

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

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CWP-21482-2020

Date of decision:23.12.2020

Ishant Sharma

... Petitioner

Vs.

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Pranav Handa, Advocate for the petitioner.

Ms. Anu Pal, Deputy Advocate General, Punjab.

Mr. Rupinder Singh Khosla, Senior Advocate with
Mr. Aman Sharma and Mr. Chirag Suri, Advocates for
respondent No.6

SUVIR SEHGAL J. (ORAL)

The hearing of this petition has been taken up through video conferencing on account of outbreak of Covid-19 pandemic.

Present petition has been filed under Article 226/227 of the Constitution of India for issuance of a direction to respondent No.2 to take action on representation dated 10.10.2020, Annexure P-6, along with a further direction to initiate departmental action against respondent No.3 for non-implementation of orders dated 27.03.2012 and 18.04.2013, Annexures P-2 and P-3, for more than 8 years.

Facts in brief, are that petitioner is a resident of New Dashmesh Nagar, Jalandhar. The road to his house passes from the Housing Board

Colony, where there is an encroachment by respondent No.6, who has constructed shops on residential property. The petitioner had also met with an accident on the said road because of congestion of traffic due to the encroachment. Upon inquiry, the petitioner came to know that the Estate Officer, Jalandhar Development Authority-respondent No.2 has passed an order dated 27/29.03.2012, Annexure P-2 under Section 45(3) of Punjab Regional and Town Planning and Development Act, 1995 (for short 'the Act') cancelling the allotment made in favour of respondent No.6. By a subsequent order passed on 18.04.2013, Annexure P-3, passed under Section 46(2) of the Act, respondent No.2 has directed respondent No.6 to vacate the property with immediate effect failing which, action shall be taken in accordance with law. Despite a lapse of 8 years, respondent No.2 did not take any action. The petitioner submitted a complaint dated 20.07.2020, Annexure P-4, in this regard with respondent No.2, which was followed by representations addressed to various officials, but they did not yield any result.

By order dated 14.12.2020, this Court solicited response from respondent No.2 regarding the final outcome of the proceedings in pursuance to the orders, Annexure P-2 and P-3. Respondent no.2 has filed a status report by way of affidavit of the Estate Officer, the relevant extract of which is reproduced as under:-

“4. That the present status report is being filed in compliance of the orders passed by this Hon’ble Court. It is respectfully submitted here that H.No.808/3, Housing Board Colony, Near Guru Teg Bahadur Nagar, Jalandhar was allotted to

respondent No.6 i.e. Sh. Sudesh Aggarwal, S/o Sh.Dev Raj Aggarwal, vide letter dated 26.02.1985. The respondent No.6 by violating the building bye-laws raised illegal construction of 4 shops. As such, after issuance of show cause notices, the allotment of the said house was cancelled vide letter No.6548-52 dated 29.03.2012.

5. That thereafter, vide order dated 18.04.2013, the respondent No.6 was directed to vacate the said house. However, the respondent No.6 neither vacated the house nor demolished the illegal construction. Rather, the respondent No.6 beforehand filed suit for permanent injunction before the Court of Civil Judge, Senior Division, Jalandhar, restraining the deponent from interfering into peaceful possession of the respondent No.6/plaintiff or from demolishing/seal any shop of the plaintiff. Copy of the plaint is attached herewith as Annexure R-1. Subsequently, the said suit was dismissed by the learned trial Court on 31.08.2016. Copy of the order dated 31.08.2016 is attached as Annexure R-2.

6. That during the pendency of the civil suit, the office of the deponent vide letter dated 17.07.2014 wrote to the Executive Engineer, PSPCL, Jalandhar to disconnect the electricity connection of the said house so as to avoid any untoward incident at the time of taking possession of the said house. Copy of the letter dated 17.07.2014 is attached as Annexure R-3. Thereafter, vide letter dated 29.05.2015, Sub Divisional Engineer (B&E), JDA, Jalandhar was written to get the said illegal shops vacated. Copy of the letter dated 29.05.2015 is attached as Annexure R-4. The field staff vide report

dated 16.07.2015 submitted that when efforts were made to get the shops vacated, the ladies present in the shop threatened to commit suicide in the shop. Copy of the report dated 16.07.2015 is attached as Annexure R-5.

7. That thereafter, vide letter dated 13.09.2019, it was written to Commissioner of Police, Jalandhar for providing police help during demolition of illegal shops. Copy of the letter is attached as Annexure R-6. On 19.12.2019, field staff of JDA went to the spot for demolition of the shops and some of the construction was demolished but as the Lintel of the shops was joint with the adjoining residence, H.No.808/3, it was asserted that if the Lintel of the shops is demolished, the adjoining house could also fall down. So to avoid any such mishappening, it was decided that the remaining construction would be demolished by use of manual labour in the presence of police personnel.

8. That due to Covid-19 outbreak in the month of March, 2020, nationwide lockdown was imposed by the Central Government. Thereafter, the office of the deponent vide letter dated 25.09.2020, again sought police help for demolition of the illegal shops and date was fixed 06.10.2020 for the demolition. On 06.10.2020, the action was undertaken for demolition of unauthorized shops. However, the said action was resisted by the son-in-law of respondent No.6 along with some other local residents. Due to resistance at the spot, the illegal construction could not be demolished. Copy of the report dated 21.10.2020 is appended as Annexure R-7.

9. *That apart from the above, the daughter of respondent No.6 (as the respondent No.6 has expired) filed an appeal on 19.10.2020 before the Additional Chief Administrator-cum-Appellate Authority, JDA, Jalandhar against the order of cancellation of allotment, which is now pending adjudication for 06.01.2021.*

10. *That during the pendency of the said appeal, a statement has been made by the counsel for the respondent No.6 that the commercial use of the building has been stopped and illegal construction has been demolished. As such, a report was sought from the field staff to verify the same. The field staff vide the report dated 18.12.2020, has submitted that the unauthorized construction still exists and has not been completely demolished by the respondent No.6. The photographs of the same has been annexed as Annexure R-8.*

11. *That it is further relevant to mention here that the office of the deponent with police help undertakes to demolish the remaining illegal construction raised by the respondent No.6 within a period of 3 weeks.”*

In view of the above stand taken by respondent No.2, the writ petition has become infructuous and is disposed of, as such.

Liberty is, however granted to the petitioner to seek revival of the writ petition, in case, respondent No.2 does not abide by the undertaking given by it in its above reproduced affidavit.

(JASWANT SINGH)
JUDGE

(SUVIR SEHGAL)
JUDGE

23.12.2020

pooja saini

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No