

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

Civil Writ Petition No.36932 of 2019(O&M)
Date of decision:16.12.2020

Devender Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Nihal Chand Kinra Advocate,
for the petitioner.

Mr. Rohit Arya, DAG, Haryana

Mr. Jatinder Nagpal, Advocate
for respondent no.5.

Mr. Gulam Nabi Malik, Advocate
for respondent no.6.

ANIL KSHETARPAL, J.

The hearing of the case was held through video conference on account of restricted functioning of the Courts.

Compassionate empathy should be one of the trait/quality of everyone manning a public office. The Constitution of India emphasizes that the public servants and other persons working in such offices are required to treat everyone equally irrespective of his caste, creed, religion or economic condition. The persons holding such offices are required to be more sympathetic and compassionate while dealing with downtrodden and uneducated persons. The laws except the penal are enacted to regulate the ordinarily development of the society. The building Bye laws in particular are enacted to regulate planned development of the areas. This court has

been compelled to make these remarks because after having examined the case file, the officials who dealt with the case of the petitioner failed to keep in mind what is expected from the official holding public offices and other similar posts. The public servants are engaged for the service of the public and not to rule over them.

The petitioner is in possession of a small building. He has constructed shops in front and is residing in the rear portion. The building is located in Tauru, District Mewat, one of the backward district in the State of Haryana. Tauru is a sub division. Haryana Wakf Board is owner of the land underneath the building. Way back in 1967-1968, there was litigation between the petitioner's father and the Punjab Wakf Board(predecessor of Haryana Wakf Board) which resulted into a settlement and his father agreed to pay Rs.5/- per month as the lease amount. It is his case that since level of the road, passing in front of the building, has been increased/elevated, therefore, rainy/dirty water started flowing in the premises. On account thereof, the building also developed certain cracks. He submitted an application on 05.09.2017 to Municipal Committee, Tauru, for permission to reconstruct the shop and the house. It was stated that the officials of the Municipal Committee, Tauru have already inspected the building. However, no response was received. He, thereafter, on 21.11.2017, once again requested the Municipal Committee to grant him permission to reconstruct the building. However, still no action was taken. It appears that in the meantime, he started reconstruction. The Municipal Committee, Tauru sent a notice on 27.03.2018 under Section 208 of the Haryana Municipal Act, 1973 (hereinafter referred to as 'the act of 1973') directing him to stop the construction and demolish whatever construction has already been carried

out. He, when served with a notice gave a note in Hindi language, on the notice itself that he has already applied for permission to construct vide applications dated 05.09.2017 and 21.11.2017. However, the Municipal Committee still did not take steps to process the application for sanction of the building plan. Thereafter, vide communicated dated 30.03.2018 he once again requested the officials of the Municipal Committee, Tauru, that rainy as well dirty water of the locality flows in his house and therefore, he is compelled to increase the level of his constructed area. He undertook that he shall abide by the government rules. Along with the application, the photographs of the dirty water stagnating in his premises were also sent. The Secretary, Municipal Committee, Tauru, rather than being sympathetic towards his situation, wrote a letter on 01.08.2018 i.e. after a period of 4 months to the effect that the construction of the road is the job of the Public Works Department (Building and Roads) and the Municipal Committee does not give any verbal orders. It was sought to clarified that the notice issued to him is not in connivance with certain persons named therein. He, immediately, wrote back on 03.08.2018 stating that he has been paying the house tax regularly and various persons have constructed their buildings abutting the road. It was pointed out that since the Municipal Committee, Tauru has also increased/raised the level of the floors of the streets, therefore, the dirty water flows into his house and the notice to him is the result of collusion of officials of the committee with the persons named therein.

