

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

CWP No.3492 of 2017

Date of Decision.22.02.2017

Municipal Corporation Bathinda through its Commissioner

.....Petitioner

Vs

Rajinder Kumar Parbhakar and another

.....Respondents

Present: Mr. Sanjeev Soni, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The petitioner in the present writ petition is aggrieved of the impugned order dated 01.09.2016 (Annexure P-7) rendered by the Additional District Judge, Bathinda whereby the appeal filed by the private respondent by availing the remedy under Section 269(2) of the Punjab Municipal Corporation Act has been allowed.

Mr. Sanjeev Soni, learned counsel appearing on behalf of the petitioner submits that vide notice dated 28.10.2011 (Annexure P-1), the private respondent was served with notice under Section 270(1) of the Punjab Municipal Corporation Act for raising construction without/against sanctioned plan in violation of Section 259, 260, 261 and 262 of the Punjab Municipal Corporation Act, 1976 in respect of house No.5031/1662, resident of Gali Afim Wali, Bathinda. The description of the construction shown was 22'x15' approximately. The private respondent replied the aforementioned notice vide Annexure P-2 by saying that he has not raised new construction but stated that only walls and floors have been repaired whereas new construction in the adjoining house No.5032 was being carried

out in an unauthorized manner. Considering the reply not satisfactory, the order of demolition was passed. Resultantly, the appeal preferred by the respondent has erroneously been allowed.

He further submits that the Additional District Judge has committed illegality and perversity in allowing the appeal when there is a direct and cogent evidence of alleged unauthorized construction. The construction had been raised without any sanctioned plan, much less, any permission obtained from the Municipal Corporation, Bathinda, thus, the order is not sustainable in the eyes of law.

I have heard learned counsel for the petitioner, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Soni. For the sake of brevity, the order of demolition dated 17.01.2012 (Annexure P-3) reads as under:-

“Order for demolition of unauthorized construction

Shri Rajinder Parbhakar son of Hans Raj, house No.5031/1662 resident of Gali Afim Wali, Bathinda has raised unauthorized construction without prior permission of Municipal Corporation, the detail of which is as under:-

Description of unauthorized construction:

You have raised unauthorized constructions approximately 22'x15' area (surrounded on West: Street, East House No.5031, North: House of Shri Hem Raj & South: House of Mathura Dass, Ex Councilor).

You have been served notice under Section 270(1) bearing No.132/B dated 4.11.2011 for violation of Section 259, 260, 261 and 262 of the Punjab Municipal Corporation Act, 1976 for stopping the construction and show cause notice No.133/B dated 4.11.11 under

Section 269(1) for show cause as to why the demolition order be passed for demolition of the unauthorized construction. This notice was received by him but the reply dated 11.11.2011 which was submitted by him after consideration was not found satisfactory. Therefore, it is clear that you have violated the provisions of Punjab Municipal Corporation Act, 1976 by raising unauthorized construction.

I, Assistant Commissioner, Municipal Corporation, Bathinda exercising the powers delegated upon me vide order No.151 dated 27.04.2011, passed this demolition order to demolish the unauthorized construction under Section 269 of Punjab Municipal Corporation Act, 1976. You are directed that within three days upon the receipt of this notice, this unauthorized construction be demolished at your own level. After expiry of stipulated period in the event of non compliance, this unauthorized construction shall be demolished by staff at your risk and cost.”

The alleged satisfaction recorded is not backed by any cogent reasons/explanation, in essence, as to how and what manner the alleged construction was found to be unauthorized or beyond the sanctioned plan. Neither any satisfaction has been recorded that the alleged construction approximately 22'x15' area was raised without sanctioned plan. Even the reply of the respondent has not been referred to. This is what the learned Additional District Judge while allowing the appeal of the respondent has noticed.

Before coming to the conclusion that the alleged construction raised is unauthorized, the Municipal Corporation, prima facie, has to establish following things:-

- (i) by getting the area demarcated either through the Inspector or any other officer in the presence of the alleged encroacher or the unauthorized constructor and the residents of the local area.
- (ii) recording satisfaction by the concerned authority while declining reply of the alleged unauthorized constructor.

All these aforementioned statutory requirements of law or principles of natural justice are conspicuously absent. This is precisely the finding rendered by the Additional District Judge. Nothing prevented the Municipal Corporation to undertake the aforementioned task i.e. demarcation and the measurements and also to show cause the respondent about the construction being raised without sanctioned plan. Even the order of demolition did not indicate that the alleged construction is against the statutory provisions or without sanctioned plan. All the material averments or the ingredients are conspicuously absent. Nothing prevented the Municipal Corporation to take action in accordance with law, in view of the observations made above yet chose to file the writ petition.

In my view, filing of writ petition is wholly misconceived and devoid of merit. No ground for interference is made out. The writ petition stands dismissed. However, this will not prevent the Municipal Corporation from taking any action after conforming to the provisions of law and observations made here-in-above.

(AMIT RAWAL)
JUDGE

February 22, 2017
Pankaj*

Whether speaking/reasoned order Yes

Whether reportable No