

**CM-5465-CWP-2022;
CM-5466-CWP-2022 in
CWP-2309 of 2014**

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

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**CM-5465-CWP-2022;
CM-5466-CWP-2022 in
CWP-2309 of 2014
Date of Decision:21.04.2022**

Ground Floor Residents in Duplex Flats Welfare Association

..... Petitioner

Versus

Chief Administrator U.T. and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH
HON'BLE MR. JUSTICE LALIT BATRA**

**Present: Mr. Sarbjit Singh Hira, Advocate,
for the petitioner.**

**Mr. G.S. Wasu, Senior Standing Counsel with
Mr. Indresh Goel, Advocate,
for respondents no.2 and 3.**

**Mr. Ashok Sharma Nabhewala, Advocate,
for respondent no.4.**

**AMOL RATTAN SINGH, J. (ORAL)
CM-10315 of 2018**

**Vide this application, persons who claim that they are residents of the
first floor in various flats constructed in Sector-41 (MIG Duplex Flats), seek to be**

impleaded as respondents in the accompanying petition, the petition itself being one which is shown to be filed by the ground floor residents in the said flats complex; and with the prayer therein being to quash the order dated 02.08.2013 (Annexure P-6), seen to be passed by the Executive Engineer-II, Chandigarh Housing Board, holding that action was being taken against the violators in the said flats (the violations being in the context of additions/alterations made to the flats constructed by the respondent Housing Board in the 1980s decade, as also encroachments made therein).

Notice having been issued in this application on 25.07.2018, pursuant thereto a reply is also stated to have been filed.

Though the counsel for the non-applicant-petitioner Association opposes the application, in our opinion the applicants also being residents of the same dwelling units in the context of which additions/alterations have been made, they are necessary parties to the litigation and consequently the application is allowed, with the said applicants ordered to be impleaded as respondents no.5 to 289 in the petition.

The amended memo of parties is ordered to be taken on record.

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Vide this application, one Janak Kumar seeks to place on record a document as Annexure R-5/1 (with no affidavit filed to which such document is to be attached) and consequently it is taken on record as a part of the application itself, with an affidavit also shown to be duly executed in support thereof.

Though it is contended that he is one of the applicants seeking to be

impleaded as a party to the petition, i.e. CM no.10315 of 2018, however it is seen that he is not one of the applicants who have been impleaded as respondents hereinabove.

The said document is shown to be a communication addressed to the Allottee/Occupant of the Dwelling Unit no.577/1, Sector 41-A, Chandigarh, stating to the effect that a demolition order dated 08.07.2019 was passed under the provisions of Section 15 of the Capital of Punjab (Development & Regulation) Act, 1952 and that more than 2 years having gone by since then, if the violations due to which demolition had been ordered, had been removed then intimation in that regard was to be given to the Secretary of the Board alongwith supporting photographs within ten days and if no such intimation was received, it would be presumed that the said violations had not been removed and demolition would be carried out at the expense of the violator.

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Vide this application, the same person, i.e. Janak Kumar, seeks a stay on the demolition orders referred to hereinabove as also on similar orders issued to other allottees/occupants of the MIG flats constructed in Sector 41-A in Chandigarh.

Notice in the application.

Learned counsel for the petitioner as also the respondent Housing Board, accept notice.

Though the applicant is not a party to the petition, the application is disposed of alongwith the main petition itself, vide the order following

immediately hereinafter.

Main case (CWP-2309 of 2014)

1. Learned counsel for the petitioner submits that the demolition orders should not be stayed in view of various orders passed by this court including the one dated 17.05.2017, which reads as follows:-

“On 04.05.2016 learned counsel for Chandigarh Housing Board furnished a list of members of the petitioner-association, who are allegedly not cooperating and are, thus, not permitting the Housing Board authorities to examine whether the construction raised by them is structurally suitable or not. In our considered view wherever unauthorised construction has been raised by an allottee, there are ample statutory powers vested in the authorities to compel such allottee to allow the authorities to inspect the premises and get it examined from Structural Engineer as to whether or not the construction, so raised, is sustainable? We direct the Housing Board to constitute a team comprising at least one Structural Engineer, one Civil Engineer and an Architect to inspect each dwelling unit and submit a report whether or not the unauthorised construction raised by such allottee are structurally suitable.

