

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

CWP-21816-2019

Date of decision: 6.9.2019

Maninder Pal Singh

...Petitioner

Versus

Municipal Corporation, Ludhiana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr.PK Kataria, Advocate for the petitioner

Mr.BS Sidhu, Advocate for the respondents.

Gurjot Singh, Junior Draftsman

JITENDRA CHAUHAN, J.

This writ petition under Articles 226/227 of the Constitution of India has been filed for quashing of the demolition order dated 29.5.2015 (Anneure P-10) passed by Assistant Town Planer, Ludhiana and judgment dated 7.5.2019 (Annexure P-17) passed by learned Additional District Judge, Ludhiana.

Learned counsel for the petitioner refers to Section 269 of the Punjab Municipal Corporation Act, 1976 to state that the Commissioner of Municipal Corporation is competent to pass demolition order, whereas in the present case, it has been passed by Assistant Town Planner, Zone-C, MC Ludhiana, therefore, the impugned orders are misconceived and illegal. He further submits that in pursuance of his request letter dated 9.8.2019 (Annexure P-18), for demarcation of the area as per official record, the

officials of respondent No.1 had come on 13.8.2019 and found that the road is existing as per official site plan but they did not give anything in writing. In the order dated 29.5.2015 (Annexure P-10) passed by Assistant Town Planner, no reason or explanation has been given and has been simply recorded that the petitioner is in unauthorized possession of the public street. No document or evidence was produced by the respondents to show that the petitioner had encroached the public street.

On the other hand, learned counsel for the respondents states that the civil Court as well as the appellate Court has rightly dismissed the claim of the petitioner, as he could not produce any evidence in support of his claim. On instructions he further submits that the petitioner has encroached the public street.

Heard.

On the complaint Annexure P-2, respondent No.2 issued notice dated 13.3.2015 (Annexure P-4) to the petitioner regarding illegal possession on the part of the road. In response to the said notice, no reply was filed by the petitioner. In view of the report prepared by the official of respondent No.1 regarding encroachment of the public street, the impugned notice dated 29.5.2015 (Annexure P-10) was issued by respondent No.2 to the petitioner for the demolition of the illegal construction on the public street. The petitioner filed a civil suit, which was decreed by learned Civil Judge, Junior Division, Ludhiana vide judgment dated 22.4.2019, wherein it has been specifically held that the passage is a public street. The petitioner had also filed a suit for permanent injunction restraining the respondents

(defendants) from interfering in the peaceful possession of the petitioner and further restraining the respondents from demolishing / damaging the property of the petitioner i.e. house measuring 100 sq. yards comprised in Khasra No.1206, Khata No.34/36 as per Jamabandi for the year 1985-86 situated at Village Dugri, Ludhiana, which was dismissed by the trial Court vide judgment dated 3.2.2017, as the petitioner had failed to lead evidence in support of his case. Thereafter, the petitioner had filed an appeal against the said judgment, which was also dismissed by learned Additional District Judge, Ludhiana vide judgment dated 7.5.2019 (Annexure P-17) by observing as under:-

“8. After hearing the learned Counsel for both the parties and going through the record, this Court is of the considered view that the Assistant Town Planner, Zone-C, Municipal Corporation, Ludhiana gave notice for demolition of room constructed in street to M/s Goyal Ice Factory as per sit plan attached with the notice. As per arguments of learned Counsel for the Municipal Corporation, no demolition order of the house of appellant is passed, as alleged. Perusal of the record further reveals that the civil suit filed by the appellant has been dismissed by the trial Court under Order 17 Rule 3 of the CPC vide judgment and decree dated 3.7.2012 and appeal against the same has also been dismissed by this Court vide judgment of today itself in the connected appeal.

9. Through this judgment, the appellant has assailed the impugned notice dated 643/DRG-C dated 29.5.2015 passed by the Assistant Town Planner, Zone-C, Municipal Corporation, Ludhiana on the ground that the

same was not passed by the competent authority as only the Commissioner of Municipal Corporation is competent to pass such order of demolition. However, as per Chapter XXIII, under Section 408 of the Punjab Municipal Corporation Act, 1976, Commissioner can delegate such powers to its subordinate staff. For the sake of reference and convenience, Section 408 of the Punjab Municipal Corporation Act is reproduced as under:

“408. Delegation: (1) The Government may, by notification, delegate all or any of its powers under this Act, except the power to make rules, to any officer not below the rank of an Extra Assistant Commissioner subject to such restrictions and conditions as may be specified in this notification. (2) The Commissioner may by order direct that any power conferred or any duty imposed on him by or under this Act shall, in such circumstances and under such conditions, if any, as may be specified in the order, be exercised and performed also by any Corporation Officer or other Corporation employee specified in the order.”

.....

6. Delegation of powers to subordinate staff: It is enough if there is a general order indicating the class of officers to whom the Commissioner had delegated his powers under any Section. Delegation is not required to be made by name of the officer.

10. In view of the above said discussion and the law discussed above, this Court is of the considered view that the impugned notice for demolition dated 643/DRG-C

dated 29.5.2015 issued by the Assistant Town Planner, Zone-C, Municipal Corporation, Ludhiana, does not suffer from any illegality or infirmity and the same has been passed by the respondent No.2 under delegations of powers to him by the Commissioner of Municipal Corporation, Ludhiana.”

The petitioner has challenged the notice of demolition dated 29.5.2015 (Annexure P-10) before the civil Court as well as the appellate Court and both the Courts had found no illegality in the said notice. The plea of issuance of the impugned notice dated 29.5.2015 by an incompetent authority i.e. Assistant Town Planner, Zone C, Municipal Corporation, Ludhiana raised in the present petition was also taken before the appellate Court and same was rightly rejected by observing that the said notice has been passed by respondent No.2 under the delegation of powers to him by the Commissioner of Municipal Corporation, Ludhiana.

In view of the above, the Court finds no illegality or perversity in the concurrent findings of the courts below vide which the impugned notice dated 29.5.2015 (Annexure P-10) was held to be rightly issued to the petitioner. As such, the present petition being bereft of any merit stands dismissed.

6.9.2019
gsv

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned?
Whether reportable?

Yes / No
Yes / No