

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

**Civil Revision No.6246 of 2017 (O&M)
Date of decision: May 29, 2018**

M/s Hotel Skylark and Restaurant Pvt. Ltd.

...Petitioner

Versus

Municipal Corporation Jalandhar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Puneet Jindal, Senior Advocate with
 Mr.Varun Goyal, Advocate
 for the petitioner.

Mr.H.K.Aurora, Advocate
for the respondents.

INDERJIT SINGH, J.

Petitioner M/s Hotel Skylark and Restaurant Pvt. Ltd. through its Managing Director has filed this revision petition against respondents Municipal Corporation, Jalandhar and Chief Town Planner under Article 227 of the Constitution of India for setting aside order dated 12.11.2016 passed by learned Addl. Civil Judge (Senior Division), Jalandhar, vide which application filed by the petitioner-plaintiff under Order 39 Rule 1 and 2 CPC was dismissed and judgment dated 17.08.2017 passed by learned Addl. District Judge, Jalandhar, vide which the appeal filed by the petitioner was also dismissed.

Notice of motion was issued. Learned counsel for the respondents appeared and contested the petition.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that plaintiff-petitioner M/s Hotel Skylark and Restaurant Pvt. Ltd. filed a suit against defendants-respondents Municipal Corporation, Jalandhar and Chief Town Planner for permanent injunction restraining the defendants themselves, their employees, agents and attorneys or any other authorized representatives, from interfering into the peaceful possession and demolishing any portion of the building of Hotel Skylark Pvt. Ltd., forcibly, illegally, unlawfully, and without conducting demarcation, without serving notice of demolishing, as shown red in the site plan. Along with the suit, an application under Order 39 Rule 1 and 2 of CPC was filed.

The case of the plaintiff is that in the year 2001, the defendants served a notice upon the plaintiff bearing memo No.MTP/173 dated 29.05.2001, whereby, defendants demanded compounding fee regarding some area of TP Scheme area No.27 and in compliance thereof plaintiff/applicant deposited amount of ₹8,99,694/- as compounding fee vide demand draft dated 30.05.2001 and defendants issued receipt dated 30.05.2001. It is also the case of the plaintiff as noted down in the order dated 12.11.2016 that plaintiff received a notice bearing No.MTP/1531 dated 22.03.2016, whereby, the plaintiff was directed to submit documents regarding the encroachment over the passage of park. Plaintiff submitted detailed reply. Defendants served another notice dated 04.05.2016. Plaintiff again explained each and every thing. Team of the defendants led by Master Town Planner and Assistant Town Planner along with police force and other officials, tried to demolish the portion of the building of the plaintiff alleged

to be illegally occupied by the plaintiff. Defendants asserted that plaintiff failed to prove title deed of the property in dispute.

On the other hand, the case of the defendants is that plaintiff relied upon the letter bearing memo No.MTP/173 dated 29.05.2001 but did not produce the complete original copy of the same and rather, concealed the alleged layout plan annexed with said letter, which showed malafide intention of the plaintiff. It is also the case of the defendants that plaintiff filed objections against the proposed town planning scheme, which were dismissed by the competent authority. The case of the defendants is that suit of the plaintiff was an attempt to change and convert the user of public park and public street into private corner for private unauthorized usage. It is also the case that Town Planner Scheme Area No.27 was declared as unbuilt on 29.01.1958 and confirmed by the Government on 05.06.1958. Scheme was published on 20.02.1978 for inviting public objections and notification was issued regarding sanction of the scheme. It is also stated that plaintiff in receipt of said drawing and scheme layout encroached 24 feet wide street on the northern side of the Erstwhile Hotel as well as the park and 10 feet wide street on the western side of the Erstwhile Hotel site. Plaintiff encroached upon the streets, park and amalgamated the same in the Hotel premises.

Learned Addl. Civil Judge (Sr. Divn.), Jalandhar, after discussing the facts of the case, dismissed the application vide impugned order dated 12.11.2016. Aggrieved from this order, an appeal was filed and learned Addl. District Judge, Jalandhar, vide impugned judgment dated 17.08.2017, dismissed the appeal.

Aggrieved from above-said order and judgment, present

revision petition has been filed by the petitioner-plaintiff.

The petitioner-plaintiff mainly relied upon deposit of compounding fee of ₹8,99,694/- on receipt of letter No.MTP/173 dated 29.05.2001. The copy of memo has been placed on record, which is Annexure P-1, which shows that copy of part plan of layout plan has been enclosed. The perusal of this memo shows that this letter was written by Municipal Town Planner, Nagar Nigam, Jalandhar to Sh.Niranjn Singh, Markfed Skylark Hotel, Jalandhar. The subject is with regard to regularize the interference in TP Scheme. It is written in this letter that you (petitioner) have interference in road as well as park and after taking ₹8,99,694/-, the same could be regularized. It is intimated that ₹8,99,694/- may kindly be deposited in the office of Nagar Nigam, Jalandhar. The copy of part plan of layout plan has not been produced by the plaintiff along with this memo, therefore, this document has been concealed by the plaintiff. From the memo Annexure P-1, it cannot be held that for which encroachment, if any, this amount has been taken.

Further, learned Addl. Civil Judge (Sr. Divn.), Jalandhar, held that plaintiff has sought equitable relief of injunction and he must do the equity. In the absence of title deed and plaintiff having encroached certain area of public land as made out from letter dated 29.05.2001, he cannot seek relief of injunction. The plaintiff has not placed on record its sanctioned site plan nor produced complete memo No.MTP/173 dated 29.05.2001 nor the encroachment on the public land i.e. road or park, can be regularized as per law.

Keeping in view the above facts, I find that plaintiff has no prima facie case nor balance of convenience lies in its favour. If the

injunction is not granted, the petitioner will not suffer any irreparable loss. Furthermore, discretion has been used correctly by both the Courts below.

In view of the above discussion, I find that the findings given by both the Courts below are correct. No illegality has been committed by lower Courts. Therefore, the impugned order dated 12.11.2016 passed by learned Addl. Civil Judge (Senior Division), Jalandhar and judgment dated 17.08.2017 passed by learned Addl. District Judge, Jalandhar, are correct, as per law and do not require any interference from this Court.

Therefore, finding no merit in the present petition, the same is dismissed.

As the main case is decided, therefore, civil misc. application, if any, also stands disposed of.

May 29, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No