

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

CWP No.5004 of 2011

Date of Decision.05.04.2017

Vineet Kumar Sachdeva

.....Petitioner

Vs

State of Punjab and others

.....Respondents

Present: Mr. Anil Kshetarpal, Senior Advocate with
Mr. Rohit Nagpal, Advocate
for the petitioner.

Mr. Anil Sharma, Advocate
for respondent No.4.

Mr. R.D. Bawa, Advocate
for respondent Nos.5 to 13.

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

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The challenge in the writ petition is to the order dated 23.11.2009 (Annexure P-15) passed by the Executive Officer, Municipal Council, Batala, order dated 31.08.2010 (Annexure P-17) passed by the Director, Local Government, Punjab and order dated 03.03.2011 (Annexure P-20) passed by the Secretary exercising the powers of the Government in the revision petition affirmed the order passed by the Director, Local Government, Punjab.

Mr. Anil Kshetarpal, learned Senior Counsel assisted by Mr. Rohit Nagpal, Advocate submits that the petitioner purchased a constructed shop vide registered sale deed dated 07.03.2007 (Annexure P-1) and Sandeep Kumar, his vendor, purchased the aforementioned shop from the legal heirs of original owner namely Kartar Singh vide sale deed dated

22.10.2014, in essence, the shop was constructed by Kartar Singh, after getting the site plan sanctioned. The petitioner demolished the shop and started re-construction on the earlier foundations. However, Junior Engineer of the Municipal Council, Batala vide report dated 28.09.2007 (Annexure P-2) submitted that the building was being re-constructed without getting the site plan sanctioned. Resultantly, served a notice dated 03.10.2007 (Annexure P-3) under Sections 195 and 195-A of the Punjab Municipal Act, 1911.

The petitioner approached the Municipal Authorities and was directed to submit a site plan according to the bye-laws, after leaving 30% of the area as vacant by depositing the construction and the malba fee. Accordingly, a sum of ₹10,940/- vide receipt dated 31.10.2007 (Annexure P-4) along with site plan, was submitted. However, he came to know that the bye-laws referred to in the notice envisaging mandatorily leaving 30% of the area as vacant have not been notified, therefore, raised the 100% construction.

However, one Sarabjit Singh filed a complaint dated 12.11.2007 (Annexure P-5) to the Deputy Commissioner, Gurdaspur with a copy to the Director, Local Bodies, Punjab. The Executive Officer of the Municipal Council, Batala reported to the Deputy Commissioner that there is encroachment on the public path. The aforementioned Sarabjit Singh also filed a civil suit for mandatory injunction for removal of the encroachment and restraining the petitioner from raising further construction. He also got a demarcation report dated 25.01.2008 (Annexure P-6) alleging an encroachment of 2 ft.

The petitioner requested the Deputy Commissioner for re-

demarcation. His request was acceded to and re-demarcation was carried out in the presence of a councillor, Section Officer of the Municipal Council and other respectables and as per the report dated 20.02.2008 (Annexure P-7), it was found that there was no encroachment by the petitioner on the public path.

Resultantly, the Executive Engineer submitted his report dated 10.03.2008 (Annexure P-8) to Deputy Commissioner indicating no encroachment. Even the complainant, who filed the complaint and civil suit also withdrew both, vide Annexure P-9 and P-10. The Deputy Commissioner, Gurdaspur vide order dated 24.09.2008 (Annexure P-11), after considering all the aspects and examination of the demarcation report, closed the enquiry.

He further submits that certain business competitors filed CWP No.17951 of 2008 by branding it to be a public interest litigation but did not disclose that enquiry had already conducted and closed by the Deputy Commissioner. This Court vide order dated 28.07.2009 (Annexure P-12), disposed of the writ petition with a direction to the Municipal Council to expedite action in regard to all the three aspects referred to in the order i.e. whether there was any violation of the Municipal bye-laws in the matter of reconstruction or remodeling of the building in question and with regard to dissatisfaction of the petitioner to the demarcation report and composition aspect. Resultantly, the demarcation was carried out and as per the report dated 26.10.2009 (Annexure P-13), it was held that there was encroachment of 1 ½ ft. on the southern side and one foot on the northern side. Though according to him, report itself revealed that there was no permanent stop or mark of consolidation for the purpose of effecting

demarcation/measurements whereas southern wall of the primary school and property of Kartar Singh on the northern side was taken as permanent mark.

