

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: May 01, 2017

1. CWP No.14361 of 2012

Ravinder Singh & another

...Petitioners

Versus

State of Haryana & others

...Respondents

1. CWP No.14413 of 2012

Mukesh Kumar & another

...Petitioners

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Ajay Ghangas, Advocate for
Mr.Kuldeep Tewari, Advocate,
for the petitioners in both the petitions.

Mr.Rajbir Singh, AAG, Haryana,
for the State.

Mr.Ravi Sodhi, Advocate,
for respondent Nos.2 to 4 in both the petitions.

AMIT RAWAL, J. (Oral)

By this order, I intend to dispose of two Civil Writ Petitions bearing No.14361 and 14413 of 2012 as the common questions of law and facts are involved. The facts are being taken from CWP No.14361 of 2012.

The grievance of the petitioners is vis-a-vis the impugned order dated 20.4.2012 (Annexure P-8 in CWP No.14361 of 2012) and order dated

1.5.2012 (Annexure P-6 in CWP No.14413 of 2012), whereby the Municipal Corporation, Gurgaon called upon the petitioners to stop the alleged unauthorized constructions as per the provisions of Section 262 of the Haryana Municipal Corporation Act, 1994 (for short “1994 Act”).

Mr.Ajay Ghangas, Advocate for Mr.Kuldeep Tewari, learned counsel for the petitioners submits that the petitioners had already submitted an application for sanctioning of the site plan, which was sanctioned vide Annexures P-1 and P-2 and started with the construction. The construction is strictly in accordance with the site plan and, therefore, there was no occasion for the authorities to issue the notice. In view of the issuance of the aforementioned notice under Section 262 of 1994 Act, proceedings under Section 261 were initiated, which fact is reflected from Annexures P-3 and P-4 and the same were duly replied vide Annexures P-5 and P-6, but without taking any action, notice under Section 262 of 1994 Act has been issued. He further submits that the petitioners could not avail the remedy under sub-section (2) of Section 261 of 1994 Act in the absence of any order under Section 261, in essence the petitioners have not been communicated any order and straightway proceedings under Section 262 of 1994 Act have been initiated.

Mr.Ravi Sodhi, learned counsel representing respondent Nos.2 to 4 submits that the petitioners have an alternative remedy under Section 261(2) of 1994 Act against the proceedings. Main notice basically can be construed to be an order. However, this fact has been denied by the learned counsel for the petitioners as there is no order.

At this stage, Mr.Sodhi, on instructions from his client, submits that they will consider the reply of the petitioners Annexures P-5 and P-6 in

CWP No.14361 of 2012 and Annexure P-4 in CWP No.14413 of 2012 in pursuance to the notices issued and on consideration of the matter, a decision shall be taken thereon in a most objective and pragmatic manner. In case the grievance of the petitioners stands vindicated, there would not be any further action. However, in case the construction has been found to be deviated from the sanctioned site plan, the petitioners have an efficacious remedy under Section 261 (2) of 1994 Act.

This Court is also sanguine of the fact that the Municipal Corporation shall consider the request/representation of the petitioners in a most objective manner and pass a reasoned order and shall also consider the factum that the alleged construction falling within the realm of compounding, if any.

With the aforementioned observations, the writ petitions stand disposed of.

May 01, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No