IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

I. **CIVIL REVISION-7274-2018 (O&M)**
Reserved on : 12.7.2022
Pronounced on : July 19, 2022

Executive Officer Municipal Council Gurdaspur
....Petitioners
Versus
M/s Miraj Entertaining Private Limited and others
....Respondents

II. **CIVIL REVISION-7318-2018 (O&M)**

Punjab State Power Corporation Limited and others
....Petitioners
Versus
M/s Miraj Entertaining Private Limited and others
....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. S.P. Arora, Advocate and
Mr. Himanshu Arora, Advocate for the petitioner(s)
(in Civil Revision-7274-2018)

Mr. T.V.S. Lahel, Advocate for the petitioners
(in Civil Revision-7318-2018)

Mr. Kanwaljit Singh, Senior Advocate with
Ms. Neha Anand, Advocate and
Mr. Vipin Mahajan, Advocate
for respondents No.1 and 2.

Mr. Joginder Pal Ratra, DAG, Punjab
for respondents No.5, 6 and 8.

ARVIND SINGH SANGWAN, J.

The present above mentioned two revision petitions, one by the Executive Officer, Municipal Council, Gurdaspur-defendant No.4 and second by the Punjab State Power Corporation Limited and others, i.e. defendant Nos.6 to 10, have been filed praying therein for setting aside the order dated 3.8.2018 passed by the lower Appellate Court vide which the order dated 3.11.2017 passed by the Civil Judge disposing of the application Under Order 39 Rules 1 and 2 C.P.C. filed by the respondent-plaintiff was modified and the application under Rule 39 Rules 1 and 2 was allowed in toto.

Brief facts of the case, as narrated in the suit for declaration are as under :-

> "2. Perusal of the record reveals that plaintiffs-appellants filed a civil suit for Declaration, mandatory and Permanent Injunction, wherein application under order 39 Rules 1 and 2 CPC was moved by the plaintiffs/ appellants, mainly on the ground that plaintiffs No. 1 and 2 are companies registered under the Companies Act. Plaintiff No. 2 i.e. M/s Miraj Entertainments limited is carrying out their business in Punjab and other States of India for running and operating Cinemas. Plaintiff no.2 took the land measuring 5 kanals 11 marlas & 2 kanals 18 marlas situated in the revenue estate of Gurdaspur vide registered lease deeds dated 12.5.2014 from the plaintiff No.4. Plaintiff No.2 has spent more than