The Executive Officer, Municipal Council in pursuance of the aforementioned report issued a notice dated 23.11.2009 (Annexure P-14) under Section 220 of the Punjab Municipal Act to remove construction within 15 days failing which illegal construction would be removed. On the same day, also issued a notice under Section 195 and 195-A of the Punjab Municipal Act for demolition of illegal construction vide Annexure P-15.

The petitioner submitted a representation to the elected body of Municipal Committee, who took cognizance of the matter and passed a resolution No.210 dated 15.12.2009 (Annexure P-16), noticing that the Government had not notified municipal bye-laws and therefore, not enforceable as per the provisions of Section 20 of the Punjab Municipal Act and further the demarcation report dated 26.10.2009 (Annexure P-13) was defective owing to non fixing of permanent stone or mark. There was another point that since all the shops constructed in Batala in a similar manner, therefore, the petitioner was called upon to deposit the composition fee for the purpose of regularization of the construction.

The main contention of the petitioner is that the aforementioned resolution was placed before the Director, who without hearing him, at his own level, vide order dated 03.09.2010 (Annexure P-17), set aside the same on the premise of jurisdictional error of Municipal Committee. The petitioner filed the revision petition against the aforementioned order before the Government by invoking the provisions of Section 236 of the Act of 1911. The aforementioned matter was heard at length. Even the written synopsis were submitted but the Principal Secretary chose to dismiss the

same vide order dated 03.03.2011 (Annexure P-20). The information obtained under Right to Information Act vide letter dated 19.11.2010 (Annexure P-21) reveals that the municipal bye-laws have not been notified, therefore, the orders under challenge are not sustainable in the eyes of law on the following grounds:-

- (i) The order of the Director passed at the back of the petitioner lacks reasoning, much less, cogent reasoning.
- (ii) The Executive Officer could not have passed the order under Section 220 and as well as 195 and 195A of the Punjab Municipal Act. Once the building bye-laws have not been notified, there cannot be said to be violation of the alleged bye-laws.
- (iii) None of the authorities had taken into consideration the order dated 24.09.2008 whereby the Deputy Commissioner had closed the file. Even the civil suit filed by the other party stood withdrawn.

He also drawn attention of the Court to the additional affidavit dated 09.05.2012 filed by the Executive Officer, Municipal Council, Batala in pursuance of the order dated 28.02.2012 passed by this Court whereby this Court had called upon the Municipal Council to file an affidavit as to whether in the absence of bye-laws, the draft rules had been adopted to operate as rules and as well as whether the adjoining shops have utilized the entire plot for construction or had left 35% or not, in paragraph 5 it has been stated that majority of the adjoining buildings to the disputed site are having very old construction and the records pertaining to the sanction of buildings plans are not traceable in their office. Even photographs attached to the

affidavit reveal that cemented stairs have been removed and wooden stairs have been kept which are only used during the working hours of the shop. Reference has also been made to affidavit of Priyank Bharti, IAS, Director, Local Govt., Punjab dated 27.06.2014 filed in pursuance of the order dated 09.05.2014 by this Court to the effect that there was no encroachment on the public street. In the aforementioned affidavit, it has also been stated that width of the road is 33 feet and access to the shop is through temporary wooden steps which during the working hours only covers about 4 feet area of the road. The building/shop in dispute is 1 feet and 2 inch ahead from the school side, thus, submitted that the alleged violation can be compounded despite non-adoption of the municipal bye-laws.

The powers conferred upon the Deputy Commissioner under Section 232 of the Punjab Municipal Act would not amount to interference in day-to-day affairs of the Municipality/Municipal Council and resolution can be set aside only where it is found that it is likely to cause waste or damage of municipal funds or property or there is likelihood of breach of peace. The powers of the Municipal Committee are wide enough, thus, urges this Court for setting the orders under challenge by allowing the writ petition.