The petitioner, thereafter, submitted a building plan vide application dated 20.08.2018. It was pointed out that since the administration has elevated the level of the road and the street, therefore his

building is now at a level lower than the street and the road and hence, he suffered a loss of Rs.5,00,000/-. Along with the building plan, he submitted the assessment report and the house tax receipts. The Municipal Committee, vide letter dated 24.08.2018 asked the petitioner to provide the evidence of ownership. It was also pointed out that the government fee for processing the building plan has not been deposited and the building plan and other documents are not signed by him. It was further informed that if within next 7 days the objections are not removed, the building plan shall be rejected/cancelled. He, within the aforesaid period, responded and submitted that the shop and the house was received by him in inheritance and the report of assessment and house tax receipts have already been provided. He submitted that the official should examine the file. On this letter, the petitioner wrote that he visited the office but the officials dealing with the building plans was available in the office. He will come whenever required and would comply with all requirements.

On 04.09.2018 the building plan submitted by the petitioner was rejected on two grounds. First, the building plan has been filed without deposit of the required fee and secondly the petitioner has failed to provide evidence of ownership. On 07.09.2018, he requested that he may be informed of the amount of the fee required to be deposited, so that he can deposit the amount. On 05.09.2018, rather than helping him to get his building plan approved, the Secretary, Municipal Committee, issued a show cause notice under Section 208A of the 1973 Act threatening to seal the property. He was given three days time to clarify. He, vide communication dated 11.09.2018, informed the Secretary that he has come to know of the notice on 07.09.2018 at 5.00 PM which had been pasted on the wall of his

house. The petitioner clarified that all the three shops and the house is constructed on a land owned by Haryana Wakf Board and he is regularly depositing the lease money.

On 19.09.2018, the petitioner once again submitted the building plan to Municipal Committee for approval. However, the Secretary of the Municipal Committee wrote back that the office is not satisfied with various communications received from him and the documents attached are not readable, therefore, the application is rejected and now the Municipal Committee proposes to take steps in accordance with Section 208 of the 1973 Act. Thereafter, his premises was sealed. On 01.10.2018, he submitted a representation to the Deputy Commissioner, Nuh, with a request that the seals put in by the Municipal Committee, Tauru be removed as he is finding it difficult to come and go out of the house. The Deputy Commissioner directed the Sub Divisional Magistrate, Nuh, to enquire and report within 7 days. The Sub Divisional Magistrate submitted a report on 16.10.2018 stating that the old walls and shutters of the shops are the same, however, new shops have been constructed on two pillars without getting the building plan sanctioned. Further the petitioner has failed to prove his ownership and a civil suit in this regard is pending in the court.

The petitioner filed an appeal before the Deputy Commissioner, Nuh against the order by which his premises was sealed. The Deputy Commissioner dismissed the appeal with the finding that the petitioner has constructed the building without getting the building plan sanctioned and since the petitioner could not produce evidence regarding his ownership, therefore, there is no error in the order. That's how this writ petition has been filed.

In response to the notice, a joint written statement has been filed by respondent no.1 and 2. Whereas separate written statements have been filed by respondent no.3 and 5. In the written statement filed by the Municipal Committee, the factual position as asserted by the petitioner is not disputed. However, it has been asserted that the petitioner constructed the building without prior sanction of the building plan and he failed to produce evidence to prove his title.

The legislature of State of Haryana has enacted the Haryana Municipal Act, 1973. Section 201 thereof requires that no person shall erect or re-erect or commence to erect or re-erect any building without the sanction of the building plan from the committee. Further, Section 203A has been inserted by amendment Act no. 8 of 1985 enabling the State government to regularize the building, whether constructed with or without sanction of the Municipal Committee in public interest. Still further, Section 205 enables the Municipal Committee to sanction or refuse erection or re-erection of buildings. Sub section 5 of Section 205 provides that the Committee or the Executive Officer, if neglects or omits to respond within a period of 60 days of the receipt from a person of a valid notice of such person's intention to erect or re-erect a building or within a period of 120 days if the notice relates to a building on which the erection of a building has already been refuse within the previous 12 months, the building plan shall be deemed to have been sanctioned. Section 208 enables the Municipal Committee to order stoppage of the under construction building or demolition of the building which has been completed within 6 months from the date of such notice. As per proviso to Section 208, the Municipal Committee may, in stead of requiring the alteration or demolition of any

such building, accept composition fee prescribed in the rules. In exercise of powers under the Act of 1973, the State Government has notified the Haryana Municipal Building Bye-laws, 1982. The Haryana has also notified the Haryan Building Code, 2017.