Rs.35 Crores and has constructed 5 storied building with basement and further with collaboration of the plaintiff No.1 has erected 3 screens multiplex cinema within the premises of AGM Malls Private Limited and plaintiff no.1 has also spent approximately more than Rs.5 Crores. The plaintiffs have completed the project on the above said land as per the provisions of law after getting sanction of the building plans from the competent authority and after getting NOCs from the concerned departments as the Executive Officer, Municipal Council, Gurdaspur i.e. defendant No.4 forwarded the building plans of the plaintiffs No.1&2 vide his letter No.358 dated 22-8-2016 to the Director, Town Planning (DTP) Punjab, Chandigarh with request for issuance of the completion certificate in favour of the plaintiff no.2 and the said letter was forwarded by Sh. Bhupinder Singh the then Executive Officer, Municipal Council, Gurdaspur. The Executive Officer, Gurdaspur also sent environment clearance certificate to the DTP Punjab, Chandigarh, vide its letter no.507 dated 24.11.2016. Plaintiff no.2 before starting construction of building of AGM Malls Private Limited had applied for sanction of building plan to defendant No.3 and 4. The building plan was designed by the competent Architect, which Architect, which was submitted to the defendant no.3. Plaintiff No.2 through its Director has applied for change of the land user measuring 2 kanals 11 marlas out of the total land measuring 8 kanals 9 marlas, which were leased out by the plaintiffs No.1 and 2 in its favour as out of the total and leased out in favour of the plaintiff no.2, land measuring 5 kanals 11 marlas was already being used for running cinema for the last so many users, as such, plaintiff no.2 was required to get change of land user only with regard to the land measuring 2 kanals 18 marlas. The Executive Officer, Municipal Council, Gurdaspur vide its letter no.14 dated 2.1.2014 asked the plaintiff no.2 to deposit Rs.20,65,809/- as charges of change of land user regarding land measuring 2 kanals 14 marlas Accordingly, plaintiff no.2 has deposited Rs.10,32,905/- on 09.1.2014 and Rs.10,32,904/- on 18.3.2014. The sanction for CLU was granted by the department of Local Bodies, Govt. of Punjab vide Letter No.DTP (SS)-14/585 dated 16.4.2014 and thereafter, site plan was sanctioned by the officials of Municipal council, Gurdaspur after physically visiting the premises of AGM Malls. Defendant no.4 vide its letter No.650 dated 12.5.2014 has given its approval to the sanction plans. The building plans of the project was sanctioned by the Municipal Council, Gurdaspur and approved by the DTP, Punjab, Chandigarh and the building plans have not been set aside so far by any authorities as the same are legal and valid. It is pertinent to mention here that sanction plans of AGM Malls were further extended and plaintiff No.2 has paid extra charges for further extension and alteration in the building of the plaintiff he had deposited Rs.73,017/- on 16.6.2015 and he had further deposited Rs.1,04,209/- on 16.6.2015 with Municipal Council, Gurdaspur through its Executive Officer gave its approval to extending building plan vide letter dated 01.10.2015. Plaintiffs have completed the project of AGM Malls as per sanctioned building plan by spending Crores of Rupees and plaintiff no.2 has applied for issuance of completion certificate along-with other required documents, which are required under law to be submitted. Plaintiffs had submitted certificate of structural safety also along with application dated 19.12.2013. The application made by the plaintiffs was complete in all respects as the same was made in compliance with the provisions of law. The Director Town Planning, Punjab, Chandigarh after considering letter dated 22.8.2016 and letter dated 24.11.2016, which was submitted by Executive Officer, Municipal Council, Gurdaspur to DTP for sanction/approval of building plan directing the Executive Officer, Municipal Council, Gurdaspur i.e. defendant no.4 to issue completion certificate in favour of AGM Malls Private Limited after complying the directions contained in the letter dated 2884 dated 16.12.2016. Then, the Executive Officer, Municipal Council, Gurdaspur had issued letter no.552 dated 22.12.2016 to the plaintiff no.2 vide which it was intimated that Director Town Planning, Punjab, Chandigarh vide its letter dated 16.12.2016 has granted technical approval for issuance of completion certificate and asked the plaintiff No.2 to deposit alteration/ compounding fee with defendant no.3 for necessary action. It is pertinent to mention here that letter dated 22.12.2016 was issued by the then Executive Officer, Municipal Council, Gurdaspur Sh. Bhupinder