On the contrary, Mr. R.D. Bawa, learned counsel appearing on behalf of respondent Nos.5 to 13 submits that private respondent had submitted a complaint to the official of the Municipal Council, Batala for illegal construction and removal of encroachment. The demarcation report dated 26.10.2009 (Annexure P-13) is perfectly legal and justified. The Municipal Committee could not have passed the resolution bearing No.210 dated 15.12.2009. The petitioner had been wielding political influence in

raising the construction against the bye-laws. As per the provisions of Section 189 of the Punjab Municipal Act, no person can erect or re-erect or commence to erect or re-erect a building without sanction of the Municipal Committee and under Section 195 of the aforementioned Act, Committee can order to alter the building or demolish the same, as it may deem necessary. The Municipal Committee has also power to stay the building operation under the provisions of Section 195-A. The petitioner had made encroachment of 6'x22' but yet Municipal Council became a mute spectator, though the Municipal Council has also power under Section 172 and 173 of the Act to prosecute the person making encroachment on the area of public street. The report dated 26.10.2009 is in conformity with the order passed by this Court wherein it was found that the petitioner had encroached upon the area of road under his showroom known as Sachdeva Garments Showroom by 1 ½' on southern side and 1' on northern side.

The elected body of Municipal Council is not an appellate authority over the order passed by the Executive Officer of a Municipal Council. The action of the elected body basically is an intentional and deliberate disobedience of the order dated 28.07.2009 passed by this Court. When the official respondents did not take any action on the notice dated 11.01.2010 (Annexure R-5/6), the private respondents were constrained to file CWP No.4576 of 2010 but during the pendency of the same, the Director Local Government had passed an order dated 31.08.2010 vide which he quashed the resolution. It is in this aspect of the matter, the writ petition was disposed of. The Secretary to the Local Government Department rightly dismissed the revision petition by rendering valid and reasoned order. In fact, the petitioner has raised the construction 35% in

excess of the construction sought to be raised, thus, urges this Court for dismissal of the writ petition.

During the course of hearing, he also drawn attention of this Court to the application seeking amendment of the writ petition as due to inadvertence, there is admission of the width of the road as 33' but actually there is encroachment in front of showroom of the petitioner by reducing the width of the road to 35' 3".

I have heard learned counsel for the parties, appraised the paper book. It would be apt to reproduce the relevant paras of affidavits referred to above:-

"Affidavit dated 09.05.2012.

".....3. That at the very outset, it is humbly submitted that as per the records, the Draft Building Bye-Laws have been adopted to operate as Building Bye-Laws. It is further submitted that all the building plans have been approved as per the conditions of the said draft Bye-Laws. It is further submitted that the office of the Deputy Director, Local Govt., Amritsar vide its Memo No.DLG-99/7280-98 dated 13.10.1999 had sent the copy of the notification of the Building Bye Laws, 1997 and issued instructions to the Municipal Council to adopt the same. The same were adopted vide resolution No.55 dated 27.10.1999 and the Building Plans are approved as per the same. Thereafter, in the year 2004, 2005 and 2007 certain amendments were made in the Bye-Laws and lastly in the year 2010, the Draft Punjab Model Building Bye-Laws were adopted by Municipal Council, Batala, vide its resolution No.257 dated 3.5.2010 and the Building Plans are being approved as per the same.

4. That this Hon'ble Court vide its order dated 28.2.2012 directed that Municipal Council to place on record photographs showing the alignment of the shops in question

with other adjoining shops. The photographs of the site from different angles are attached herewith as Annexure R-A.

5. That so far as the directions of the Hon'ble Court with regard to the effect as to whether the adjoining shops to the disputed sites/shops have utilized the entire plot for constructions or have left 35% as canvassed in this petition, it is submitted that as per the Building Bye Laws no open space has been left out. Secondly, a plot adjoining to the disputed site is lying vacant and on the other side is school building in which there is some open space. It is further submitted that majority of the adjoining buildings to the disputed site is having very old construction and the records pertaining to the sanction of the Building Plans with regard to the same, are not traceable in the office of the Municipal Council, Batala.....”

Affidavit dated 27.06.2014

“.....2. That in compliance of the above orders, the Regional Deputy Director, Urban Local Government, Amritsar has directed to personally visit the place of encroachment and submit report. The Regional Deputy Director, Urban Local Bodies, Amritsar personally visited the place of encroachment and submitted the report vide letter No.DDLG/2014/4105 dated 06.06.2014. A copy of which is attached as Annexure R-1. As per the report:-

(a) That the building (shop) in dispute falls 1 feet and 2 inch ahead from the school side and 6 inch ahead from the other side but at present the width of the road is 33 feet. The access to the shop is through temporary wooden steps which covers about 4 feet area of the road.

