

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-2604 of 2017 (O&M)
Date of decision: 01.09.2022

Kehar Singh Dhulku

..Appellant

Versus

Union Territory, Chandigarh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Avnish Mittal, Advocate, (**Amicus Curiae**)
for the appellant.

Mr. J.S.Toor, Standing Counsel for UT, Chandigarh.

ANIL KSHETARPAL, J(Oral)

While assailing the correctness of the concurrent findings of fact arrived at by the Courts below, the plaintiff has filed the present appeal. His suit for declaration that the order dated 22.2.2011, passed by the Deputy Commissioner, while exercising powers under the Punjab New Capital (Periphery) Act, 1952 (hereinafter referred to as 'the 1952 Act'), is illegal, null and void.

Primarily, the stand of Union Territory, Chandigarh, is that the appellant has carried out the unauthorized construction which is not permissible. It has been pointed out that such construction is also not compoundable because there is a total prohibition in construction except as provided under the 1952 Act.

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

The learned counsel representing the appellant, who is appearing as amicus curiae, submits that the order passed by the Deputy Commissioner is not sustainable as it has failed to consider the reply filed by

the appellant. He submits that in absence thereof the order cannot be sustained.

On the other hand, the learned counsel representing the Union Territory, Chandigarh, has submitted that the appellant has constructed three rooms, one toilet and two bathrooms in Khasra No.11//19/2 in village Khuda Ali Sher, Union Territory, Chandigarh, which has been declared the controller area. He submits that various notices were sent to the appellant as well as his daughter-in-law, who is now the owner of the property.

Undoubtedly, the order passed on 22.02.2011 does not refer to the reply. However, now at the stage of Regular Second Appeal, it will not be appropriate to set it aside only on the ground of hyper technicality. The appellant despite being given opportunity failed to justify as to how the construction exists on the land in question. The appellant while filing the reply claims that a Mali Hut has been constructed, whereas there are three rooms, one toilet and two bathrooms.

In view thereof, no ground to interfere is made out.

Dismissed.

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

September 01, 2022
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(ANIL KSHETARPAL)
JUDGE

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