

**COCP No.1340 of 2018 &
COCP No.1341 of 2018**

Vimal Kumar
2018.07.12 10:11

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

Date of decision: 10 .07.2018

COCP No.1340 of 2018

Kanwaljit Gaba & another

...Petitioners

Vs.

Jaskaran Singh & another

...Respondents

COCP No.1341 of 2018

Hardeep Singh & another

...Petitioners

Vs.

Jaskaran Singh & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sanjay Tangri, Advocate, for the petitioners.

Mr. Ashok Bazaz, Advocate, for the respondents.

RAJIV NARAIN RAINA, J. (ORAL)

This order will dispose of the aforementioned two contempt petitions filed by the petitioners alleging against the respondents i.e. Commissioner, Municipal Corporation, Ludhiana and the Zonal Commissioner, of the same Corporation, contempt of the judgment and decree passed by the court of Shri Ranjit Kumar Jain, the then Additional District Judge, Ludhiana on 30.10.2012 in Civil Appeal No.122 dated 17.12.2010 [COCP No.1340 of 2018] and Civil Appeal No.123 dated 17.12.2010 [COCP No.1341 of 2018] reversing the findings recorded by the trial Judge. It is maintained that the respondents are in breach of the judgment and decree since the petitioners have been held to be owners in

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possession of the disputed plot and the Corporation cannot interfere in the peaceful possession of the petitioners and to build a house thereon as per the sanctioned plan. The operative part of the judgment dated 30.10.2012 reads as follows:

“10. In considered view of this Court, Ld. Lower Court has wrongly appreciated the evidence as brought on record. The appellant has purchased this property by way of registered sale deed. So they are owners-in-possession and they are entitled for protection from some illegal act by the respondent. The view taken by the Ld. Ower Court on the basis of evidence is perverse and against the law. Such findings are not sustainable in the eyes of law and I, hereby, reverse the findings of the Ld. Lower Court on issues no.1 and 3. Ld. Lower Court has already decided issues no.2 and 4 against defendants/respondents. Consequently, this judgment of Ld. Lower Court is set aside and appeal is, hereby, allowed and the suit of the plaintiffs is, hereby, decreed. The parties are left to bear their own costs. Decree-sheet be prepared. Lower Court record be returned with the copy of this judgment. File be consigned to record room.”

Both the instant contempt petitions have been filed on the basis of notices dated 13.04.2018 issued by the Municipal Council, Ludhiana under Section 270(1) of the Punjab Municipal Corporation Act, 1976 (for short ‘the Act’) for raising construction without getting the plan sanctioned and the subsequent notices dated 16.04.2018 issued under Section 269(1) of the said Act to stop the unauthorized construction and if the petitioners do not desist, then show cause why the unauthorized construction should not be demolished.

At this stage, it would be apt to reproduce the relevant part of the decree sheet passed in Civil Appeal No.122 dated 17.12.2010 titled

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‘Kanwaljit Gaba & another Vs. Municipal Corporation, Ludhiana & another’:

“It is, hereby, ordered that present appeal is, hereby, accepted. Defendants are restrained from dispossessing or otherwise interfering in the peaceful possession of the plaintiffs and from raising the construction as per the sanctioned plan, over the plot measuring 110 Sq. Yards shown red in the plan attached and bounded as under:

East: Plot of Gurjit Singh etc. and then M.G.Cycle Industries;

West: Plot of Sanjay Kapoor and then street 25 feet wide;

North: House of Shankar Dass and then street 8 feet wide;

South: Road 33 feet wide;

Situated in Janta Nagar, near Guru Nanak School, Ludhiana.”

Mr. Sanjay Tangri, learned counsel appearing for the petitioners submits that contempt has been committed in disregarding the orders for which the respondents deserve to be punished. He relies on the decision of the Supreme Court in Rama Narang Vs. Ramesh Narang & another, (2006) 11 SCC 114 holding that although all decrees and orders including consent decrees are executable under Civil Procedure Code, but merely because an order or decree is executable, would not take away the Court’s jurisdiction to deal with a matter under the Contempt Act provided the Court is satisfied that the violation of the order or decree is such, that if proved, it would warrant punishment under Section 13 of the Act on the ground that the contempt substantially interferes or tends substantially to interfere with the due course of justice.

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There can be no quarrel with the proposition of law as stated by the Supreme Court, but the question here is that even if assuming that there is infringement of the decree of the first Appellate Court, it would not be expedient to invoke and exercise contempt jurisdiction as a mode of executing the decree. If there is violation, then it can be brought to the notice of the Civil Court in a proceeding under Order 39 Rule 2 A of the Code of Civil Procedure or better still to approach the Municipal Council, Ludhiana in writing showing evidence and proof that the sanctioned plan has not been violated and the alleged unauthorized construction/s are legal and valid. Contempt jurisdiction cannot be used as an arm-twisting proceeding to cover up questionable actions of the petitioners for which notices have been issued to atone to the illegal construction and bring it in tune with the plans duly sanctioned.

Besides, the petitioners have alternative remedies against the show cause notices issued under the Act and party may take recourse to those remedies, but to my mind contempt is not made out in this case.

In view thereof, no orders are required to be passed in the instant petitions. The same are accordingly ordered to stand dismissed.

Notice is discharged.

10.07.2018
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No