ petition stands allowed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

28.07.2016
vishnu

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No.