

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

CWP-20979-2020 (O&M)
Date of decision : 09.12.2020

Rakesh Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Ms. Kiran Bala Jain, Advocate and
Mr. Vishal Aggarwal, Advocate for the petitioner..

Mr. Samarth Sagar, Addl. A.G. Haryana.

Mr. Sunil Dhandha, Advocate for Municipal Corporation.

ANIL KSHETARPAL, J.

Through this writ petition, filed under Article 226/227 of the Constitution of India, the petitioner prays for the issuance of a writ in the nature of certiorari, setting aside the orders dated 17.11.2020 and 18.11.2020. The question which needs adjudication is:-

“Whether the high court should entertain the writ petition when the petitioner has a statutory remedy of filing an appeal against the order impugned herein, particularly when, it is neither shown to be illusory nor less efficacious?”

The petitioner claims to be owner of property No.50, BC Bazaar, Ambala Cantt. It was previously owned by his grandfather, who

died in the year 1975. The petitioner claims that he applied for approval of building plan which was sanctioned on 14.03.1986. In para 3 of the writ petition, the pleadings are as under:-

“3. That the said buildings are quite old and due to rain there was considerable damage to the roof due to which the petitioner as well as his siblings carried out the necessary repairs, reconstruction and renovation of the same. It is not out of place to mention here that none of the legal heirs or co-sharers have raised any objection qua the same It is also relevant to mention here that the petitioner has not encroached upon any government land and whatever repairs etc have been carried out, the same have been done only in the building/s.”

In this case, previously two writ petitions and a contempt petition have already been filed. The petitioner filed CWP-10318-2020, which was disposed of on 20.07.2020 with the following directions:-

“After hearing both the parties, the writ petition is disposed off with a direction that no demolition of any portion of the disputed premises shall be done by the respondent Authorities, representing the Municipal Commissioner/Municipal Committee, Ambala, for a period of 15 days after a speaking order, on the petitioner's representation dated 14.07.2020 (Annexure P-9), is passed, on giving him or his authorized representative an opportunity of hearing, and communicating the said order thereafter.”

It may be noted here earlier thereto, CWP-8188-2020 filed by Anil Kumar and another was disposed of on 17.06.2020, directing the Deputy Commissioner, Ambala, to look into the complaint and take

appropriate action. It may further be noted here that Anil Kumar and another also filed COCP-2393-2020 which was disposed of on 05.11.2020, directing the respondent to ensure removal of the encroachment.

In Annexure P-3, a representation sent by the petitioner, it is claimed that he has reconstructed 1st and 2nd floor of the building since the building was quite old and weak.

The petitioner has not annexed the building plan or the order by which the building plan submitted by the petitioner was allegedly sanctioned in the year 1986. From the reading of Annexure P-2, dated 26.02.2020, it transpires that the Municipal Council claims that the petitioner has raised illegal construction, to the following effect:-

*“Description of Illegal Construction:- GF Shop 2*10'*25', First Floor 2*10'*15', 2*10'*15', Kit-8'*6', Second Floor 2*10'*15',”*

In compliance with the orders passed by the High Court, the Executive Officer, Municipal Council, Ambala Sadar, has passed a detailed order, wherein, it has been stated that the petitioner's application for compounding of illegal construction has been found without merit as the construction of the building is with 100% ground coverage and 343% floor area ratio, which is not compoundable as per the Haryana Building Code, 2017.

Learned counsels for the petitioner, have annexed copies of the photographs (Annexure P-10). From bare perusal thereof, it is apparent that the building is under construction and not only 2nd floor, even pillars and a wall of 3rd floor, have been partially erected.

Learned counsels have submitted that in the year 1986, the petitioner has got sanctioned the building plan for construction of two-storey building i.e. ground floor and 1st floor, therefore, the construction of the ground floor and 1st floor is not illegal. They have further submitted that the petitioner has already filed an application for compounding and therefore, the order passed by the respondents is illegal. It was further contended that the respondents are taking action in undue haste.

This Court has analyzed the arguments of learned counsel for the petitioner and perused the paper book.

