

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

**CR No.464 of 2015(O&M)
Date of Decision: 08.02.2019**

Mani Ram Bishnoi (deceased) through his LR Ashok Kumar

.....Petitioner

Versus

Indu Lamba and another

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Rajesh Sethi, Advocate
Ms. Varinder Kaur Warraich, Advocate
Mr. Tushar Gera, Advocate and
Mr. Arun Biriwal, Advocate
for the petitioner.

Mr. Drupad Sangwan, Advocate for
Mr. Rose Gupta, Advocate
for respondent No.1.

Mr. Piyush Khanna, Advocate
for respondent No.2.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner/decreed holder is in revision petition against

the order dated 22.08.2014 passed by Civil Judge (Senior Division), Hisar exercising the powers of executing Court.

[2]. Few facts can be noticed. A suit for declaration and mandatory injunction was filed by the plaintiff. Trial Court decreed the suit vide judgment and decree dated 30.11.2004. The relief clause was in two parts. First part was in respect of direction to defendant No.1 to make payment of Rs.25,737/- to the plaintiff within a period of 3 months from the date of passing of judgment and decree. In the event of non-payment, defendant No.1 was bound to pay interest @ 12% per annum from the date of decree till final realisation of the amount. Second part was in respect of mandatory injunction, directing defendant No.1 to lower down the height of plinth level of the ancillary zone i.e. drive way upto the level of sanctioned site plan. Defendant No.1 was further directed to lower down the height of drive way within a period of 3 months from the date of passing of judgment and decree. Judgment debtor remained unsuccessful in appeal before the Additional District Judge, Hisar which was dismissed on 04.02.2008. Even in RSA No.1413 of 2008, relief of mandatory injunction was upheld. In the execution filed by the petitioner/decreed holder, statement of judgment debtor was recorded on 24.07.2014 to the following effect:-

“Stated that level of my house constructed by me has been made as per HUDA Act and Rules and that the decree of the Court has been complied with fully. There is no violation from our side. For that purpose there is no objection for sending JE HUDA as Local Commissioner.

Sd/-

24.07.2014”

[3]. Statement of decree holder was also recorded wherein he pleaded no objection in sending the local commissioner in order to ascertain the factual position on the spot. As a consequence of consensus arrived at between the parties, Local Commissioner was appointed with following reference:-

“----- Accordingly, Estate Officer, HUDA, Hisar is directed to appoint a J.E who will visit the spot in dispute and would submit his report with regard to the level in the ancillary zone (drive way) and to report whether the same is in accordance with the sanctioned plan and to report whether there has been sufficient compliance of the Court decree in this regard or not.-----”

[4]. Local Commissioner has given the following report:-

“Report of the Local Commissioner

House No.191/15-A, Hisar in connection with plinth level raised high than HUDA norms.

It was directed by the worthy E.O. on 31.07.2014 in presence of ADA HUDA that said site be measured and submit the report within two days.

The above site measured on dated 01.08.2014 and found as under:-

1. The plinth level at entrance is on main gate from centre of Road/street is 0.47m instead of 0.46m, which is just correct and as per HUDA norms.

Local Commissioner,”

[5]. According to the learned counsel for the petitioner, there was no compliance of reference made to the Local Commissioner. Even objections were filed by the petitioner to the report of Local Commissioner. According to learned counsel, Local Commissioner was supposed to submit his report with regard to level of ancillary zone (drive way). The definition of ancillary zone (drive way) as per Section 2(3)(a) of Haryana Urban Development Authority (erection of buildings) Regulations 1979 means a zone of building attached to or serving the main residential-building which shall include buildings such as garage, store, rooms, fuel store and servant quarters but shall

not include a guest house capable of use as independent dwelling unit.

[6]. In view of aforesaid definition, learned counsel for the petitioner submitted that Local Commissioner was supposed to give report upto garage. Local Commissioner has given report only upto few yards in the ancillary zone. Leaned counsel also relies upon Section 2(xxxvi) of Haryana Urban Development Authority (erection of buildings) Regulations 1979 to contend that plinth level is something different than that of ancillary zone and the Local Commissioner was legally obligated to comply with the reference made by the executing Court.

[7]. The report of Local Commissioner appears to be not in consonance with the reference made by the executing Court. Local Commissioner has not given any report regarding total ancillary zone (drive way).

[8]. At this stage, in my considered opinion, the impugned order, dismissing the objections of the petitioner needs to be re-visited by the executing Court by directing the Local Commissioner to once again make a complete report as per reference dated 25.07.2014 strictly in consonance with the definition of ancillary zone (drive way) as per Section 2(3)(a) of Haryana Urban Development Authority (erection of buildings) Regulations 1979.

[9]. In view of above, this revision petition is disposed of.
Executing Court would be at liberty to fix reasonable time
directing the Local Commissioner to submit a necessary report.

08.02.2019
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No