Needless to say that wherever such structure is found to be unsuitable and dangerous to the lives of the occupants of the building, such structure is liable to be demolished after following the prescribed procedure. Alternatively, the occupants of such dwelling units may be permitted to raise authorised construction as per the drawings approved by the Housing Board, more so where the ground floor occupants are willing to consent to such construction. If need be, one dwelling unit per day shall be examined and let a complete status report be submitted on the next date of hearing.

Adjourned to 29.08.2017.”

He next points to the concluding part of the order dated 28.09.2017, which reads as follows:-

“It is clarified yet again that the pendency of this writ petition will not be a ground for the official respondents not taking action against any illegal construction in accordance with law. In fact, in such cases the official respondents ought to take appropriate action.

Adjourned to 02.11.2017.”

On July 11, 2018 the following order was passed:-

“In deference to the previous order, Secretary, Chandigarh Housing Board is present. He states that process of issuing show cause notices to get the unauthorised construction removed is near completion and given two weeks' more time, the same shall be completed.

We have impressed upon him that Chandigarh Housing Board shall adopt a uniform pattern for allowing additional construction and/or for demolition of the unauthorised construction. The exercise should not be based on pick and choose criteria.

Adjourned to 06.09.2018.”

2. On 06.09.2018 it was recorded that a committee was constituted by the Chandigarh Housing Board to consider the directions issued by this court as well as the need based changes within the prescribed parameters, with certain recommendations made in the meeting held on 23.08.2018, but with the final decision to be yet taken for its implementation (at that stage).

On 27.09.2019 thereafter, the following order was passed:-

“The petitioner is a Society and the present petition was filed

by its President, who has expired on 04.05.2019 during pendency of the present petition. Any representative is not on record to pursue this petition.

However, learned counsel for the petitioner seeks time to place on record the resolution passed by the members of the Society.

The policy as well as time schedule for removal of unauthorized construction by considering the issues in view of the policy of need based changes are in progress as submitted by learned counsel appearing for Chandigarh Housing Board.

Adjourned to 28.11.2019.

Respondents No. 2 and 3 – Chandigarh Housing Board is directed to file status report on or before the next date of hearing.

Personal appearance of Mr. A.K. Sinha IAS, Chairman, Chandigarh Housing Board is exempted.

A photocopy of this order be placed on the file of connected case.”

Thereafter the relevant part of the order dated 28.11.2019 is also reproduced hereinbelow:-

“On perusal of documents available on file, it appears that some of the objections raised by the petitioner-Association have been taken into consideration but as far as problem of unsafe condition of the building is concerned, the same has not been taken into consideration and the survey is required to ascertain as to whether actually the building is unsafe for residential purpose or not. However, it has also been pointed out by learned counsel for the respondent-Housing Board that the Committee visited the houses and had been pointed out that some of the portion of the building was found unsafe but in some houses, the members of the Committee were not allowed to enter into the premises.

Accordingly, keeping in view the submissions made by learned counsel for the parties, the respondent-Housing Board is directed to constitute a Committee afresh to survey the houses to find out as to whether the building is unsafe for residential purposes or not.

Meanwhile, the petitioner-Association is also at liberty to make a detail representation, if any, within a period of two weeks from today mentioning therein as to which of the houses, floor wise, are unsafe. In case such representation is moved within said period, the Committee, so directed to be constituted, shall consider the representation by personally visiting the premises.

It is also clarified that in case any other persons were otherwise aggrieved in any manner, they are also at liberty to move representation to the said Committee.

Adjourned to 12.02.2020.

Respondent-Housing Board is also directed to place on record the status report on or before the next date of hearing.”

3. Pursuant thereto, a status report dated 25.11.2019 was filed by the respondent Housing Board, after which another status report dated 11.02.2020 was filed, annexing therewith a report of the committee constituted by the Secretary, Chandigarh Housing Board (pursuant to the order passed by this court on 28.11.2019), with the relevant part of the detailed report stating as follows:-

“The Committee is of the view that the following dwelling units should be declared as unsafe for residential purposes.

- (i) Those ground floor units where blatant violations have been made by way of removing essential load bearing walls thereby affecting the Structural Stability of the dwelling unit.
- (ii) Those first floor dwelling units where additional storey at third floor level have been raised as the existing foundations have not been

designed to withstand the load of additional storey.

(iii) Those first floor dwelling units where construction over the cantilever portion at 1st/2nd floor have been made/where construction has been made at 2nd floor level, fully covered, thus loading the 9"x9" column which has been designed for original loading and is not able to take any additional load.