Singh, who is presently working as Executive Officer, Municipal Council, Gurdaspur. In compliance of letter no. 552 dated 22.12.2016, the plaintiff no.2 had deposited Rs.6,97,050/- as alteration/ extension fee of AGM Malls Private Limited with Municipal Council, Gurdaspur vide receipt no.10 dated 14.2.2017 and then the Municipal Council, Gurdaspur had issued partial completion certificate vide letter no. 768 dated 15.2.2017, whereas it should have issued a complete/full completion certificate. Plaintiff no.2 i.e. AGM Malls Private Limited has leased out 4th floors of AGM Malls in favour of the plaintiff No.1 i.e. M/s Miraj Entertainment Private Limited to run and operate 3 screens multiplex cinema with seating capacity of approx. 650 vide registered lease deed dated 7.6.2016 duly signed by Sh. Amarjot Singh Babehali being Director of AGM Malls Private Limited and on behalf of Miraj Entertainment Company Private Limited, Sh. Amit Sharma, authorized signatory has put his signatures on the lease deed. Plaintiff no.1 after getting fourth floor on lease from the plaintiff no.2 has spent more than Rs.5/6 crores for installing various sort of infrastructures, chairs, electricity fitting, ceiling installation of sound system and electrical instruments etc. Thereafter, plaintiff no.1 had applied for issuance of licence to the Deputy Commissioner, Gurdaspur in its favour for running/ operating three screens multiplex cinema vide letter dated 17.4.2017. The Deputy Commissioner, Gurdaspur i.e. defendant No.2 vide its letter dated 24.4.2017 wrote letter to the Heads of different departments i.e. to the SSP, Gurdaspur, SDM, Gurdaspur, Executive Engineer, Public Health, Executive Engineer, PWD (B&R), Executive Officer, M.C., Gurdaspur, Chief Electricity Inspector, Patiala, Divisional Town Planner and Divisional Forest Officer, Gurdaspur for issuing no objection certificate to AGM Malls. In compliance of the above said letter of Deputy Commissioner, Gurdaspur, all the concerned heads of departments, Divisional Forest Officer, Gurdasur vide its letter dated 15.5.2017, Divisional Town Planner, Gurdaspur vide its letter dated 25.4.2017, Chief Electricity Inspector, Patiala vide its letter dated 30.5.2017, Executive Officer, Municipal Council, Gurdaspur vide its letter dated 8.6.2017, Chief Executive Engineer, PWD (B&R) vide its letter dated 3.5.2017, Chief Executive Engineer, Public Health, Gurdspur vide its letter dated 27.4.2017 and SDM, Gurdspur vide its letter dated 2.5.2017 have issued no objections certificates and they have stated that they have no objection in case the licence is being issued and granted in favour of Miraj Entertainment Company Private Limited and AGM Malls Private Limited for running and operating 3 screens multiplex Cinema in AGM Malls. Deputy Commissioner, Gurdaspur after completing all the formalities a d as per the provisions of law had granted licence in favour of plaintiff no.1 Miraj Entertainment Company Private Limited in the premises of AGM Malls, Gurdaspur under the provisions of Section 5 of Punjab Cinema (Regulation) Act,1952 vide order no.8846/ MA/ MC-2 dated

15.6.2017. Thereafter, plaintiff No.2 had applied for getting and releasing electricity connection on-line 837 K.W. and submitted all the documents with application through single window system, Nodal Officer, PSPCL, Patiala vide consumer No.17887 dated 30.6.2017. The defendants No. 8 to 10 after examining minutely all the documents submitted by the plaintiffs asked the plaintiffs to deposit process fee Online. Then, plaintiffs on the same day, had deposited Rs.10,000/- as a process fee with defendants for release of electricity connection vide receipt no.143608 dated 30.6.2017. The Municipal Council, Gurdaspur wrote letter dated 5.7.2017 to the Executive Engineer, PSPCL for not issuance of electricity connection in favour of plaintiff no.2 stating therein that some alleged enquiry is pending against plaintiffs with Secretary, Local Bodies and till the decision of said enquiry, electricity connection may not be given and released to the plaintiffs No.1 and 2. The superintending Engineer had sent the said letter to defendants no.8 to 10 without any comments. Then, Chief Engineer, Commercial PSPCL,Patiala wrote letter dated 13.7.2017 to the Superintending Engineer, PSPCL, DS Circle, Gurdaspur seeking clarification from the Executive Officer Municipal Council, Gurdaspur to proceed further with release of electricity connection. Thereafter, plaintiffs in reference with said letter requested to the defendants No.8 to 10 to release the electricity connection in favour of the plaintiffs as mere pendency of alleged enquiry has no bearing or relevancy for release of electricity connection and as per instructions of Govt., defendants no.8 to 10 need not to get NOC of any sort from Municipal Council, Gurdaspur as plaintiffs are ready to deposit the requisite expenses as desired by PSPCL. As such, act of the defendants no.6 to 10 by not releasing electricity connection the plaintiffs is biased, *mala fide*, illegal, null and void, politically motivated, whereas they are bound to release the electricity connection to the plaintiffs no.1 and 2. Order dated 15.8.2017 passed by defendant no.2 which is under challenge vide which licence No.8846/MA/MC-2 dated 15.6.2017 granted in favour of the plaintiff no.1 has been suspended on the basis of some alleged letter dated 7.8.2017 and letter dated 10.5.2017 issued by Executive Officer, Gurdaspur without affording any opportunity of being heard to the plaintiffs no.1&2 is illegal, null and void and same has been passed under political pressure, *mala fide*, biased unconstitutional, against law and principle of natural justice as it has been alleged in the impugned order that Executive Officer, Municipal Council, Gurdaspur has conveyed to the Deputy Commissioner, Gurdaspur i.e. defendant No.2 that the NOC issued in favour of the plaintiffs No.1 and 2 vide letter dated 8.6.2017 has not been issued by the then Executive Officer, Municipal Council, Gurdaspur and same is forged, is totally incorrect and the Executive Officer, Municipal Council, Gurdaspur Mr. Bhupinder Singh who earlier himself has also issued the NOC and has forwarded the building plans of AGM Malls with his own recommendation to the

