

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

COCN No. 292 of 2016 (O&M)

Date of Decision: 15.10.2019

Dr. Vijay Nijhawan

.....Petitioner

Versus

Sh. Kumar Sourab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Vipin Mahajan, Advocate
for the petitioner.

Mr. Sunil Chadha, Senior Advocate with
Mr. Lakshay, Advocate for the applicants
(in C.M. No.10805-CII of 2017).

Mr. Neeraj Sharma, Advocate
for respondent-MC.

Ms. Samina Dhir, DAG Punjab.

AVNEESH JHINGAN, J.(oral)

The petitioner being aggrieved of construction of a basement and raising building thereupon on his adjoining plot gave a legal notice to the Municipal Corporation, Pathankot. As no action was being taken, CWP No.22060 of 2015 was filed. The petition was disposed of on 14.10.2015 with the direction to the official respondents to look into the grievance of the petitioner in the legal notice dated 25.7.2015 and take appropriate action in accordance with law. The needful was to be done within two months from receipt of the certified copy.

Pursuant to directions of this Court, order dated 5.1.2016 was passed stating that the Municipal Corporation had already instituted criminal complaint under Section 270, 271, 272 of the Punjab Municipal Corporation Act, 1976 (for short 'the Act').

The present contempt petition was filed pleading wilful disobedience of direction of this Court. During the pendency of the contempt petition, on 14.3.2017 this Court was apprised that action was required to be taken under Section 269 of the Act instead of Section 270 and notice was issued under Section 269 (1) of the Act. The said notice was challenged by the alleged violator. The Additional District Judge, Pathankot vide order dated 10.1.2019 allowed the appeal, set aside the notice, granting liberty to the Municipal Corporation to proceed afresh in accordance with law. Further it was also noticed that One Time Settlement Scheme (OTSS) for compounding violation in the building was about to be notified. The appellant was granted one month time from notification of the scheme to move an application.

Thereafter notice was issued under Section 269 of the Act by the authorities but in the meantime, an application was moved for one time settlement.

An order dated 14.10.2019 has been produced today in Court whereby the application under OTSS is accepted subject to deposit of Rs.68,61,119/- in the office of Municipal Corporation within five days, producing structure safety certificate from Indian Institute of Technology and providing remaining parking area to the tune of 15.19 equivalent car space.

Learned counsel for the petitioner states that acceptance of OTSS is conditional. Moreover, he raises a grievance that even subsequent notices issued under Section 269 of the Act, were intentionally given in a casual manner committing one or the other technical error. Acceptance of

OTSS is also objected to.

The directions of this Court in the writ petition were to look into the grievance raised in the legal notice dated 25.7.2015 and thereafter to take appropriate action in accordance with law. After the acceptance under OTSS, no cause of action survives to pursue the present contempt petition.

However, in case, there is grievance against the acceptance under OTSS, the petitioner would be at liberty to avail remedy in accordance with law.

It would be pertinent to note at this stage that compounding of violation is subject to three conditions. It would be suffice to say that the conduct of the Municipal Corporation authorities prima-facie does not appear above board as is evident from order dated 5.1.2016, where the proceedings were initiated under Section 270 of the Act, which deals "order of stoppage of building or work in certain cases" whereas admittedly in the present case, the building was already complete and constructed.

At this stage, learned counsel for Municipal Corporation tenders unconditional apology and assures that in case the conditions of compounding of violation are not complied with within time given, needful action in accordance with law would be taken as expeditiously as possible.

Disposed of.

As the main petition stands disposed of, all the pending civil miscellaneous applications have been rendered infructuous.

15.10.2019
reema

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable:	No