

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

**CWP No. 1510 of 2021 (O&M)
Date of Decision:09.02.2021**

Raminder Singh

.....Petitioner

Versus

Defence Estate Officer, Jalandhar Circle, Jalandhar Cantt. and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Puneet Kumar Bansal, Advocate for the petitioner.

TEJINDER SINGH DHINDSA J.

Instant writ petition is directed against the order dated 30.04.2019 passed by the Estate Officer, Jalandhar Circle, Jalandhar Cantt. (Annexure P-5) directing the demolition of unauthorized construction i.e. shop measuring 14'-09" x 18'-06" in Bungalow No.86, comprising of GLR Survey No.202, Church Road, Firozpur Cantt.

Further challenge is to order dated 25.02.2020 (Annexure P-7) passed by the learned Additional District Judge, Firozpur, dismissing the appeal preferred by the petitioner and thereby affirming the order of demolition passed by the Estate Officer.

Learned counsel has argued that the impugned orders cannot sustain as the respondent authorities had not placed on record the sanctioned plan of bungalow in question which could reflect that the alleged shop was not part of the authorised construction. It is urged that all the documents with regard to the property were with the custody of the respondent

department and consequently the best evidence i.e. the site plan of the bungalow depicting the permitted construction has been with-held. Another limb of the argument raised is that the Courts below have erred in shifting the burden of proof on the petitioner to prove that the construction was legal. The same is stated to be not permissible in law. Counsel further contends that the petitioner had been paying taxes to the Cantonment Board for usage of the property. The Cantonment Board having collected the taxes for the property in dispute, was estopped from raising the plea as regards construction being unauthorized. The last submission raised by counsel is that the order of demolition passed by the Estate Officer at Annexure P-5, is a non-speaking order and on this ground alone the impugned order deserves to be set aside.

Counsel has been heard at length and pleadings on record have been perused.

The process of law was set in motion at a stage when the field staff of DEO Jalandhar Cantt. had reported that unauthorized construction has been raised by the petitioner in the nature of a shop measuring 14' 09"x18' 06" on Bunglow No.86, Church Road, Firozepur Cantt. Acting upon such report, the Estate Officer, Jalandhar Circle, Jalandhar Cantt. issued show cause notice dated 26.10.2006 under Section 5-B Sub Section (1) of the Public Premises (Eviction of Un-authorized Occupants) Act, 1971 to the petitioner. Upon response having been filed and after going through the records the following issues were framed by the Estate Officer

“(i) Whether respondent is the recorded Holder of Occupancy Rights (HOR) of the Bungalow No.86, Survey No.202, Church

Road, Ferozepur, Cantt.as per GLR maintained by the Defence Estates Officer, Jalandhar Cantt.?

(ii) Whether valid sanctioned plan for raising of structures in association with Cantonment Act, 2006/Gov. land policy has been obtained by the respondent?

(iii) Has any permission been sought from the DEO, Jalandhar Circle, Jalandhar Cantt. before erection of the building?”

During the course of recording evidence, the petitioner in cross-examination admitted that the land under his occupation is defence land and he is running a shop there. It was admitted that petitioner neither possesses a copy of sale-deed regarding the disputed shop nor any sanctioned plan pertaining to the construction. He also admitted that he is paying rent to the HOR (Holder of Occupancy Rights) Sh. Harnam Singh to run the shop. Petitioner further admitted that he does not have any permission to run commercial activities in Bungalow No.86. Such admission has been recorded in the impugned order dated 30.04.2019 passed by the Estate Officer, Jalandhar Circle, Jalandhar Cantt at Annexure P-5. It is not the case made out by the petitioner in the instant writ petition that such observations contained in the impugned order are perverse. Neither any submission has been raised in such regard by counsel during the course of hearing before this Court.

The conceded position is that as per General Land Register maintained by DEO, Jalandhar Circle, Jalandhar, Harnam Singh is the recorded Holder of Occupancy Rights (HOR) of Bungalow No.86, Survey

No.202, Church Road, Firozepure Cantt. for residential purposes only. It is the case of the petitioner himself as per response to the show cause notice that he is a tenant under Harnam Singh, recorded Holder of Occupancy Rights. The Courts below have rightfully held that the afore-noticed HOR Harnam Singh had no right to induct anyone as a tenant in the property which is public premises except with the permission of the concerned authorities. The petitioner has failed to produce any document supporting his claim for right of occupancy pertaining to the Bungalow in question. No such document has even been placed on record and appended alongwith the instant petition. Petitioner as such has rightfully been held to be an unauthorized occupant of government land. Furthermore petitioner had failed to submit any sanctioned plan passed in his name on the strength of which the construction of the shop measuring 14'-09" x 18'-06" in Bungalow No.86, comprising of GLR Survey No.202, Church Road, Firozpur Cantt. had been erected.

The submission advanced by counsel that the entire record was in possession of the respondent department and under such circumstances the onus to prove that the construction was authorized had been wrongfully shifted to the petitioner, is without merit. Such view is being taken as counsel on a specific query has conceded that no application at any stage had been filed by the petitioner calling upon the respondent authorities to produce relevant record as regards sanctioned plan of the bungalow in question.

The contention as regards the impugned demolition order at Annexure P-5 being a non-speaking order is outrightly rejected. Perusal of the order dated 30.04.2019 (Annexure P-5) passed by the Estate Officer,

Jalandhar, Jalandhar Cantt. would show the same is a reasoned speaking order containing cogent and valid basis to support the order of demolition. The submission as regards payment of taxes are concerned would be of no consequence. Even if the petitioner had deposited the taxes pertaining to the bungalow in question, that in itself would not tantamount to the petitioner being an authorized occupant of the property and the construction of the shop in question having been deemed to have been sanctioned.

For the reasons recorded above this Court does not find any infirmity in the impugned orders directing demolition of the shop in question.

There is no merit in the writ petition.

Dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

February 09, 2021

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