(iv) Those first floor dwelling units where construction in back terrace without raising load bearing wall from ground floor level have been made."

Immediately thereafter it is stated that (as regards the survey conducted), 6 ground floor units were found to be having blatant violations by way of removing essential load bearing walls thereby affecting the structural stability of the dwelling unit.

76 first floor dwelling units were stated to have made an additional 3rd floor level but with the existing foundation not having been designed to withstand a load of an additional storey.

174 dwelling units on the first floor were found to have made constructions over the cantilevered portion at the 1st/2nd floor, with construction made at the 2nd floor being fully covered, thus "loading the 9"x9" column which has been designed for original loading and is not able to take any additional load".

One dwelling unit (Flat no.648/1) was found to have raised a construction on the rear terrace without raising a load bearing wall from the ground floor level.

Thus, a total number of 194 units, out of the total number of 628 units

(i.e. 31% thereof), were found to be in violation as per the said report.

4. Having considered the matter, it is to be observed that though in the order dated 17.05.2017 passed by this court, it was observed that such structures were liable to be demolished after following the prescribed procedure, alternatively the occupants of the dwelling units were also given the option to raise authorised construction as per the drawings approved by the Housing Board, especially where the ground floor occupants were willing to consent to such construction.

However, it is seen that as regards the last observation in that order, obviously it was without benefit of the report submitted thereafter in the year 2019 (as has been referred to hereinabove), with the said report having been made by a Committee ordered to be constituted upon directions of this court.

5. Consequently, we consider it appropriate that the respondents take immediate action to remove all completely unauthorized structures made on the 3rd floor of the aforesaid units, as it has been specified by the Committee consisting of technical people including Executive Engineers and a Superintending Engineer, that the said floor is wholly unauthorized and that the foundations of the dwelling units do not cater to such load.

It is also to be observed that the dwelling units are stated to be actually two dwelling units, i.e. one on the ground floor and one consisting of a duplex of the 1st and the 2nd floor. Thus any 3rd floor could only have been constructed either by the persons living on the 2nd floor or on his/her express consent, which is completely illegal.

Learned counsel appearing for the newly added respondents submits that the occupants of that floor are not party to this petition.

In view of the fact that this litigation has been pending for the past about 8 years now and surveys have been conducted at different points of time by the respondent Housing Board, it is not possible to believe that they are not aware of this litigation and in any case if no such 3rd floor has ever been sanctioned by the competent authority obviously such construction is liable to be removed immediately, with it endangering the structure of the whole unit.

6. As regards alterations made by those living on the ground floor and the 2nd floor (the 1st and 2nd floor actually having been allotted as a single duplex unit), the respondent Housing Board would take immediate action within a period of one month from today of restoring the structural aspects of the dwelling units, i.e. any pillars, load bearing walls, foundations and cantilevers etc. as have been found to be removed would be constructed. It would also be ensured that proper structural safety is provided to all the units, at the cost of the allottees of such units on a pro rata basis, i.e. as per the extent of the violation made and the construction to be now made in lieu thereof by the respondent Housing Board, with costs to be assessed as per the scheduled rates specified by the competent authority.

7. After the complete structural safety of all dwelling units has been certified by the competent authority amongst the respondents, such report be put up to a committee consisting of technical persons and headed by the Chairman of the Housing Board.

Thereafter, as to which additions etc. made by all residents of the area

are those which fall within the permissible norms of the existing bye-laws would be considered on an individual basis by the respondent Housing Board, and where such alterations etc. are found to be permissible, a detailed speaking order in that regard would be passed, with the persons who have made such alterations to make statutory payments as may be required for compounding such alterations (as are permitted by the bylaws).

8. Mr. Sharma, learned counsel for the newly added respondents, submits that the construction should start from the ground floor. Needless to say that normally, as per even basic principles, it would start accordingly because the structure starts from the ground upwards and not from the top. However, it is clarified that if no violation on any particular ground floor is found, naturally that particular unit need not be disturbed at all and action as required, would then be taken on the higher floors as are found to have been altered.

9. COCP-729 of 2018 also stands disposed of in the above terms, alongwith the writ petition (and any applications as have not been disposed of). It is also clarified that all previous orders passed in this petition stand modified by this order by which the petition has been finally disposed of, accordingly.

(AMOL RATTAN SINGH)
JUDGE

April 21, 2022
dinesh

Whether speaking/reasoned
Whether Reportable

(LALIT BATRA)
JUDGE

Yes
Yes