

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

CWP-1245-2022 (O&M)

Date of decision: 03.03.2022

Sanjay Kumar

...Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Prateek Sodhi, Advocate for the petitioner
 Mr. Ayush Sarna, AAG, Punjab
 Mr. Sanjeev Soni, Advocate for respondent no.2
 Mr. Sangram Singh Saron and
 Ms. Surabhhi Kaushik, Advocates for respondent no.4 and 5

ANIL KSHETARPAL, J (Oral)

The petitioner prays for issuance of a writ in the nature of Mandamus to direct the Municipal Corporation to initiate action against private respondent no.4 and 5.

Some facts are required to be noticed. The petitioner is stated to be owner of Hotel-Grand. Respondent no.4 is constructing a hotel building in the adjoining plot. The construction is being carried out after sanction of the building plan from the Municipal Corporation, Amritsar. The petitioner alleges that the building is being constructed in violation of the sanctioned building plan. He relies upon certain documents/representations in support thereof.

After having heard the learned counsel representing the parties at length, this Court is of the considered view that the petitioner is required to be relegated to the alternative remedy of filing a civil suit which has already been filed. The detailed reasons are as under:-

(i) Admittedly, the civil suit filed by the petitioner against

respondent no.4 and 5 is pending. An application filed under Order 39 Rule 1 and 2 of Code of Civil Procedure, 1908 to restrain the respondent no. 4 and 5 from constructing the building has already been dismissed. However, the suit is pending.

(ii). The petitioner has filed an appeal challenging the correctness of the order passed by the trial court under Order 39 Rule 1 and 2 CPC. However, he has not disclosed that fact while filing the writ petition.

(iii). The petitioner has also filed a civil suit for damages.

(iv). In the facts of the case, it is evident that the disputed questions of fact are required to be adjudicated. On the one hand, the petitioner alleges that the building is being constructed in violation of the sanctioned building plan whereas it is the stand of the private respondents that the building is in consonance with the sanctioned building plan. The Corporation has failed to take any definite stand.

Learned counsel representing the petitioner submits that in the civil suit the Municipal Corporation, Amritsar, has not been impleaded as a party. If that be so, the petitioner shall be at liberty to file an application in this regard.

Disposed of.

All the pending miscellaneous applications, if any, are also disposed of.

03.03.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)

JUDGE