(b) That according to the report of circle patwari the measurement of road is 33 feet (6 karam) and as per the report of technical staff of Municipal Council, Batala consisting of Junior Engineer and Assistant Municipal Engineer the width of road from both side is 33 feet.

(c) That the Executive Officer of Municipal Council, Batala Sh. Manjinder Singh Bandesha (now posted at Municipal Council,

Ropar) has already filed an affidavit regarding 33 feet of the road and this measurement of the road is still in existence.

(d) That on 20.02.2008 the place in dispute was demarcated in the presence of Sh. Ravinder Singh Kalsi, Junior Engineer, Municipal Council, Batala and as per demarcation report Khasra No.2119 (Gair Mumkin Road) 6 Karam, starting from East side of Maharaja Jassa Singh Ramgariya Hall and ending towards Hansli on the 7 karam western side. According to field book/akschejjra the road was demarcated from all the sides and measurement was found correct and all the persons present on the spot endorsed the corrections of the measurement of road.

(e) That the construction of building in dispute of Sh. Vaneet Sachdeva is 1 feet 2 inch ahead from the school side. The map to this effect is attached herewith. The constructions adjoining alleged building are very old and coverage of these constructions are 100% and the width of road is 33 feet from both side.

3. That the Regional Deputy Director, Local Government, Amritsar further clarified vide their affidavit dated 25.6.14 that there is no encroachment on the M.C. Batala Road. A copy of which is attached herewith as Annexure R-2.”

Of the procedure of reopening the matter after the conclusion of the enquiry by the then Deputy Commissioner as evident from order dated 24.09.2008 (Annexure P-11), the question, which evolve is, whether the encroachment is against the bye-laws, in essence, whether the bye-laws are applicable or not and the answer is simple and straight. As per the information obtained under the Right to Information Act vide letter dated 19.11.2010 (Annexure P-21), the Public Information Officer, Batala informed the informer of adopting bye-laws but no notification has been issued by the Government. In the absence of the same, the bye-laws cannot

the previous demarcation report dated 10.03.2008 (Annexure P-8).

The order of the Director Local Government had been passed at the back of the petitioner without giving any opportunity of being heard and also lacks any reasoning. Mr. Anil Kshetarpal, learned senior counsel appearing for the petitioner, during the course of the argument, in support of averment made in the writ petition apprised that the complaint is nothing but nursing a professional rivalry and the factum of the same was not denied by Mr. R.D. Bawa, when called upon. The alleged complainant when approached this Court did not bring to the notice of the Court the conclusion of the enquiry by the Deputy Commissioner, in essence, perhaps had aforementioned report been annexed or placed on record as the complainant ought to have made reasonable enquiries before filing the writ petition, this Court would not have issued direction in CWP No.17951 of 2008 decided on 28.7.2009 (Annexure P-12). In my view, such an act is an attempt for infringement of provisions of Article 19 of the Constitution.

The authorities and this court cannot be a platform/foundation for settling the private scores. The contents of the affidavit, for the sake of repetition, reveals that there is no encroachment and the width of the road is 35'. It is only during day time, some wooden stairs are kept in front of the shops as the earlier concrete/permanent stair case, according to submissions of Mr. Anil Sharma, representing respondent No.4, had been demolished. Even photographs attached with the applications conform to the aforementioned fact.

The resolution No. 210 dated 15.12.2009 (Annexure P-16) cannot be said to be in derogation of any provisions of law, as the same was based upon actual and factual aspect of the matter.

For the reasons aforementioned, the orders of the authorities dated 23.11.2009 (Annexure P-15) passed by the Executive Engineer, Municipal Council Batala and order dated 03.09.2010 (Annexure P-17) of the Director, Local Government, Punjab are totally erroneous, arbitrary, illegal and are not sustainable in the eyes of law, thus, hereby set aside.

The writ petition stands allowed.

Since the petitioner has been made to suffer at the behest of the private respondents, once there was already culmination of proceedings on a complaint filed by some other person, costs of litigation assessed at ₹25,000/- shall be paid by private respondent Nos.5 to 13 to the petitioner within a period of two months from the date of receipt of certified copy of this order. If the aforementioned amount is not paid as directed, the petitioner shall be at liberty to move an appropriate application seeking compliance of the order.

(AMIT RAWAL)
JUDGE

April 05, 2017
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No