As noted above, the petitioner has not produced copy of the building plan sanctioned on 14.03.1986, however, from perusal of the order, it is apparent that a building plan was got sanctioned but the construction was to be completed in one year. In fact, no document has been produced to prove that in the year 1986-97, any construction of the building as per sanctioned building plan was carried out. It has further been found by Executive officer of the Municipal Council, that now, the petitioner cannot be permitted to construct, on the basis of sanctioned site plan dated 14.03.1986, as its validity expired after a period of 1 year. Still further, in para 3 of the petition, the petitioner claims that he has carried out the necessary repairs, reconstruction and renovation of the same. As per Section 201 of the Haryana Municipal Act, 1973, no person is entitled to erect or re-erect or commence to erect or re-erect any building without prior permission of the Municipal Committee. Thus, even if the petitioner has re-erected or reconstructed, the same is not permissible without sanction of the building plan. At this stage, it may be noted here that the Municipal Council vide

notice dated 26.02.2020, issued notice and gave description of the illegal construction carried out or being carried out by the petitioner. In response thereto, the petitioner submitted a reply on 03.03.2020 (Annexure P-3) wherein it was stated that the petitioner has got a building plan approved for construction of a shop and the construction of the shop on 14.03.1986, is as per the plan. He has further stated that **“since the building is quite old and also weak, therefore, I have constructed the 1st and 2nd floor of the building.”**

Thus, it is not the case of the petitioner that he has not erected the building.

Further, it is nowhere disputed by the learned counsels that the petitioner has constructed the building with 100% ground coverage and 343% floor area ratio, which is not compoundable. In such circumstances, it is apparent that the building has been not only been constructed without getting the building plan approved but it is also beyond the permissible limits. Hence, the Executive Officer, Municipal Council, has rejected the application for compounding.

Learned counsels do not even dispute the correctness of the finding that the construction is not compoundable. .

Still further, the petitioner has not been fair to the Court. In para 49 of the writ petition, the petitioner has asserted as under:-

“49. That the petitioner has no alternative speedy or efficacious remedy of appeal or revision except filing the present writ petition in this Hon'ble court. Since no order has been passed on the notice issued to the petitioner, there is no remedy of appeal as well.”

This assertion of the petitioner is factually incorrect. As per Section 209 of the Haryana Municipal Act, 1973, any person aggrieved, by an order of the Committee, the Executive Officer or the Secretary, as the case may be, made under Section 208, may prefer an appeal against the order to the Deputy Commissioner, within the period specified. In the present case, the order in question has been passed under Section 208 of the Haryana Municipal Act, 1973. Hence, the petitioner has a statutory remedy of filing an appeal before the Deputy Commissioner..

Assertions in para 33 of the writ petition are as under:-

“33. That moreover the petitioner does not expect any justice or fair decision from the respondents including the deputy Commissioner for the simple reason that they are already prejudiced against the petitioner which is visible from the fact that the speaking order is dated 17/11/2020 while the deputy Commissioner had given an undertaking before this Hon'ble Court on 05/11/2020 stating that the encroachments should be removed within 4 weeks which clearly shows that the order has been passed in a predetermined manner and with the objective of deciding it against the petitioner.”

If the petitioner does not expect justice from the Deputy Commissioner, then he should have been fair with the Court while asserting that although, there is statutory remedy of appeal available, however, the petitioner has not chosen to avail the same because of various reasons to be given therein.

Further, this is not the first time the petitioner has been given notice of illegal construction. From the reading of notice (Annexure P-15),

it is apparent that predecessor of the petitioner was also given notice under Sections 14 and 187 of the Cantonments Act, 1924, directing him to demolish the unauthorized construction. Thereafter, he was also given a show cause notice. Later on, he was given an opportunity to get the violation compounded on deposit of the necessary charges, which appears to have been permitted to be compounded.

Keeping in view the aforesaid facts, this Court is of the considered view that the petitioner has failed to make out a case for interference while bypassing the statutory remedy of appeal. Consequently, he is relegated to the remedy of appeal under Section 209 of the Haryana Municipal Act, 1973.

It is important to note that the observations made by this Court while deciding the writ petition are only for the purpose of decision of the writ petition and shall not be taken as an expression of opinion on the merits of the case.

With these observations, the writ petition is disposed of.

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

09.12.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No