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IN THE PUNJAB AND HARYANA HIGH COURT  
AT CHANDIGARH

CWP-7556-2020 (O&M)  
Decided on: 22.02.2021

JIWAN KUMAR AND OTHERS

....PETITIONERS

VERSUS

STATE OF PUNJAB AND ANOTHER

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE GIRISH AGNIHOTRI

Present: Mr. Vishal Aggarwal, Advocate  
for the petitioners.

Ms. Anju Arora, Addl. AG, Punjab.

Mr. Sanjeev Soni, Advocate  
for respondents No. 3 and 4.

Mr. Harsh Aggarwal, Advocate  
for respondent No. 6.

(THROUGH VIDEO CONFERENCING)

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**GIRISH AGNIHOTRI J. (Oral)**

The matter has been taken up through Video-Conferencing on account of restriction due to outbreak of pandemic COVID-19.

Petitioner-Jiwan Kumar and three others, have jointly filed the present petition, *inter alia*, with the prayer for issuance of a writ of certiorari or mandamus or any other appropriate writ, order or direction to the respondents to stop the construction of a Temple being constructed over Plot No. 5080, 5081, 5082 now having been given new numbers as MCB Z-10327, 10328 and 10329 situated in Afim Wali Gali, Bathinda being illegal and against law and against the Municipal Act, 1999.

Records of the case shows that vide order dated 01.06.2020, this Court had issued notice of motion and passed the following order:-

*“Notice of motion for 27.08.2020.*

*On the asking of the Court, Ms. Monica Chhibber Sharma, Sr. Deputy Advocate General, Punjab, accepts notice on behalf of respondent Nos.1, 2 and 5.*

*There shall be no further construction and installation of idols in the structure being constructed at the site i.e. Plot Nos.5080, 5081, 5082 with new numbers as MCB Z-10327, 10328 and 10329 situated in Afim Wali Gali, Bathinda, till further orders.*

*Direction is further issued to the Deputy Commissioner, Bathinda, to look into the matter and ensure compliance of the statutory rules/instructions as have been pointed out by the petitioners in the writ petition and submit report in court prior to the next date of hearing and submit report in Court prior to the next date of hearing.”*

Learned counsel for the petitioners has referred to Annexure P-7, the photographs to show that he has adjoining building and he submits that the building of the said area are mainly residential though some part of it also is being used for commercial purpose. Learned counsel has made reference to Annexure P-6 to submit that even the authorities themselves on 26.12.2019 had noticed that if the Bye-laws pertaining to Community Centre are made applicable on the said plot, a road of at least 60 feet wide is the pre-condition and the size of the plot should be 1000 Sq. meters. He has also fairly referred to the second portion of the noting wherein it has been noticed by the authorities as under:-

*“As per the new building byelaws there is no provision of such a building but it cannot be considered in the category of Community Centre as well. A temple is sought to be*

*constructed here. Such religious building are generally build without any sanction. In case, this building is build by seeking sanction, then in my view there should be no objection to the same and the site plan can be sanctioned.”*

Learned counsel makes reference to the site plan (Annexure P-6) to indicate the area on which the temple is proposed to be constructed. He submits that the petitioner had also submitted a representation dated 17.03.2020 (Annexure P-8).

In response to the notice of motion issued by this Court, respondent No. 3 and 4, i.e. Municipal Corporation, Bathinda, has filed its reply. In the reply, inter alia, it is submitted that respondent No. 6 i.e. Sohan Lal Gupta has submitted a proposed building plan in the office of Municipal Corporation, Bathinda for raising construction of a temple. He had got No Objection Certificate from the Department of Cultural Affair, Archaeological and Museum, Punjab dated 15.10.2019. Thereafter, a proposed building plan was scrutinized under the Building Bye Laws, 2019 and the said building plan was sanctioned by the Municipal Corporation, Bathinda on 10.01.2020.

It is then submitted that Rakesh Kumar, brother of the present petitioner No. 1 has filed a civil suit on 21.03.2020. Interim stay was declined by the trial Court.

It is then submitted that when the complaints were received by the Deputy Commissioner and Municipal Corporation, Bathinda from the petitioners as well as certain residents, a notice was issued to respondent No. 6 dated 15.05.2020 to stop the construction. Reply from respondent No. 6 was received on 09.06.2020 and a consent letter from the residents of the said street was also received.

On question put by this Court, Mr. Sanjeev Soni, learned counsel for respondents No. 3 and 4 submits that the said notice issued to respondent No. 6 is still pending with the authorities as the authorities deemed it appropriate not to proceed further after the receipt of order dated 01.06.2020.

Learned counsel for respondent No. 6 submits that, in fact, the writ petition should be dismissed primarily on the ground that the petitioners have concealed the fact that his brother had filed a civil suit and the interim stay in this regard was declined by the trial Court. In this regard, he makes a reference to order dated 21.03.2020 passed by the trial Court (Annexure R-6/8). Learned counsel then makes a specific submission by making reference to para No. 2 of the preliminary submissions of his written statement to the effect that it has been clarified by him that there would not be any Community hall etc. there would not be any marriage or bhog ceremonies etc. causing any nuisance to the residents. Relevant portion of the same is reproduced below:-

*“It may be specified here that there would not be any community hall etc. and there would not be any marriage or bhog ceremonies etc. causing any nuisance to the residents. Apart from it, the construction of temple has started after leaving about 20' on front and 15' on rear side from the boundary wall.”*

Learned counsel has also referred to notification dated 31.12.2019 with specific reference to Clause 4.26 to submit that the temple sought to be constructed to fall under the category 'Religious'. He, thus, submits that there is no illegality if the temple is permitted to be constructed.

In view of the peculiar facts and circumstances as noticed above the present writ petition is disposed of with the following directions:-

1. Respondents No. 3 and 4 are directed to grant hearing to the parties in pursuance to notice dated 15.05.2020. The petitioners are also at liberty to make their submissions, if any, before the authorities. Respondent No. 3 may proceed to pass final order in accordance with law after granting hearing to the parties.
2. Let the needful be done within the period of two months from the date of receipt of the certified copy of the order.
3. At this stage, learned counsel for respondent No. 6 makes a request that the period lost by the petitioners because of the stay on construction since June, 2020 till date be further granted to him from the date of expiry of the contract. In this regard, he may submit a representation to the authorities which shall be sympathetically considered and decided.

Disposed of.

**(GIRISH AGNIHOTRI)**  
**JUDGE**

22.02.2021  
*shabha*

Whether Speaking/reasoned : Yes/No

Whether Reportable : Yes/No