

117

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

CR No.1007 of 2020

Date of decision: February 12, 2020

Gagan Shehravat

.....Petitioner

Versus

Municipal Corporation, Gurugram and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Ashok Kumar Jindal, Advocate for the petitioner.

MAHABIR SINGH SINDHU, J

Present petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 12.12.2019 (P-6) passed by learned Civil Judge (Junior Division), Gurugram, whereby liberty was granted to defendant No.1-Municipal Corporation, Gurugram to place on record copy of notice regarding illegal construction by the present petitioner, as well as order dated 29.01.2020 (P-8) accepting the copy of notice dated 20.12.2019 on case file.

It is contended by learned counsel for the petitioner that as a matter of fact, no submission was made on behalf of the petitioner-plaintiff before the learned trial Court regarding issuance of any fresh notice as reflected in the order dated 12.12.2019, but the learned trial Court at its own directed defendant/respondent No.1 to issue fresh notice regarding illegal construction made by the petitioner.

Heard learned counsel for the petitioner and perused the paper-book.

Learned trial Court on 12.12.2019 passed the following order:-

“Learned counsel for the plaintiff submits that notice dated 02.12.2019 does not clarify the exact nature of the property and is not valid. Learned counsel for the defendant No.1 submits that the site plan annexed with the plaint is the same property which is the disputed property.

Defendant No.1 is directed to issue fresh notice to the plaintiff qua the disputed property thereof clarifying the exact illegal construction within a period of 10 days from today. Thereafter plaintiff shall be granted an opportunity to reply the same within a period of 15 days. Defendant No.1 shall pass a speaking order regarding the representation, if filed/repy by the plaintiff. In case the plaintiff refuse to accept the notice to be issued by defendant No.1, defendant No.1 is at liberty to place the notice on record by moving an appropriate application before the Court. Defendant No.1 is restrained from demolishing the disputed property till the next date of hearing.

Now to come up on 29.01.2020 for filing of written statement and reply to injunction application.”

This Court has been apprised that in pursuance of the above order, fresh notice dated 20.12.2019 was issued to the petitioner-plaintiff and photocopy of the same is produced on record, which is marked as 'X'.

On 12.12.2019, it was submitted on behalf of the plaintiff-petitioner that notice dated 02.12.2019 did not clarify the exact nature of property and thus, claimed to be invalid. On the other hand, learned counsel for Corporation-defendant-respondent No.1 submitted that as per site-plan annexed with the plaint, the property in dispute is the same regarding which notice has been issued. In such a scenario, learned trial Court thought it appropriate to direct defendant No.1 to issue fresh notice to the plaintiff-petitioner clarifying the exact illegal construction on the disputed property.

Resultantly, a fresh notice dated 20.12.2019 (mark 'X') was issued to the plaintiff-petitioner as is clear from the zimni order dated 29.01.2020 and as per this subsequent notice, the boundaries of the property are as under:-

“Plot of (224 Sq. Yards.) Part of Khewat No.192, Khatauni No.213, Khasra No.455/1(0-2-14) Back Side of Medanta Hospital, Islampur Colony, Village Islampur, Gurugram.”

Since now a fresh notice is issued to the plaintiff-petitioner giving the complete details of the property along with alleged illegal construction and he has already received the copy of the same. It is also acknowledged before this Court that civil suit is at the initial stage, thus, the petitioner would have remedy to challenge the fresh notice dated 20.12.2019 in accordance with law.

In view of the facts and circumstances discussed hereinabove, this Court has no option except to dismiss the petition with liberty observed as above.

Ordered accordingly.

The observations made above may not be construed as an expression of opinion on the merits of the case in any manner.

(MAHABIR SINGH SINDHU)
JUDGE

February 12, 2020
mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No