

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

CWP No.20221 of 2019

Date of Decision: 09.12.2019

Veena Ahuja

....Petitioner

Versus

Union Territory, Chandigarh and others

....Respondents

**CORAM :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

Present:- Mr. Ashok Sharma Nabhewala, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

Petitioner-Veena Ahuja is aggrieved by order dated 24.04.2019 passed by the Secretary, Chandigarh Housing Board, Sector 9, Chandigarh (respondent No.3), whereby, a direction has been issued to remove the violations, in case, the same is not covered under the Need Based Changes Policy dated 15.02.2019 within a period of 15 days and to regularize the remaining violations within a specified period. In case, the same is not removed, then it would be removed at the risk and cost of allottee/occupant without any further correspondence.

Initially, House no.1072/1, Sector 39-B, Chandigarh was allotted to one Shri Harjit Singh Sanga and the same was transferred in the name of present petitioner i.e Smt. Veena Ahuja on 21.01.2011. A complaint was made against her stating therein that the allottee has carried

out illegal construction by constructing a room, kitchen and bathroom at the top terrace of the dwelling unit. The house was inspected and thereafter, a notice was issued to the allottee/occupant for removal of violations so carried out by her. Ultimately, when the illegal construction was not removed in spite of opportunity being granted to her, it was removed by the respondent-Chandigarh Housing Board. The demolition was done as the same was examined as per Need Based Changes policy and was not compoundable.

Learned counsel for the petitioner submits that the impugned order dated 24.04.2019 has been passed and the construction as raised by the petitioner has been removed, whereas, it was covered under the policy of Need Based Changes. Some of the violations were compoundable but both the things have not been taken into consideration. Learned counsel also submits that some of the additions and alterations were permitted by the respondent-Chandigarh Housing Board on 18.05.2001 and the same were approved by the Administration also. Learned counsel also submits that the construction so raised by the petitioner has been removed at the instance of respondent No.4, who filed **CWP No.595 of 2017**. Learned counsel further submits that the petitioner also filed **CWP No.6465 of 2017** challenging the action of respondent-Board initiating the demolition process but it was withdrawn on 06.04.2018 to approach the authorities. Learned counsel also submits that the amount was also deposited for additional construction but still without taking into consideration the Need Based Changes policy, the impugned order has been passed. The objections filed by the petitioner were not considered and the demolition has been carried out at the instance of respondent No.4 only. At the end, learned counsel also submits that the

petitioner is entitled for compensation and the construction which has been raised by the petitioner but wrongly demolished area be reconstructed by the Chandigarh Housing Board.

Heard the arguments of learned counsel for the petitioner and we have also perused the documents available on the file including the impugned order.

Respondent no.4 i.e Sh. Atamjit Singh Thind approached this Court by way of filing **CWP No.19276 of 2018** wherein the present petitioner was also the party respondent. In said petition, it was the allegation that the present petitioner has raised an un-authorized construction of two rooms along with kitchen and bathroom over the flat of said petitioner on the terrace. However, in pursuance of directions issued by this Court in **CWP No.19276 of 2018**, the illegal construction was demolished.

The grievance of the petitioner in the present petition is that the demolition of authorized construction was carried out at the instance of said Atamjit Singh Thind (respondent No.4).

As per stand of respondent-Chandigarh Housing Board, the construction raised by the petitioner was not covered by the existing policy and unauthorized construction was demolished. It was not compoundable as per policy, whereas, as per case of the petitioner, some of the construction was compoundable and amount was also accepted for compounding the alleged unauthorized construction as it was covered under the Need Based Changes policy. The construction raised by the petitioner has been demolished illegally at the instance of respondent No.4.

The disputed questions of facts cannot be decided by this Court

as the demolition has been carried out by the respondent-Chandigarh Housing Board and case of the petitioner was not covered under the latest scheme. Moreover, in case, the petitioner is aggrieved in any manner by the action of respondent-Chandigarh Housing Board, she is at liberty to avail the appropriate remedy. In case, the construction has been demolished, which is not stated to be unauthorized, the petitioner is also at liberty to move representation or to avail a remedy by filing suit for damages. This Court cannot go into disputed question of facts. Moreover, the petition filed by respondent No.4 has already been disposed of. In case of disputed question of facts, the Court can decline the relief under Article 226 of the Constitution of India by relegating the party to avail the appropriate remedy as has been held in various judgments of Hon'ble the Apex Court as well as of this Court.

In Nilabati Behera (Smt.) alias Lalita Behera (through the Supreme Court Legal Aid Committee) v. State of Orissa and others 1993 (2) SCC 746, it has been held by Hon'ble the Apex Court that for a private wrong committed by the individual, the remedy in public law under the Constitution by taking recourse to Articles 32 and 226 is not maintainable. In case, the prayer is for claiming damages for demolition of authorized construction as alleged, the petitioner is at liberty to claim damages. Moreover, in case of disputed question of facts, the case requires evidence and the same cannot be decided in the writ petition without leading evidence.

Accordingly, we do not find any merit in the contentions raised by learned counsel for the petitioner and the present petition, being devoid of any merit, is hereby dismissed. However, the petitioner is at liberty to

avail the appropriate remedy as mentioned above.

(DAYA CHAUDHARY)
JUDGE

(JASGURPREET SINGH PURI)
JUDGE

09.12.2019

gurpreet

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No