

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

**CWP No. 11527 of 2016(O&M)
Date of decision : 19.04.2017**

Surinder Pal Verma

..... Petitioner

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Ashish Aggarwal, Sr. Advocate with
Mr.Govind Chauhan, Advocate
for the petitioner.

Ms.Monica Chhibber Sharma, DAG, Punjab.

Mr.Rajiv Joshi, Advocate
for respondents No. 3 and 4.

Mr. J.S.Mehndiratta, Advocate
for respondents No. 5 and 6.

AMIT RAWAL, J.

The most innocuous prayer the petitioner has sought in the present writ petition by seeking a mandamus directing respondents No. 1 to 4 i.e. State of Punjab through its Secretary to Government of Punjab, Department of local bodies; Sub Divisional Magistrate, Derabassi; Nagar Panchayat, Lalru and Executive Officer, Nagar Panchayat, Lalru for compliance of the order dated 26.04.2016 (Annexure P-17) whereby the respondents were directed to pass a reasoned order in compliance of the order dated 11.02.2016 passed in CWP No. 2803 of 2016 and detailed order has been passed and it has been found that respondent No.5 has raised

construction without getting the site plan sanctioned. Relevant portion of the report is as under:-

“ That as per aforesaid after seeing the site and after analyzing the prevailing facts and after seeing the report of Structural Engineer, it is clear that the house of petitioner Surinder Pal Verma son of Walaiti Ram Verma is almost 22 years old, but is only one storied built and the construction of this structure is average type. The three storied structure of respondent Surinder Singh son of Sh. Chaman Singh, has been constructed by him two years ago and its site plan was not go approved from Nagar Panchayat Lalru. Regarding which Nagar Panchayat Lalru issued a notice to Surinder Singh son of Chaman Singh under Section 195/195A of the Punjab Municipal Act(for short 'the Act'). In the light of which, Chaman Singh was informed vide Office letter No. 3317 dated 06.11.15 that as per the report of Structural Engineer serious discrepancies have been found in the structure constructed by him and he was called to be personally present in the office of Nagar Panchayat Lalru on 16.11.2015 for personal hearing, but neither he came to the office nor he gave any written reply. Regrading which Nagar Panchayat also wrote to Station House Officer, Lalru for not allowing any construction/modification on the spot, in response of the said letter, the Station House Officer reported after recording the statement of Surinder Singh son of Chaman Singh and reported that he will maintain status quo on the site in dispute.

Therefore appropriate legal action will be taken for demolishing two floors out of the three floors structure, which has been constructed by Surinder Singh son of Chaman Singh without getting any site plan approved and appropriate proceedings will be undertaken as per law, but if respondent Surinder Singh son of Sh.Chaman Singh submits his site plan, then if the same is found to be compoundable offence then as per the Punjab Municipal Act 1911 and as per the Municipal

Building Bye laws 2010, the appropriate fine will be recovered and in case it is found to be non-compoundable offence then the legal action will be taken as per law for removing the appropriate constructed portion.

That apart from this a request will be sent to Sub Divisional Magistrate Derabassi for providing compensation to petitioner Surinder Pal Verma son of Sh. Walaiti Ram Verma regarding the loss, which has been caused to his house/structure, after getting the same analyzed from the technical officials. Sh. Surinder Singh son of Sh. Chaman Singh is directed to strengthen his structure for preventing any type of damage in future and in case the same is not done, then appropriate proceedings will be taken against you.

That the aforesaid speaking order is passed in the light of order of the Hon'ble Punjab & Haryana High Court passed in CWP No. 2803 of 2016.”

The aforesaid order was communicated to the respondent No.5 and thereafter the show cause notice Annexure P-19 under section 195 and 195A of the Act had been issued. Instead of complying with the aforementioned order, according to the submissions, respondent No.5 approached the civil court and obtained ex parte stay order. However, on appearance the ex parte stay order had been modified where the trial court while adjudicating upon the application moved under Order 39 Rules 1 and 2 read with Section 151 CPC has passed the following direction:-

“ So, the present application is hereby allowed to the extent that the defendants not to demolish the house of the plaintiff fully detailed in the head note of the suit illegally and forcibly except following the due process of law. However, if the defendants adopt the due process of law in demolishing the house of the plaintiff fully detailed in the head note of the suit,

then plaintiff has no right to restrain them in doing so regarding which the defendants No. 2 and 3 have already submitted in their written statement. The application in hand disposed of accordingly with the above said observations.”

In view of the aforementioned fact the petitioner is seeking the execution of the order Annexure P-7 and according to him the Municipal Council is not making any headway and is avoiding the execution of the injunction order.

Mr.Rajiv Joshi, learned counsel appearing on behalf of the Municipal Council submits that they will have no objection in taking the action in accordance with law as indicated in the order dated 19.04.2016 passed by Civil Judge(Junior Division).

Mr. Mehndiratta, learned counsel appearing on behalf of respondents No. 5 and 6 submits that respondent No.5 though had raised construction on the two storeyed building but the cracks occurred in the building of the petitioner owing to the old construction and not on account of the raised construction. At his cost he has given offer to appoint any engineer for the purpose of determining the cause of cracks as to whether it is on account of the old building or on account of the raised construction. He has given offer for repairing the cracks but the petitioner has not acceded to his request. He has also drawn the attention of the Court to the relevant portion of the order Annexure P-17 with regard to certain seepage of the water into the foundation of the house of the petitioner. He is willing to provide support to the house of the petitioner by erecting beams where the construction of the petitioner has been raised, therefore, there is no possibility of any cracks. He further submits that it is a disputed question of

fact which cannot be adjudicated before this Court. He has also drawn the attention of the Court towards the operative part of the order dated 26.4.2016 Annxure P-17 whereby direction was given to respondent No.5 to strengthen his structure for preventing any type of damage in future.

I have heard learned counsel for the petitioner, perused the paper book. If at all, the respondent No.5 had any respect and regard to this Court he should have taken some steps in order to do so. Instead he had chosen to go to the civil court and obtained ex parte injunction. This act itself shows the mala fide intention of the private respondent. It is pertinent to mention here that during the pendency of the writ petition the efforts were also made to arrive at a compromise between the parties by sending the matter to the Mediation and Conciliation Center of this Court but as per the report of the mediator the mediation failed and the matter has come back. Even despite that the Municipal Corporation has not taken any action in accordance with law. The only thing which has to be done is to take action and nothing beyond. Respondent No.5 has not been able to place on record any document to show that the construction raised is after having obtained sanction from the concerned Nagar Panchayat. Mr. Mehndiratta has also reiterated the issue of having raised the construction without any sanction. No person in country can raise unauthorised construction without getting the plan sanctioned. In essence cannot take law in their own hands which can cause a fatal accident or may result into collapse of building as every day we come across the cases in newspapers of falling down of such kind of unauthorised buildings etc. The life and liberty of any of the respondents or the petitioner is the most precious one which cannot be put at stake on account of the unauthorised act of any of the parties muchless by respondent

No.5.

Resultantly I deem it appropriate to dispose of the writ petition with a direction to respondents No. 2 to 4 to comply with the order Annexure P-17 strictly in accordance with law at least in the letter and spirit of the order of Civil Judge which has attained finality. Petition stands disposed of. Liberty is granted to the petitioner to move application in case the municipal corporation does not take any action.

(AMIT RAWAL)
JUDGE

April 19, 2017
sunita

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No