

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

CWP No.19864 of 2019

Date of Decision: 23.07.2019

Jaswant

....Petitioner

Versus

State of Haryana and others

....Respondents

***CORAM :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MR. JUSTICE SUDHIR MITTAL***

Present:- Mr. Ankit Chahal, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

Petitioner-Jaswant has filed the present petition for issuance of a writ in the nature of prohibition restraining the respondents to further demolish his house constructed over the agriculture land owned/possessed by him falling in *Khewat No.42, Khasra No.68//21/2/2 (5k-19m) and 22/1 min (3k-18m), 69//25/3/2 min (2k-18m) and 83//5/2/1 min (0k-8m)* in the revenue estate of Village Jai Jaiwanti, Tehsil Julana, District Jind in pursuance of order dated 14.09.2018 (Annexure P-9) as well as Show Cause Notice dated 14.08.2018 (Annexure P-8).

Briefly, the facts of the case, as made out in the present petition, are that the petitioner raised a boundary wall and constructed a house along with *Tin shed* over the land, which falls in controlled area of Julana. As per stand of the petitioner, he has made construction being layman and illiterate. He was not aware that for raising construction,

permission for change of land use was mandatory. He received a show cause notice dated 17.04.2017 to which he filed reply. On 26.04.2017, he also made request for grant of Change of Land Use license qua the above said land. Thereafter, he received a letter dated 03.05.2017 from the Office of District Town Planner, Jind, whereby, he was directed to submit the requisite documents with CLU-I Form. He requested for compounding of unauthorized construction. Petitioner submitted all relevant documents along with demand draft of Rs.67,060/- in compliance of letter dated 03.05.2017. Thereafter, he was directed to submit a detailed building plan with scrutiny fee and request of compounding the unauthorized construction along with additional demand draft of Rs.15,750/-. The request of the petitioner to grant change of land use was declined. Thereafter, a show cause notice was issued to him to appear on 27.08.2018 and to restore the concerned land to its original state to bring it in conformity with the provision of the Act.

In response to show cause notice, the petitioner submitted a letter with a request seeking three months' time for removal of unauthorized construction. Thereafter, vide letter dated 14.09.2018, again an order was passed to restore the land within a period of seven days, failing which construction would be demolished. An FIR was registered against him as he did not remove the unauthorised construction. Ultimately, the police personnel carried out demolition over the land belonging to the petitioner except his residential house.

Learned counsel for the petitioner submits that the action of the respondent authorities is without any application of mind and the same has been taken with *mala fide* intention. All documents were submitted by the

petitioner as required by the respondent authority but still, the same were not considered. Some construction raised by the petitioner was demolished and he was threatened to demolish his residential house. The petitioner applied for the requisite access permission for direct access from NH-365, which is still pending. At the end, learned counsel for the petitioner submits that the respondent authorities may be restrained from demolishing the house of the petitioner constructed over the agriculture land.

Without issuing notice of motion, learned counsel for the respondent-State of Haryana-Mr. Ankur Mittal, Additional Advocate General, Haryana was asked to get instructions regarding construction of house, which has not been demolished and to verify the size of the house and other details.

Learned State counsel-Mr. Ankur Mittal, Additional Advocate General, Haryana, on instructions from Shri Lalit Kumar, District Town Planner, Jind submits that it is not single room or small area but a big house has been constructed and even after demolition of the constructed building. He has also produced certain photographs of the building showing that the labourers are reconstructing that building which has already been demolished by the respondent authorities.

Heard the arguments of learned counsel for the petitioner as well as learned State counsel. We have also perused the documents available on the file.

Admittedly, a show cause notice was issued to the petitioner stating therein that a huge building was constructed in spite of the fact that his application for CLU has already been rejected. Even the application for compounding of unauthorized construction was also declined. The

unauthorized construction has been raised by the petitioner at the site in violation of Act 41 of 1963 and Rules framed thereunder. Petitioner was granted time to file reply of the show cause notice and to appear in person by giving a specific date. It was also mentioned in the notice that the application of the petitioner for CLU has already been rejected by the Director, Town and Country Planning vide Memo dated 20.07.2018. He was asked to restore the land but still nothing was done by him.

As per provisions of Section 7(1) of the Act, no construction can be raised in a controlled area except with the permission of the Director on payment of conversion charges as prescribed by the Government from time to time. Petitioner applied for permission to change of land use but it was rejected. He neither appeared before the concerned authority nor submitted his reply. Even after demolition, again construction was raised in violation of Sections 3, 6, 7(1) of Act 41 of 1963 and Rules framed thereunder. This act of the petitioner is punishable offence with imprisonment upto three years. FIR No.0143 dated 07.07.2019 was also registered against the petitioner for commission of said offence. The petitioner does not deserve for equity and law as he has raised the illegal construction and even after demolition of the building, which is clear from the photographs shown during arguments.

It is a settled proposition of law that writ is not meant for those persons who take the law in their hands and simultaneously violate the rule of equity, justice and good conscience. The Court is not inclined to interfere in this matter for more than one reason.

The petitioner is seeking a prerogative writ to protect his wrong and the same is not a ground for issuance of a writ to perpetuate a wrong.

Hon'ble the Apex Court has observed in case ***Chandigarh Administration vs. Jagjit Singh AIR 1995 Supreme Court 705*** that the petitioner cannot be under any legitimate expectation to receive encouragement in continuing a wrong or follow an illegality which is not permissible under law.

In the present case, the petitioner has raised a construction in an unauthorized manner, which is illegal and being within the controlled area without prior permission of the authority concerned. For restoration of the site, not only the notices were issued but time and again, the petitioner was asked to demolish the construction but neither the reply was filed nor the site was restored. The concerned authority had to take recourse in view of the provisions of the Act applicable.

Accordingly, keeping in view the facts and circumstances as mentioned above, there is no force in the arguments raised by learned counsel for the petitioner and the present petition, being devoid of any merit, is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

(SUDHIR MITTAL)
JUDGE

23.07.2019

gurpreet

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No