

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

CWP-3644-2016 (O&M)
Date of decision : 16.07.2019

Gurkirpal Singh

...Petitioner(s)

Versus

Municipal Corporation, Ludhiana and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Petitioner in person.

Mr. A.K. Bazaz, Advocate,
for respondent Nos.1 and 2.

None for respondent No.3.

JITENDRA CHAUHAN, J.

The petitioner seeks quashing of the order dated 26.08.2002 (Annexure P-2), passed by learned Additional District Judge, Ludhiana, whereby, the appeal preferred by respondent No.3 under Section 269(2) of the Punjab Municipal Corporation Act, against the order of demolition dated 03.09.2001, passed by the official respondents, was accepted.

Heard.

The petitioner is a resident of House No.456-B, Bhai Randhir Singh Nagar, Ludhiana, whereas, respondent No.3 is resident of House No.451-B, Bhai Randhir Singh Nagar, Ludhiana, i.e. the house behind the residence of the petitioner. The Building Inspector vide his report dated 24.07.2000, reported that respondent No.3 had started unauthorized

construction on the first floor of his building. On receipt of this report, the competent authority ordered issuance of notice under Sections 269(1) and 270(1) of the Punjab Municipal Corporation Act, 1976. Pursuant to receipt of said notice, respondent No.3 submitted reply on 16.08.2000, but did not stop further raising of the construction. In the reply, it was asserted that he had already deposited the compounding charges of ₹36,513/- (₹15,000/- + ₹21,513/-). However, subsequently it was found that respondent No.3 managed to deposit the composition fee by misrepresentation and using unauthorized means and as such, the composition fee deposited by him was ordered to be refunded and demolition of the illegal structure was ordered. Aggrieved against the action of the Municipal authorities, respondent No.3 preferred appeal before learned Additional District Judge, Ludhiana, which was accepted vide impugned order (Annexure P-2). Thereafter, the petitioner filed civil suit for mandatory injunction directing the authorities to demolish the construction already made and further to restrain respondent No.3 from raising any further construction. The suit was partly decreed by learned trial Court on 24.04.2007 restraining respondent No.3 from raising construction any further, without taking due course of law. However, the relief of mandatory injunction for demolishing the construction already raised, was declined. The petitioner challenged the judgment and decree passed by learned trial Court by filing RSA No.897 of 2008 before this Court which was dismissed by this Court vide judgment dated 19.03.2008. Thereafter, the petitioner approached Hon'ble the Supreme Court in Civil Appeal No.8716 of 2010, which was also declined on 19.08.2015 in the

following terms:-

“We have heard Mr. Gurkirpal Singh, appellant-in-person at length.

What is coming in the way of the appellant is an order dated 26th August, 2002 passed by the Additional District Judge, Ludhiana in CA No.41 dated 7.09.2001. The appeal was filed by Suraj Jyoti son of Dev Raj, resident of House No.451/B, Bhai Randhir Singh Nagar, Ludhiana.

The appellant says that he did not know about this order till some time in the year 2004 and, therefore, was unable to challenge it.

We are not inclined to entertain this appeal particularly in the face of the order dated 26th August, 2002. However, we grant liberty to the appellant to challenge the order dated 26th August, 2002 before the competent court in accordance with law and after applying for conditional of delay on such grounds that may be available to him.

The appeal is accordingly disposed of with liberty as aforesaid.”

Hence, the instant writ petition.

The grouse of the petitioner is that respondent No.3 has been allowed to raise illegal construction without the sanctioned plan and against the MC Ludhiana Building Bye Laws, 1997. Further, the impermissible non-compoundable construction was compounded vide proforma dated 24.07.2000 as the officials of the respondent-Corporation and respondent No.3 were hand-in-glove.

While passing the impugned order (Annexure P-2), learned trial Court has noticed that no details of misrepresentation or unauthorised means adopted by the appellant were mentioned in the notice under issued to respondent No.3 for refund of the composition fee. No record was placed before the trial Court to prove that the respondent No.3 had deposited the composition fee of ₹36,513/- by adopting wrong or unauthorized means. The order of deposit of composition fee has been signed by the Building Inspector, Head Draftsman, Building Superintendent and ultimately by the Commissioner, MC. Thus, once the composition fee stands accepted by the Municipal Corporation and in the absence of any conclusive material to show that the same was accepted on account of any misrepresentation, the authorities could not turn back to refund the composition fee and order demolition of the structure in question.

Thus, this Court is of the considered opinion that the findings recorded by learned Court below are based on correct appreciation of facts and material placed before it and no illegality or infirmity can be said to have been committed while passing the impugned order (Annexure P-2).

In view of the above discussion, the instant petition being devoid of any merit, is hereby, dismissed.

16.07.2019
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No