Higher authorities has intentionally with some oblique motives at the instance of local MLA, who is vindictive against plaintiffs and particularly, one of the Director of the plaintiffs no.2 Amarjot Singh Babehali, who happens to be the son of previous local MLA S. Gurbachan Singh Babehali belonging to Shiromani Akali Dal. In fact, NOC issued in favour of the plaintiffs vide letter No.1543 dated 8.6.2017 is legal, valid and genuine and duly signed by the then Executive Officer. S. Jagtar Singh, Municipal Council, Gurdaspur and defendant no.2 without verifying the facts and without conducting any enquiry and without hearing the plaintiffs has illegally suspended licence granted in favour of the plaintiff no.1 under political pressure of Local MLA as the Local MLA belonging to Congress party has been openly proclaiming that he will not allow the plaintiffs to run and operate their business in the AGM Malls. Now the defendants/ respondents no.1 to 5 are threatening to dispossess or cause interference in the peaceful possession, enjoyment, running, functioning and working of the plaintiffs no.1&2 and further threatening to demolish any part of AGM Mall Building illegally and forcibly, which action of the defendants is altogether wrong, illegal and requires immediate check by the Court. If respondents succeed in their illegal designs and also if the electricity supply connection is not to be released in favour of the plaintiff/applicants no.1 and 2 within short period, then the plaintiffs shall suffer irreparable loss and injury and they will be financially ruined as they have invested crores of rupees and the very purpose of filing the suit would be frustrated and also in case of operation of the impugned orders and letters/notices issued by defendants/ respondent no.2 &4 and alleged enquiry proceedings allegedly initiated by the defendant no.5 is not stayed, in that eventuality, plaintiffs/applicants will also suffer irreparable loss and injury, which cannot be compensated in terms of money. Hence, it was prayed that the defendants be restrained from doing so.

3. Upon notice defendants appeared. Defendants No. 1 and 2 filed separate written statement and reply to the application under order 39 rules 1 and 2 has been filed by defendants No. 1 and 2. It has been submitted by defendant No. 2 that defendant No. 2 had issued license under the provision of Section 5 of Punjab Cinema (Regulation) Act, 1952 vide memo No.8846/MA/MC-2 dated 15.6.2017. Thereafter, letter No. 2468 dated 7.8.2017 received from Executive Officer, Municipal Committee/ Council Gurdaspur intimating that NOC which was issued by the Municipal Council, Gurdaspur vide memo No.1096 dated 10.5.2017 to Miraj Entertainment Private Limited, Gurdaspur has yet not been issued on the basis that an enquiry has been initiated against said building and after completion of enquiry, further action is to be taken in this regard. But, Executive Officer, Municipal Committee, Gurdaspur has not given any response in this regard. So, without the signature of above said officer, this document is to be considered as forged document. The licence of said

Mall Miraj Entertainment Pvt. Limited, Gurdaspur was suspended on this ground. Order passed by answering defendant no.2 vide which the licence of the plaintiff was suspended under Section 8 of Punjab Cinema Regulation Act, 1953 on the basis of letter issued by the Executive Officer, Municipal Council, Gurdaspur is legal and valid. Other averments are being denied. So, application is not maintainable and the same is liable to be dismissed.

4. Defendant no.3 filed separate written statement denying averments made in the application and admitted that plaintiff No.2 had constructed the building of AGM Mall. It is further admitted that answering defendant and its Executive Officer had issued letter mentioned in the application. It is submitted that answering defendant has no knowledge regarding issuance of letter No.2725 dated 5.7.2017 by its Executive Officer. Answering defendant or its Executive Officer has no authority to issue such a letter to PSPCL and not PSPCL is required to obtain any no objection certificate from Municipal Council. Remaining averments are being denied. So, application is not maintainable and the same is liable to be dismissed.