Thus, the entire emphasise of the legislature is to encourage the residents to erect the buildings after getting the building plan sanctioned and if some building has been erected or re-erected in violation thereof and such construction is found within the permissible limits, then the construction should be regularised or the violation should be compounded. In other words, the objective is not to demolish the buildings which are permissible to be constructed in accordance with the rules framed thereunder.

There can be different situations. One is, if the building has been constructed illegally on a public land. There can be other situation like the building has been constructed against the development plan of the area, i.e., in an area where either no construction is permissible or the nature of building constructed is not permissible in a particular area. Third situation can be when the building has been constructed without sanction of the building plan, however, it can neither be regularized nor compounded. Forth category, although there is no restriction on the construction of the building, however, it has been erected or re-erected without sanction of the site plan. In the cases falling in the last category, the officials are expected to deal with such violation with compassion. The present case appears to be falling in the 4th category as noticed above. In such situation, it was expected of the officials to have a compassionate view of the matter. It appears that the petitioner is a simpleton. No doubt, he is alleged to have carried out some construction without sanction of the building plan.

However, it is not the case of the respondent that such building could not be constructed or is beyond the permissible limits. It is also not the case that the building has been constructed beyond floor area ratio. In such situation, the manner in which his various applications submitted by him have been dealt with, leaves much to desire. It is not expected of public officials to act in such a manner.

Still further, although, repeatedly requested, learned counsel for the Municipal Committee failed to draw attention of the court to any requirement of law requiring a person who applies for sanction of the building plan, to prove his ownership before the building plan can be sanctioned/approved. As already noticed in this case, the land belongs to the Haryana Wakf Board whereas the construction belongs to the petitioner. It is not the case of the Wakf Board that it has constructed the building. It appears that now the officials of the Wakf Board have also filed a civil suit to get back the possession. However, till the time the petitioner is continues to be in possession he is entitled to repair/ renovate/reconstruct the building existing therein.

Hence, the order passed by the Municipal Committee and affirmed by the Deputy Commissioner, Mewat at Nuh, sealing the property are undoubtably arbitrary exercise of power. It is not the case of the Municipal Committee that the petitioner inspite of having been issued notice, did not apply for sanction of the building plan. In fact, the petitioner applied before starting construction. It was the officials of the Municipal Committee, who sat over the file and did not respond in time.

Keeping in view the aforesaid facts, the writ petition is allowed.

The order of sealing of the building is set aside. The petitioner shall be at

liberty to submit a fresh application for sanction of the building plan for post facto approval within one month from the date of receipt of a copy of this judgment and the officials of Municipal Committee are directed to process the same in accordance with law. If the officials of the Municipal Committee find that the application submitted by the petitioner is defective or certain other information is required, the officials shall intimate the petitioner by a registered post. It is expected that the Municipal Committee would finally decide the application for sanction of the site plan within 6 months. However, if the Municipal Committee finds that the building already constructed with certain modifications can be permitted to be compounded, then the Municipal Committee would consider exercising its powers under Section 206 of the 1973 Act. However, if the Municipal Committee finds that the building cannot be permitted to be constructed at all, it shall be open to pass a speaking order thereon.

Let a copy of the judgment be forwarded to the Deputy Commissioner, Nuh at Mewat, with a hope that he would take some steps to sensitize the concerned officials of the Municipal Committees within his jurisdiction.

16th December, 2020
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No