

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

CWP-12476-2020 (O&M)

Date of decision : 21.09.2020

Yogesh Maini

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. B.S. Rana, Sr. Advocate with
Mr. Gagandeep Rana, Advocate for the petitioner.

Mr. Suveer Sheokhand, Addl. A.G. Punjab.

Mr. Ashok Kumar Bazaz, Advocate for respondent No.3.

Mr. Namit Kumar, Advocate and
Mr. Alankrit Bhardwaj, Advocate for respondent Nos.4 to 6.

Mr. Rahul Rampal, Advocate for respondent Nos.7 and 8.

ANIL KSHETARPAL, J. (ORAL)

The petitioner has filed the present writ petition under Article 226/227 of the Constitution of India, with the following substantive prayers:-

“(i) Issue a writ in the nature of certiorari for quashing the memo dated 15.07.2019 (Annexure P-7) passed by Assistant Town Planner, Zone D, Municipal Corporation Ludhiana vide which the illegal construction raised by the respondent Nos.4 to 8 has been compounded.

(ii) Issue a writ in the nature of mandamus directing the respondents No.1 to 3 for taking action against respondent Nos.4 to 8 for raising illegal six storied construction of a hotel and marriage palace on plot No.B-1-651/2B and B1-651/4 measuring 806 square yards situated in Taraf Mahal Bagat, Hadbast 164, Tehsil East, District Ludhiana.

(iii) Issue a writ in the nature of mandamus directing the respondents to demolish the illegal construction raised by respondent Nos.4 to 8 without obtaining any CLU or getting sanctioned the building plan of the construction raised by them as per provisions in the Punjab Municipal Building By Laws, 2018,

(iv) Issue any appropriate writ, order or direction which may be deemed fit and proper by this Hon'ble Court in the facts and circumstances of the present case.”

After hearing the learned Senior Counsel appearing for the petitioner, notice of motion was issued on 21.08.2020.

Mr. Ashok Kumar Bazaz, Mr. Namit Kumar and Mr. Rahul Rampal, Advocates, have put in appearance on behalf of respondents

Mr. Rahul Rampal, Advocate, for respondent No.7 and 8 has submitted that the petitioner had also filed a civil suit for seeking relief of permanent injunction as well as mandatory injunction. It has been pointed out that in the plaint, the petitioner, who was plaintiff No.5 alongwith 12 other plaintiffs in the civil suit, had claimed that the respondents be restrained from completing the building. It was further prayed that a decree for mandatory injunction be passed against the respondents, to demolish the building constructed. It has further been pointed out that the petitioner withdrew the suit on his behalf from the Civil Court on 29.07.2020. The Civil Court on 29.07.2020 passed the following order:-

“Present: Sh. Kulvinder Singh, counsel for plaintiffs.

Suit qua plaintiff No. 5 dismissed as withdrawn.

Plaintiff No. 5 Yogesh Maini had got his statement recorded to the effect that he did not wish to pursue the present suit and that the same might be dismissed as

withdrawn. The remaining plaintiffs, some of them appeared in person and the remaining through their counsel, had given their consent with regard to withdrawal of the suit by plaintiff No.5. Accordingly, the application stands disposed of and the case stands dismissed as withdrawn qua plaintiff No. 5. The case stands adjourned to 04.09.2020 for the purpose already fixed.

Date:- 29.07.2020

*Vishav Gupta
Civil Judge (Jr. Division),
Ludhiana
UID No. PB-0527”*

On being confronted, learned Senior Counsel, appearing for the petitioner has fairly admitted that the petitioner did file a civil suit as noticed above, however, he points out that the petitioner had filed a representation (Annexure P-9), to the Commissioner, Municipal Corporation, Ludhiana, for restraining the private respondents from continuing the construction on plot No.B-1-651/2B and B-1-651/4 measuring 806 square yards, situated in Kundan Puri, Civil Lines, Ludhiana, and for demolition of the construction already raised on the said plot. He submits that since the Commissioner is under a statutory duty to decide the said representation, therefore, the petitioner filed the present writ petition.

It is not disputed by the learned Senior Counsel appearing for the petitioner that the petitioner did not disclose the factum of having filed the suit and withdrawal thereof. He has also not sought permission from the Civil Court to file a writ petition. Still further, prayer in Annexure P-9, is the same as is in the Civil Suit, which is stated to be pending. It is also not in dispute that the plaintiff and others failed to get injunction from the Civil Court.

Keeping in view the aforesaid facts, this Court is of the considered opinion that the present writ petition is liable to be dismissed on the ground of concealment of material facts from the Court. The writ petition has not been filed with clean hands.

The petitioner while filing the writ petition was required to disclose that he had already filed a civil suit with regard to the same property, prayed for the injunction but was not granted. The petitioner has also concealed that he has withdrawn the suit instituted on his behalf by moving an application before the Court on 29.07.2020. It is also not in dispute that the petitioner did not pray for permission to withdraw the suit with liberty to file a fresh suit or a writ petition.

Keeping in view the aforesaid facts, this Court declines to go into the merits of the case. The respondents have put in appearance pursuant to notice of motion having been issued, hence, the writ petition is dismissed with a cost of Rs.1,00,000/-. The cost imposed shall be liable to be deposited by the petitioner with the 'Poor Patients Welfare Fund' of the Post-graduate Institute of Medical Education and Research (PGIMER), Chandigarh, personally or through its website “www.pgimer.edu.in”.

All the pending miscellaneous applications, if any, are disposed of, in view of the above-said judgment.

21.09.2020*Pawan***(ANIL KSHETARPAL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**