5. Defendant no.4 filed reply denying averments made in the application and further submitted that alleged certificates of incorporation allegedly issued by Registrar of Companies of Rajasthan, Jaipur and Registrar of Companies, Punjab, Chandigarh are false and fictitious and are procured documents. It is

submitted that plaintiff no.1 has applied for licence for running and operating Cinema at AGM Malls, Gurdaspur to the District Magistrate, Gurdaspur. It is further submitted that plaintiffs had submitted alleged deeds with answering defendant, but legality, validity and genuineness of these documents is denied. Sh. Paramhans Nath alleged vendor had already died before execution of alleged sale deeds. Thus, alleged sale deeds are also invalid and illegal documents. The building of Multiplex and AGM Malls in dispute has been constructed against and in violation of Municipal bye-laws pertaining to construction of buildings. Not only this, existing construction of building of multi storied/multiplex AGM Malls is not according to the site plan sanctioned by the answering defendants. Lots of addition, alteration and improvements have been made without any intimation and approval of Municipal Council, Gurdaspur. Enormous and reckless deviations from sanctioned site plan in constructing the multi-storied Mall building by the plaintiffs have been noticed by the answering defendant. The illegal and unauthorized construction of AGM Mall cannot be allowed to exist according to the provisions of law. The plaintiffs have no right to subvert the Municipal Laws at their convenience and raise illegal and unauthorized structure of multi storied building of Mall. The violations of sanctioned plan are deliberate and motivated. The plaintiffs are bound to demolish unauthorized construction forthwith as it is against bye-laws of Municipal Council. The notice to plaintiffs to remove the unauthorized structure of Malls has already been issued by Municipal Council as the construction of Mall is against public interest as well as against public safety. There is a seating capacity of 650 in the cinema and the Mall is otherwise public place. In case of any unforeseen, unfortunate events, mishap like bomb blast or terrorist activity in the building in dispute or in case of any natural calamity such like earthquake or floods etc., there is no adequate setback area left on both the sides of AGM Malls Private Limited nor there is adequate front line area for the free ingress and outgress of security vehicles and fire tenders as required under the Municipal Building bye-laws regarding construction of Multiplex buildings, Gurdaspur District in otherwise terrorist affected and cinemas and Mall are always the soft targets. The existing dimensions of the boundaries of the site of AGM Malls, its shape and structure of building block do not match with the sanctioned site plan. The total area of the site of AGM Malls according to sanctioned site plan is 44921.25 Sq. feet, whereas at the spot, the total area of AGM Malls site is 45394.75 Sq. feet, which is 473.49 Sq.feet in excess of the area mentioned in the sanctioned site plan/completion plan. The existing area of front set back at spot is 6475.73 Sq. feet (14.26%) whereas according to the multiplex bye-laws minimum front set back are should be (25%)). In this manner, there is a clear violation of clause 3.15(B) of Municipal Building bye-laws, which is non compoundable whereas the set back area on the back side of the building structure is required to be

30 feet according to bye-laws, but there exists only set back area to the extent of 33 feet 33 inch and 25 feet 11 inch on back side of the structure of building of AGM Malls. This violations of backyard set back area is again non compoundable. Not only this, the sanctioned height of the building of AGM Malls is 68'9" whereas the plaintiffs have at the spot extended the height of the Malls upto 93 feet 6 inch. According to 93 feet 6 inch height of the Mall, plaintiffs are required to leave setback of 9 meters (30 feet). On the basis of Principle as the height of building increases setback area also increases proportionality according to the height. On both the sides of AGM Malls, there are structures shown are liable to be removed. But, at the spot, the above said existing structures are still standing on both the sides of building structure of AGM Malls. Whereas according to municipal bye-laws, minimum setback area on both the sides of building is required to be 30 feet. As per the sanctioned site plan and area statement, the Green area of 4567.25 Sq. feet (10%) has been shown, whereas at the spot no green area is existing building, which were existing on both the sides of structure of AGM Mall are still existing at the spot and have not been demolished so far. Thus, in the presence of these buildings on the sides of Mall, there is no green area, as per requirement under the building bye-laws. There is required to be 10% green area left. Moreover, in the context of construction of Multiplex, the construction of double level basement is compulsory for parking and the entire area of

