

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-23512-2018 (O&M)
Date of decision : 12.04.2019

Gopal Gupta

...Petitioner

Versus

Municipal Corporation and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Vishal Sharma, Advocate for the petitioner.

Mr. Pawan Kumar, Advocate for respondent No.1.

Mr. S.S.Rangi, Advocate for respondent No.2.

JITENDRA CHAUHAN J. (ORAL)

This writ petition under Articles 226/227 of the Constitution of India has been filed for the issuance of a writ of mandamus directing respondent No.1 to take immediate action for removal of unauthorized/illegal construction raised by respondent No.2 in gross violation of the sanctioned site plan as well as the directions issued by this Court in CWP-4886-2003 (Annexure P-5).

It is contended that respondent No.2 without adopting any safety measures and the rules/obligations of the Municipal Corporation, Ludhiana is raising illegal dangerous and haphazard construction over the property in question which is adjacent to the property of the petitioner. The petitioner had also moved complaint before Commissioner, Municipal

Corporation, Ludhiana on 13.07.2018 but no action was taken thereon. Faced with the inaction on the part of the respondent authorities, the petitioner preferred civil suit claiming injunction restraining respondent No.2 from carrying out illegal construction. The said suit was filed qua property No.165 wherein respondent No.2 was restrained from raising any unauthorized construction on the suit property vide order dated 23.07.2018 (Annexure P-4). Despite having knowledge of the said fact, respondent No.2 started raising construction from the side of property No.167. Hence the petitioner was constrained to approach this Court.

On the other hand, learned counsel for respondent No.1 submits that the site in question was checked by the Area Building Inspector, Municipal Corporation, Ludhiana and it was found that respondent No.2 had raised illegal construction without getting sanctioned any site plan and against the bye-laws of the Corporation. It is further submitted that a part of the illegal construction of the site in question which was compoundable, has been compounded on receipt of ₹1,81,535/- as compounding fee. Whereas, the non-compoundable construction has been ordered to be demolished vide order dated 27.07.2018.

Learned counsel for respondent No.2 submits that the petitioner has already filed suit for permanent injunction titled as Gopal Gupta Vs. Raja Arora and another which is pending in the civil Court at Ludhiana. In the said civil suit apart from seeking permanent injunction against construction on property bearing No.165, the petitioner has also sought mandatory injunction directing the defendant No.2 (Municipal Corporation,

who is respondent No.1 in the present writ petition) to take action against the alleged unauthorized construction over property bearing No.165 belonging to respondent No.2. Learned civil Court has already granted ad-interim injunction against the construction in favour of present petitioner. Instead of amending his civil suit by including property bearing No.167, the petitioner has filed the instant writ petition with regard to the said property No.167 in sheer abuse of the process of law.

Heard.

The petitioner has preferred this petition against alleged illegal construction done by respondent No.2 on property bearing No.167 on the ground that the same has been raised without getting the site plan sanctioned and against the bye-laws of respondent No.1-Municipal Corporation. Prior to the filing of the instant petition, petitioner instituted suit for permanent injunction titled as ***Gopal Gupta Vs. Raja Arora and another***, qua property No.165, which is also owned by respondent No.2 herein on the similar grounds as in the instant petition. Learned civil Court has already ordered ad-interim injunction against the construction in favour of present petitioner. However, rather than approaching the civil Court for amendment of the civil suit by including property bearing No.167, the petitioner has chosen to prefer the instant petition.

Even otherwise, respondent No.2 has already deposited an amount of ₹1,81,535/- towards compounding fee in terms of Section 394-B of the Punjab Municipal Corporation Act, 1976. Thus, the assertion of the petitioner that the Municipal Corporation is not acting as per law is

misconceived. The matter is already subjudice before the civil Court and at this stage, this Court does not find any ground to interfere.

In view of the above, the instant petition is hereby dismissed.

12.04.2019
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No