

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.12261 of 2017
Date of Decision.31.05.2017

Prem Partap Singh

.....Petitioner

Vs

State of Punjab and another

.....Respondents

Present: Mr. S.S. Rangi, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

Learned counsel for the petitioner submits that the impugned order/letter (Annexure P-5) is against the principles of natural justice, much less, without jurisdiction as vide letter dated 23.01.2017 (Annexure P-2), the Executive Officer, Municipal Council, Balachaur, SBS Nagar had sanctioned the site plan for constructing the shop. However, on receipt of complaint of one Dev Raj on 08.05.2017 by conducting an alleged inspection of the spot at the back of the petitioner straightway without affording any opportunity of hearing, he passed the impugned order cancelling the site plan, which is not sustainable in the eyes of law.

Notice of motion.

Mr. Yatinder Sharma, Addl. A.G., Punjab accepts notice.

The order dated 16.05.2017 reads as under:-

“On the above subject you are informed that you have deposited your Map No.103 dated 09.01.2017 for construction of the shop. This map was approved by this office on 23.01.2017. Sh. Dev Raj etc. has complained regarding this map on 08.05.2017 that you are construction your shops in your area. Along with this you are encroaching the passage

of the street in the ownership of municipal council Balachaur and increasing your area. Due to which passage has become very short, due to this resident of the neighbourhood will face hardships.

The spot of the said street was inspected. In one of the copy of registry dated 2.01.1998 submitted by one of the complainants in which there is no mention about the width of the street. In the registry it is mentioned that all rights including passage Gujjar Pass Durgesh Kumar and in registry No.1427/1 dated 09.01.1979 submitted by you and registry No.1743/1 dated 13.02.1979 submitted in this office 12.05.2017 in which also there is no mention of the street as in the above complaint. You have broken about 1 and half feet of the floor and drain in the street, there are more houses beyond your area and this street is closed at the dead-end. Your area falls in the start of the street therefore in case you start construction in about 1 and half feet in the street then the width of the street will be 7 feet at the start and it will be of width 8 and a half feet after your area. Due to construction of your area, the building line is affected and people will face problem for moving around, therefore keeping in view the above your map was approved on 23.1.2017 is cancelled in the public street.”

The aforementioned order, in my view, is not in consonance with the principles of natural justice. At the best, the Executive Officer could have issued a notice to the petitioner under proviso to Section 195 of the Punjab Municipal Act, 1911, enabling the petitioner to avail the remedy of appeal before the Municipal Committee but not in the manner and mode as indicated above. It would be a farcical exercise in issuing notice to the Municipal Committee in view of the aforementioned observations.

Resultantly, the order under challenge vide Annexure P-5 is set

afford an opportunity of hearing to the petitioner and also join the petitioner in the alleged inspection with regard to alleged violation of the sanctioned plan and take action in accordance with law, much less, the observations of this Court, enabling the petitioner to avail the remedy, in case of any eventuality arises.

The writ petition stands disposed of in the above terms.

(AMIT RAWAL)
JUDGE

May 31, 2017
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No