

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 5513 of 2021

Date of Decision: 08.09.2021

Swasthya Siksha Sehyog Sangathan

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Amit Jhanji, Senior Advocate
with Mr. Shashank Shekhar Sharma, Advocate
for the petitioner(s).

Mr. Samarth Sagar, Additional Advocate General,
Haryana, for respondent No.1 to 3.

Anil Kshetarpal, J.

1. Notice of motion.
2. On the request of the Court, Mr. Samarth Sagar, Additional Advocate, General, Haryana, accepts notice on behalf of the respondent No.1 to 3.
3. Through this writ petition, the petitioner-Sangathan prays for the following substantive reliefs:

“i) Issue a writ in the nature of Certiorari for quashing the Order dated 22.12.2020 (Annexure P/26) passed by Respondent No.4 being illegal, arbitrary, in violation of Section 208 & 208A of the Haryana Municipal Act, 1973 and against the principles of natural justice.

ii) Issue a Writ in the nature of Certiorari for quashing the

site inspection report presented by Respondent No.7 (JE cum Building Inspector) dated 04.12.2020, (Annexure P/22) being illegal, arbitrary, in violation of Haryana Municipal (Charging of Composition Fees for Regularization of Unauthorized Construction) Rules, 2003 and Haryana Building Code-2017.

- iii) Issue a Writ in the nature of Mandamus directing the official Respondents to enquire into the ownership of the land on which the Hospital building is being built/operated by Respondent Nos. 8 & 9.*
- iv) Issue a Writ in the nature of Mandamus directing the respondents No. 4 & 5 to seal and further demolish the Hospital premises under Section 208 & 208A of the Haryana Municipal Act, 1973 being illegally constructed without any sanctioned building plan.*
- v) Issue a writ in the nature of Mandamus directing respondents No.1 to 7 to take necessary action against Respondents No.8 & 9 of illegally constructing the Hospital in violation of provisions of Haryana Building Code 2017, Haryana Municipal Act, 1973, Haryana Fire Services Act, 1973 and National Disaster Management Guidelines-2016.*
- vi) Direct the respondent Nos. 8 & 9 to produce the sanctioned building plans of the Hospital premises, if any, before the Hon'ble Court.*

- vii) *Further, to direct respondents No.1 to 6 to ensure that the due procedure laid down in the Policy No. 2/5/2017-R-11 dated 30.3.2017 and its amendment No. DULB/TP/ATP-III/2018/170-1892 dated 16.4.2018 for regularization of existing Nursing Homes running from residential premises and grant of permission for the new Nursing Homes be adhered to while deciding the application for regularization of Respondent Nos. 8 & 9.*
- viii) *Direct an officer of the level of Executive Engineer or above to re-inspect the hospital for pointing out violations/deficiencies.*
- ix) *Direct the official Respondent Nos. 1 to 6, to take necessary steps to stop the further construction of the said Hospital premises and direct Respondent No. 8 & 9 to immediately stop running medical services from the said under construction premises during the pendency of the present petition”.*

4. In essence, the petitioner alleges that the respondent No.8 and 9 have constructed a hospital building in violation of the building plan. The Municipal Commissioner, Bhiwani while deciding the appeal against the order of sealing the building, has observed as under:-

“On next date of hearing, legal counsel of respondent (i.e. Municipal Council, Bhiwani) filed written statement against appeal. Appellant deposited bank guarantee and site inspection report presented by JE cum Building Inspector and

site map report presented by Architect pointing out violations/deficiencies. Report submitted by Building Inspector points out violations as such:-

- 1. That slop of ramp constructed inside the hospital is not as per rules.*
- 2. That set back has been given in hospital on the backside but stairs has been constructed on the front side.*
- 3. That construction of hospital is less than F.A.R. covered area, which is correct as per rules.*
- 4. That provision of toilet for handicapped persons is not made in the hospital.*
- 5. That fire related symbols are exhibited in the hospital.*
- 6. That ventilation in some toilets is not provided in the hospital.*
- 7. That parking number and sign are not marked in the hospital.*

Report of Architect also mentioned same violations pointed out by Building Inspector. Keeping in view of deficiencies pointed out in Building Inspector report, status quo order is vacated for rectification of violations pointed out. Appellant was ordered to remove deficiencies/violations immediately in given time. Further, it has also been ordered that fees or charges if any pending towards Municipal Council,

Bhiwani would be paid by appellant on demand immediately. Building Inspector was directed to visit site and make actual report whether violations was rectified or not within 10 days.

On next date of hearing on 22-10-2020, report from Building Inspector been submitted vide MC, Bhiwani letter No. 4376 dated 16-12-2020. Legal counsel of respondent has no objection on report submitted by Building Inspector. As per report, all the violations/deficiencies are rectified and respondent also submitted that there are no pending dues on appellant side. As per reply of Executive Officer, MC, Bhiwani, appellant also has applied for regularization under nursing home policy/notification of Haryana Government, ULB dated 30-03-2017. After perusal of case file and going through report submitted by Building Inspector, it has been observed that violations were rectified by appellant. Respondent (i.e. MC, Bhiwani) also satisfied with rectification done and have no objection further on the said matter. It has been directed to Municipal Council, Bhiwani to release Bank guarantee of Rs.2 Lakh which has been submitted by appellant in compliance of order dated 25.11.2020. Further it is also to be mentioned here that this Court is not going into the validity of sanctioned building plan, as it is expertise of MC, Bhiwani and during entire proceeding of the case MC, Bhiwani never raises any question on valid aspect of sanctioned building plan. MC, Bhiwani only points out violations committed by appellant.

It has been directed to MC, Bhiwani to speed up the process of regularization of application as per law under Haryana Government notification of Urban Local Bodies dated 30-03-2017 submitted by appellant.

Further it has been directed to appellant to take all permissions in future from Municipal Council, Bhiwani for any modification/construction/erection of the said site. If any violations is found, Municipal Council, Bhiwani is free to act under rules or laws framed under Haryana Municipal Act, 1973. It has also been pertinently mentioned here that this order only governs under Section 28(A) of Haryana Municipal Act, 1973 and this Court not putting any remark/comment on the question of title if involved. In keeping view of all the circumstances and going through all report submitted by respondent, appeal of appellant is accepted without any cost and appellant is directed to follow all procedures and rules framed under Haryana Municipal Corporation Act, 1973 and building bye laws 2017 in future and respondent also submitted that they are not having any further issue after violations were rectified by appellant”.

5. It is apparent that the Municipal Council, Bhiwani, is yet to take a final decision on the entire matter.

6. Keeping in view the aforesaid facts, this Bench is of the considered view that the Municipal Council shall decide the matter within a period of three months, positively.

7. With the observations made above, the present writ petition is disposed of.

(Anil Kshetarpal)
Judge

September 08, 2021
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No