basement is to be used for parking purposes only except the area used for air conditioning plants and lift room, which is no case is to exceed 10% of the area. This is mandatory and non compliance of it, is non compoundable. Whereas in this case of AGM Mall, the area covered under air conditioning plant lift room is more than 20% of the area and this violation is again against building building bye-laws and the same is non compoundable. The building of AGM Mall is located at Hanuman Mandir Chowk, which is the hub of commercial activity of Gurdaspur city. On its one side, there is a Gurdaspur-Mukerian road while on all its three sides, there is thickly populated residential area. The construction of Multiplex and AGM Malls is as such against Municipal building byelaws as well as against public interest. It is a threat to public and is also likely to endanger public safety. Since the building of multiplex of AGM Malls, Gurdaspur is constructed in utter violation of municipal council bye-laws, so, keeping in view the public safety and public interest, an enquiry was initiated by the Secretary, Local Bodies, Punjab and meanwhile alleged no due certificate which was issued on 03.5.2017 merely on the ground of no arrears by defendant no.4 was cancelled on 10.5.2017 by answering defendant subject to the outcome and result of pending enquiry. Since the answering defendant was not a competent authority to issue completion certificate to plaintiff no.2. The building site plan of AGM Malls was simply forwarded by answering defendant to the Director Town

Planning, Chandigarh for further proceedings and necessary action for grant of completion certificate to plaintiff no.2 in accordance with law. The environment clearance certificate thereafter was also forwarded to DTP, Punjab, Chandigarh by the answering defendant on 24.11.2016 as desired by the concerned department. Notice bearing No. 2510 dated 09.8.2017 was served to plaintiffs by M.C. Gurdaspur pointing out violation in construction of AGM Malls. It is submitted that plaintiff no.2 had submitted application along-with site plan for construction of building of AGM Malls to answering defendant for the purpose of sanction of site plan. Plaintiff no.2 had submitted an application for change of land uses with respect to 2 kanals and 14 marlas, which was granted by Director, Town Panning vide letter dated 16.4.2014. It was subject to certain conditions which were mentioned in the letter. Plaintiffs have failed to follow conditions and constructed the Multiplex building in blatant violations of sanctioned building plan. It is further submitted that alleged sub-lease was filed by plaintiff no.1 in the office of answering defendant, but its execution genuineness and validity is denied. Plaintiff no.1 got the licence issued by misrepresentation and fraud. No NOC was issued to the plaintiff no.1 by answering defendant. The alleged NOC is a forged document. The licence issued in favour of plaintiff no.1 has already been ordered to be suspended by the Licensing authority. Answering defendant has not issued any NOC regarding building of AGM Malls to

Electricity Department, Punjab. Plaintiffs got issued the licence in favour of plaintiff no.1 by misrepresentation and fraud and by of misleading the Licensing authority. Plaintiff no.1 placed before Licensing authority a forged NOC alleged to have been issued by Sh. Jagtar Singh, Executive Officer, M.C, Gurdaspur in favour of plaintiffs vide letter no.1543 dated 08.6.2017. When this fact came to the notice of answering defendant, municipal record was verified. There was neither any diary number nor dispatch number on the alleged letter forwarding alleged NOC to the worthy Deputy Commission, Gurdaspur. The above mentioned Executive Officer was also contacted and he also denied signing, executing the alleged NOC and also forwarding of alleged NOC to Licensing authority. The matter was brought to the notice of defendant no.2 and defendant no.2 had ordered the suspension of licence and also ordered enquiry regarding issuance of alleged forged NOC. The order of suspension of licene is legal and valid. The enquiry is still pending. It is further submitted that letters written by defendants no.1 to 5 to plaintiffs are legal and valid and the proceedings taken thereon are also legal and according to the provisions of law. The building of AGM Malls is illegal and it has been constructed against sanctioned plan of M.C., Gurdaspur and same is liable to be demolished. Answering defendant has already issued legal notice to plaintiff under Municipal Act to remove illegal construction, failing which, Municipal Council shall take action regarding demolition of illegal building of plaintiffs according to provisions of law. It is prayed that application may kindly be dismissed.

