

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

**Civil Revision No.7894 of 2013  
Date of Decision: 21.07.2017**

**Karamjit Singh**

**.....Petitioner**

**Vs**

**Municipal Council, Hoshiarpur**

**....Respondent**

**CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Naveen Batra, Advocate  
for the petitioner.

Ms. Reeta Kohli, Sr. Advocate with  
Mr. Rahul Sharma, Advocate  
for the respondent.

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**RAJ MOHAN SINGH, J.**

[1]. In this revision petition challenge is to the order dated 26.11.2013 (Annexure P-8) passed by Additional District Judge (Adhoc), Fast Track Court, Hoshiarpur vide which order dated 10.07.2013 passed by Civil Judge (Jr. Divn.) Hoshiarpur was reversed.

[2]. Brief facts are that the plaintiff/petitioner filed a suit for permanent injunction restraining the defendant-Municipal Council, Hoshiarpur from interfering in the peaceful and lawful possession of the plaintiff and also from demolishing the super

structure constructed by him in the suit property. Along with the suit, the plaintiff filed an application under Order 39 Rules 1 and 2 CPC for the grant of *ad interim* injunction.

[3]. It was asserted by the plaintiff that he had applied for sanctioning of site plan of the construction of the suit property in the year 2003 and had also deposited the requisite charges and fee in the office of defendant against proper receipt, but till date the defendant has not sent any intimation regarding the fate of the site plan. As per law the site plan has to be sanctioned within a specified period and if, no decision is conveyed, then the site plan has to be presumed as duly sanctioned by necessary fiction.

[4]. Plaintiff further asserted that the defendant had earlier forcibly demolished the construction of the plaintiff in the year 1997 and the plaintiff had filed suit for permanent injunction against the defendant in the Court of Additional Civil Judge (Sr. Divn.) Hoshiarpur, which was dismissed vide judgment dated 22.01.2001. Thereafter plaintiff applied for sanctioning of the site plan in the year 2003. The requisite period was of three months, if no intimation was received, then it could be presumed that the site plan has been duly sanctioned.

[5]. Plaintiff further asserted that the defendant with an

ulterior motive and in order to give undue advantage to the illegal colonizers started sending false and frivolous notices for the removal of the construction at the spot. Plaintiff has already replied to the aforesaid notices.

[6]. In the written statement filed by the defendant, the claim of the plaintiff was controverted. It was submitted that previously plaintiff along with his brother Ram Lubhaya and his uncle Kabal Singh had filed suit against the neighbourers Jai Pal and others, restraining them from interfering in their possession. The said suit was dismissed on 12.12.1989. The appeal filed against the said judgment and decree was also dismissed on 07.05.1994. Thereafter they left the passage of 2 *karams* wide and 36 *karams* long. Now the plaintiff has started raising construction in the said passage. As per the building bye laws, no building shall be constructed unless it abuts on the street, lane, passage, road or other way of a minimum width of 20 feet as per notification dated 10.08.1977. Dismissal of the suit of the plaintiff on 22.01.2001 was also admitted to be a continued effort by the plaintiff in raising construction time and again.

[7]. Defendant further submitted that the plaintiff has not obtained any sanction site plan from it, but has started raising construction/encroachment in violation of the Punjab Municipal

Act (for short 'the Act') on 24.02.1997. At that time defendant issued notice under Sections 195, 195-A and 220 of the Act and encroachment made by the plaintiff was demolished by the defendant on 20.03.1997. The plaintiff filed a suit against the defendant on 20.08.1997 and the said suit was dismissed by the Court of Addl. Civil Judge (Sr. Divn.), Hoshiarpur on 22.01.2001. The said judgment has already attained finality as the same was never challenged by the plaintiff.

[8]. It was further submitted by the defendant that the plaintiff submitted the site plan on 15.12.2003 to the defendant-Municipal Council, Hoshiarpur and some objections were raised by the Council and letter No.35 dated 16.02.2004 was written to the plaintiff to remove the objection. The building plan was also returned for correction to the plaintiff, but plaintiff never submitted the site plan after correction, therefore, the building plan submitted by the plaintiff was rejected. A notice dated 16.02.2004 was issued. On 11.08.2011, the official of the defendant Council visited the spot and found that plaintiff was raising the construction without getting any sanction from the Municipal Council. On being reported, the defendant Council issued notice under Section 195 and 195-A to the plaintiff on 16.08.2011. Plaintiff did not submit any site plan. The official of the Municipal Council again visited the spot on 23.08.2011 and

found that plaintiff was raising construction of three shops in the street. The official reported the matter and notice under Section 172-A was issued by the defendant Council to the plaintiff on 26.08.2011. Defendant Council asserted that the plaintiff has encroached upon the public passage after receipt of notice from the Municipal Council and, therefore, plaintiff is not entitled to any relief of *ad interim* injunction.

