

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.W.P No.13241 of 2021 (O&M)
Date of Order:26.07.2021

Sanjeev Kumar Sharma

..Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Bhupinder Ghai, Advocate,
for the petitioner.

Ms. Kanica Sachdeva, AAG, Punjab
for respondent no.1 to 4.

ANIL KSHETARPAL, J(Oral)

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

The petitioner has invoked the extraordinary writ jurisdiction of
this Court under Article 226 of the Constitution of India with the following
substantive prayers:-

- (a) *Issue a writ in the nature of certiorari for quashing of letter dated 10.01.2020 (Annexure P-2) (erroneously mentioned as 17.12.2019) vide which site plan for construction of temple over Plot No.5080, 5081, 5082 (New Numbers MCB Z-10327, 10328 and 10329) situated in Afim Wali Gali, Bathinda, has been sanctioned by the respondent-Corporation, which is in violation of the provisions contained in Punjab Municipal Building Bye-laws 2018 as well as not in consonance with 'No Objection Certificate' dated*

15.10.2019 (Annexure P-1) granted by Department of Cultural Affairs, Punjab.

- (b) *Issue a writ in the nature of mandamus directing the official respondents to take appropriate action against the guilty officials/officers, involved in grant of permission for construction of temple over Plot No.5080, 5081, 5082 (New Numbers MCB Z-10327, 10328 and 10329) situated in Afim Wali Gali, Bathinda, which is not permissible in view of the provisions contained in 'Punjab Municipal Building Bye-laws 2018'.*
- (c) *It is further prayed that during pendency of the present petition before this Hon'ble Court, construction of the temple at the spot, may kindly be ordered to be stopped."*

Some facts are required to be noticed.

Respondent no.5-Sohan Lal Gupta is the owner of Plot No.5080, 5081 and 5082 (new numbers MCB Z-10327, 10328 and 10329) situated in Afim Wali Gali, Bathinda. He, after getting permission from the Competent Authority-cum-Director, Cultural Affairs, Archaeology & Museums, Punjab, Chandigarh, vide a letter dated 15.10.2019 as also after getting sanctioned of the building plan from the Municipal Corporation on 10.01.2020, he started constructing a temple on the plot measuring 223 Sq. Mts. (2400 Sq. Feet). The petitioner claims that the aforesaid construction cannot be allowed on the following grounds:-

- (1) *The property is situated in a residential zone and therefore, construction of religious building cannot be permitted.*
- (2) *It would cause grave inconvenience to the public at large.*
- (3) *As per the building bye-laws, a community building can only be permitted to be constructed on a 60 feet wide*

road, whereas the street in question is 15 feet wide.

I have heard the learned counsel for the petitioner and with his able assistance perused the paper book.

At the outset, it must be noticed that certain group of residents do not want the construction of the temple. They are taking all possible steps to stop the construction. After the sanction of the building plan on 10.01.2020, a Civil Suit No.949 of 2020 (**Rakesh Kumar vs. Sohan Lal and others**) was filed. On 21.03.2020, an application for discontinuing the construction was dismissed. Thereafter, the suit was dismissed as withdrawn with permission to file a fresh suit on 28.08.2020. However, rather than filing a fresh suit, Civil Writ Petition No.7556 of 2020 (Jiwan Kumar and others vs. State of Punjab and others) was filed. On 01.06.2020, the following order was passed:-

“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.”

The writ petition was disposed of vide an order dated 22.02.2021, with the following order:-

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."

Pursuant to the directions issued by the High Court, the

Commissioner, Municipal Corporation, Bathinda, granted an opportunity of

hearing to all those concerned. On 30.06.2021, the Commissioner has dismissed the objection and permitted respondent no.5 to continue with the construction. It may be noted here that the respondent has brought to the notice of the Commissioner that the construction work is already at the verge of completion. The relevant observations are extracted as under:-

“I have considered the submissions made by both the Ld. Counsels for the parties and also have gone through the Punjab Municipal Building Bye Laws, 2018 and upto date amendments thereof. There is no doubt that this street/locality is situated in very old and thickly populated area of the city which is fully developed and build up. The area dates prior to Independence possibly than more 200 or 300 years old as it is in the vicinity of 1200 year old “Qila Mubarak”. When it was a village neither any regulatory authority nor any Master plan was applicable. At that time people used to run their businesses in their respective houses. A number of owners of the building are running their businesses in the same street as well as residing in the same building. Even the present petitioner Jiwan Lal Garg is running a Kiryana Shop under the name & style of “Jiwan Kiryana Store”. Number of other commercial establishments in the said street/locality are operational. The width of the street is variable at different spots but there is no encroachments in any part of the street.

In the year 2018, the respondents had tried to raise the construction of temple without getting any prior permission from the concerned authorities therefore, he was not allowed to do so and advised to take permission from the concerned department. Since the street in dispute falls in restricted zone created by Department of Cultural Affair Archeological & Museum Punjab. Therefore, before raising any construction in the said area a No Objection Certificate from the Department of Cultural Affair, Archeological & Museum Punjab is also required.