6. Defendants No. 6 to 10 filed separate reply denying averments made in the application and further submitted that no commercial electric connection can be issued in the area of Municipal Council unless and until NOC is issued by the Municipal Council. Answering defendants can issue connection as per rules of PSPCL, if required NOC is issued by Municipal Council, Gurdaspur. Letter/memo No.478 dated 16.8.2017 issued by Dy.CE/Regulation for Chief Engineer/Commercial, PSPCL addressed to SE/DS, Circle PSPCL, Gurdaspur was received with No.439-440 dated 21.7.2017, the developer(plaintiff party) has been informed regarding clarification received from Executive Officer, Municipal Council, Gurdaspur and as decided by the authority that NOC can be processed further with the condition that the developer shall submit no objection certificate issued by Executive Officer, M.C. Gurdaspur before release of connection to the Mall."

The respondent-plaintiff also filed an application under Rule 39 Rules 1 and 2 CPC praying for staying the operation of the order dated 18.8.2017 passed by defendant No.2-Deputy Commissioner, Gurdaspur suspending the license of the plaintiff-firm for running the three screen cinemas as in terms of certain letters issued by Executive Officer, Municipal Council, Gurdaspur, the NOC issued in favour of the plaintiff was cancelled/withdrawn. As per the case of the defendants, there are building violations of rules/bye-laws of the Municipal Council stating that the construction has been raised by not following the sanctioned plan.

The trial Court while deciding the application observed that the objections raised by the defendants regarding the violation of the building plans cannot be decided at the state of deciding the application under Order 39 Rules 1 and 2 CPC as the Court, *prima facie*, has to see whether the interim relief can be granted in terms of the pleadings of the parties. The trial Court further observed that though the defendants have issued show cause notice to the plaintiff regarding the violations but without affording an opportunity of hearing, the suspension of license or withdrawal of NOC is not permitted and, therefore, it was directed by the trial Court that the defendants are restrained not to interfere in the peaceful possession or demolition the building illegally and forcibly except in due course of law till the decision of the suit. It was further directed that if the defendants find that there is any violation of the bye-laws of the Municipal Committee, the defendants, after giving the notice of being heard, can proceed.

However, the trial Court further held that the Court cannot restrain the defendant from taking action against the plaintiff for the violation of the bye-laws of the Municipal Committee.

Accordingly, the trial Court declined the interim relief regarding revival of license or issuance of direction for electricity connection to the building of the plaintiffs.

The plaintiffs preferred an appeal before the learned lower Court and the lower Appellate Court, while passing the impugned order dated 3.8.2018 has made the following observations:-

> "35. In the case in hand, in case ad-interim injunction which has been declined by learned lower Court is declined by this Court also and ultimately suit is decided in favour of plaintiff, it will be a matter of great inconvenience to the plaintiffs because of the reason that till that time the building will loose its strength. The infrastructure and instruments by plaintiffs will become old and he will be deprived of using the big building and to earn his livelihood and to return the loan, while on the other hand,, in case injunction is granted and ultimately suit is dismissed, then there will be no question of any inconvenience to the defendants.
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> 36. Ad-interim mandatory injunction has been sought by plaintiff for directing the defendants No.6 to 10 to release the electric connection in the building of plaintiffs. Merely on one letter written by Municipal Engineer to the officials of defendants No.6 to 10, they have stopped the release of connections to the building of plaintiffs Chief Electricity Inspector. As per rules, now, there is no need of NOC by electricity

Board of the purpose of release of electricity connection.

37. No doubt for grant of ad-interim mandatory injunction, a strong *prime facie* case is required to be made out but in the present case ad-interim mandatory injunction sought by plaintiff is not of that nature whereby it can be said that grant of ad-interim mandatory injunction will amount to decreeing the case of the plaintiffs. In case, ultimately, it is found that plaintiff was not entitled for electricity connection to be installed in his building, then if suit is decided against the plainiffs, the electricity connection can be dis-connected immediately. Installation of electric connection will generate the revenue for Electricity Board. Electricity Board is not releasing the connection merely on the ground that Municipal Council Gurdaspur has come to this conclusion that building has been constructed against bye-laws. But as observed above, the act of Municipal Council, Gurdaspur is under challenge in this case. Before grant of license to run Cinema, Chief Electrical Inspector gave a NOC that building is fit for electric supply. So, on this ground, defendants No.6 to 10 have got no right to withhold the electricity connection in favour of the plaintiffs irreparable loss will be caused to the plaintiff in case electricity connection is not release.