[9]. Trial Court vide order dated 10.07.2013 allowed the application under Order 39 Rules 1 and 2 CPC, however the same was reversed by the Court of Additional District Judge (Adhoc) Fast Track Court, Hoshiarpur. That is how the present revision petition came to be filed before this Court.

[10]. I have heard learned counsel for the parties.

[11]. Evidently, as per the pleadings a *prima facie* defence has been projected in the context of Order 39 Rules 1 and 2 CPC. Initially the plaintiff along with his brother Ram Lubhaya and his uncle Kabal Singh had filed suit against the neighbourers Jai Pal and others restraining them from interfering in their possession. The suit was dismissed on 12.12.1989 and appeal was also dismissed on 07.05.1994. As a result of aforesaid decision, the plaintiff, his brother and his uncle left a passage of 2 *karams* wide and 36 *karams* long.

Thereafter on finding that the plaintiff was raising some construction over the said passage without getting sanctioned site plan, the defendant-Municipal Corporation issued notice to the plaintiff under the Punjab Municipal Act and the encroachment made by the plaintiff was demolished by the defendant Council on 20.03.1997. The plaintiff filed a suit against the defendant Council on 20.08.1997 which was dismissed by the trial Court on 22.01.2001. The said judgment has already attained finality.

[12]. The site plan submitted by the plaintiff for sanction was found to be deficient. The objections were raised and the plaintiff was called upon to remove the defects, however the same was never done by the plaintiff. According to defendant Council, on 11.08.2011 officials of the defendant Council visited the site and found petitioner was involved in raising illegal construction on the site without getting it sanctioned and the matter was reported by the officials of the defendant Council and notice under Sections 195 and 195-A was issued to the plaintiffs on 16.08.2011. Thereafter, notice under Section 172-A was also issued to the plaintiff on 26.08.2011. According to defendant Council, the plaintiff has encroached upon the public passage even after receipt of the notices. Apparently, in view of judgment and decree dated 12.12.1989 passed by the trial

Court and affirmed by the lower Appellate Court on 07.05.1994, a passage of 2 *karams* wide and 36 *karams* long was left by the plaintiff, his brother Ram Lubhaya and his uncle Kabal Singh, but the said passage has been encroached upon by the plaintiff.

[13]. There is *prima facie* material on record to show that the respondent-Municipal Council, Hoshiarpur has adopted lawful mechanism to get the encroachment removed. Issuance of notices to the petitioner/plaintiff would be the subject matter of appreciation by the trial Court at the relevant stage, but at this juncture, it cannot be lost sight of the fact that the plaintiff has made repeated efforts to encroach upon the land which was earlier removed and the suit filed by the plaintiff was dismissed on 12.12.1989 and 22.01.2001. Dismissal of the earlier suit would show that plaintiff has made all out effort to encroach upon the land in question on earlier occasions as well.

[14]. On the basis of *prima facie* material on record, it cannot be presumed at this stage, that the site plan submitted by the plaintiff have the effect of automatic sanction after passing of three months as the Municipal Council has specifically objected to the same by asserting that the site plan submitted by the plaintiff was found to be deficient and plaintiff was required to remove the objections. The site plan was returned to the plaintiff and thereafter the plaintiff never filed the site plan after

removing the objections.

[15]. The notices issued to the plaintiff would *prima facie* show that all the ingredients for the grant of interim relief in terms of Order 39 Rule 1 and 2 CPC are not existing in favour of the plaintiff. Respondents seeks to execute the notices in accordance with law. *Prima facie*, the petitioner/plaintiff could not show as to how the notices are illegal or without jurisdiction. *Prima facie* consideration of facts and circumstances of the case negates existence of any *prima facie* in favour of the plaintiff, nor balance of convenience is in favour of the plaintiff.

[16]. In view of above, I do not find any force in the contention of learned counsel for the petitioner.

[17]. For the reasons, recorded hereinabove, this revision petition is dismissed.

July 21, 2017

*Atik*

Whether speaking/reasoned

Whether reportable

**(RAJ MOHAN SINGH)**  
**JUDGE**

Yes/No

Yes/No