On 17.12.2019 the respondent submitted a proposed building plan in the office of the Municipal Corporation, Bathinda for construction of a temple on its plot bearing old No.5081 and 5082 situated at Galli Affimwali along with this plan the applicant has also attached No Objection Certificate bearing No.ARCH/DCAN/NOC/2019/847 dated 15.10.2019 issued from the Department of Cultural Affair, Archeological & Museum Punjab. The said proposed building plan was scrutinized in the office of the Municipal Corporation but since there was no specific Building Bye Laws for religious buildings therefore, the said proposed building plan was considered and recommended for sanction in a hall measuring 17.8'X42.10^{1/2}". The total height of the building alongwith Shikhara is 19.3 feet. The respondent has also left open space of 27 X 20 feet for parking purpose and at the rear site of the building they have left 27X 15.1 feet open space.

In the meantime, the department of Local Government vide its notification bearing No.LG/CTP(LG)/2019/3977 dated 31.12.2019 has amended the Punjab Municipal Building Bye Laws, 2018. As per Clause 4.26 of the said amendment the Government has fixed the norms for religious building also. As per these norms the maximum ground coverage is 35%, maximum F.A.R. is 1:0.70 and maximum height is 15 meter upto roof level and including Sikhara is 26 Meter. Since the proposed building plan met with all the norms fixed by the Department of Local Government therefore, the same was sanctioned by the Municipal Corporation vide its File No.495/C dated 10.01.2020. As per office report the construction raised at the site by the respondent is strictly as per sanctioned site plan and there is no violation of the sanctioned site plan.

The counsel for the petitioner/complainant has raised the objection that the No Objection Certificate given by the Department of Cultural Affairs, Archeological & Museum Punjab is for construction of community building and not for

the construction of Mandir. I have gone through the No Objection Certificate granted by the Department of Cultural Affairs, Archeological & Museum Punjab in which the department has permitted the construction of only ground floor with total height of the building is 5.89 meters. The proposed building plan submitted by the respondent in the office of Municipal Corporation is a single storey building and total height of the building is 5.88 meters including Shikhara. The argument advanced by the counsel for the petitioner has no legal force that it is not a community hall, as the permission sought by the respondent is construction of only a hall in which two idols of Lord Ganesha Ji and Lord Hanuman Ji are proposed to be placed. Moreover, it fulfills all other norms of the Punjab Municipal Building Bye Law, 2018 and amendment thereof. Therefore, the proposed building plan has rightly been sanctioned by the Municipal Corporation, Bathinda.

The counsel for the complainant has a presumption that the hall will be let out for the public functions which will create problem for local residents of the area. Though this is only a presumption yet for the safer side in future the respondent is hereby directed to furnish an affidavit that they will not let out this hall for organizing any events like marriage etc.

In view of the above discussions the complaint filed by the complainants is hereby dismissed and the respondent are allowed to raise construction as per the sanctioned site plan dated 10.01.2020. However, in case the validity of plan lapses the respondent is advised to apply for its revalidation.”

It may be noted here that the petitioner has not assailed the correctness of the order passed by the Commissioner, Municipal Corporation, Bathinda. On drawing the attention of the counsel to the said fact, he submitted that the petitioner does not wish to challenge the correctness of the order as he was not a party to the aforesaid proceedings.

It may be noted here that the petitioner in paragraph 18 has

pleaded as under:-

“18. That some of the other inhabitants of the area had approached this Hon'ble Court and this Hon'ble Court was pleased to stay the further construction as well. However, petition was disposed of with a direction to the respondent authorities to take a decision of the show cause notice issued by them. The petitioner and many other persons approached the authorities and duly represented them as well. However, the authorities having themselves sanctioned the plan were not willing to cancel the same even though the illegality is apparent on the record. A copy of the speaking order passed by the Deputy Commissioner is annexed along with as Annexure P-7.

The order passed by the Commissioner is Annexure P-7. Thus, the petitioner has himself pleaded that he had also submitted a representation when the Commissioner passed the said order.

On a careful reading of the order passed by the Commissioner, it is apparent that majority of the owners of the building are running their business on the same street. In the previous writ petition, petitioner no.1- Jiwan Lal Garg, has been shown to run a kiriyana store. In the said street/locality, a number of other commercial establishments are already operating. In such circumstances, the assertion of the petitioner that the building plan has been sanctioned in a residential area is not factually correct.

As regards the argument of the learned counsel that the temple would cause grave inconvenience, it may be noted that no material to that effect has been placed on the file. The Municipal Commissioner has already noticed that respondent no.5 has left an open space of 27 feet x 20 feet on

the front, whereas 27 feet x 15 feet on the rear side. Still further, the building plan has been sanctioned in accordance with the amended norms issued by the Punjab Government. Respondent no.5 has also complied with the requirements of the Punjab Municipal Building By-laws, 2018. Hence, there is no substance in the argument.

With regard to the next argument, it may be noted here that the officials of the Municipal Corporation, Bathinda, have knowledge of the present factual position. They are expected to have knowledge of the law as well. In these circumstances, while exercising the writ jurisdiction, this Bench does not find it appropriate to stay the construction, at this stage. Still further, from the facts observed above, it is apparent that efforts are being made to stop the construction by indulging in a number of litigations which is not appropriate or encouraged. Still further, the petitioner does not challenge the correctness of the order passed by the Commissioner.

Therefore, this Bench is of the view that the petitioner has tried to abuse the the process of the Court.

Hence, dismissed.

26th July, 2021
nt

(ANIL KSHETARPAL)
JUDGE

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