38. In totality it is worth mentioning here that as argued by Mr. R.S. Goraya, all the State Governments are desiring to bring the industries and good business

in their respective states to bring prosperity. In case plaintiffs are allowed to run business in the premises in question, then, running of business certainly will give employment to certain unemployed youth in the area and it will result into some income to this State in different shapes.

39. Accordingly, this Court considers that a *prima facie* case is made out in favour of appellants/plaintiffs and appellants/plaintiffs will suffer irreparable loss in case operation of order of Deputy Commissioner, Gurdaspur is not stayed and defendants are not restrained from taking the benefit of order dated 15.6.2017 and from interfering into the business and work of plaintiffs and further balance of convenience is also lies in favour of the plaintiffs.

40. Hence, appeal stands allowed and application moved by plaintiffs under Order 39 Rules 1 and 2 CPC is allowed in toto and til the suit of appeal, along with the relief already granted by learned lower Court, it is ordered that till the pendency of suit the operation of order dated 15.6.2017 passed by defendant No.2 Deputy Commissioner, Gurdaspur will remain stayed in the manner that defendants are restrained from acting upon it and further defendants are restrained from creating any sought of interference in the functioning and working of plaintiffs. Further respondents No.6 to 10 are directed to supply the electric connection to plaintiff after deposit of requisite fees within 10 days from today.

> 41. Above observations are only for the disposal of the present application and shall have no effect on the merits of the appeal.
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> 42. Trial Court record be returned immediately.
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> 43. Appeal file be consigned to record room."

By way of filing two separate revision petitions, the impugned order is challenged.

These revision petitions are pending since 2018 and it is the admitted case of the parties that no further proceedings in the civil suit is going in view of the pendency in this petition, though there is no such order.

A co-ordinate Bench of this Court vide order dated 27.3.2019 directed the Additional Commissioner-II, Municipal Corporation, Chandigarh-cum-Chief Fire Officer, Chandigarh to visit and inspect the suit property and submit a detailed report regarding the fire safety norms.

Thereafter, a report was received and again the same official was directed to re-inspect the premises and submit a fresh report as per order dated 7.11.2019.

On 25.11.2019, it was also noticed that the Punjab one time voluntary disclosure and settlement of building constructed in violation of building bye-laws, 2019 under which the respondents-plaintiffs have applied for compounding of building violation is under challenge in CWP (PIL)-71 of 2019 and the same is pending.

Again on 24.2.2020, it was directed that the Secretary Local Bodies Government of Punjab will submit a report regarding the alleged violation of the building by taking a constructive, fragmatic and holistic view of the entire case.

In view of the said order, an affidavit of Principal Secretary, Government of Punjab, Department of Local Government, Punjab dated 26.6.2020 along with a report was filed in the Court. The operative part of the report reads as under :-

> "7. As per the above report dated 17.3.2020 has been received from Deputy Director, Urban Local Bodies, Amritsar. A committee comprising of Deputy Director, Urban Local Bodies, Amritsar, Executive Officer, Municipal Council, Gurdaspur, Municipal Engineer, Municipal Council, Gurdaspur, Assistant Town Planner, Pathankot and Chief Draftsman, Municipal Corporation, Amritsar visited the site and they have submitted following report.
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> * The total area of the site as per sanctioned plan was 4991 square yards, but on site, only 3509.22 square yards area is under possession of the owner.
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> * The minimum plot area required for a Multiplex is 4840 square yards but on site, only 3509

square yards area is available thus the owner does not fulfill the first condition of minimum plot area requirement.

* The minimum roaf width requirement for Multiplex under the Building Bye-laws is 80′ which is correct as per site.

* The minimum ground coverage requirement for Multiplex is 40% under the Building Bye-laws but, as only 3509 square yards plot area is available onsite therefore the ground coverage is 49% or 15502 sft.

* The minimum landscape area requirement for Multiplex under the Building Bye-laws is 10% of the plot area but the area reserved for landscaping as per sanctioned plan is not under the possession of the owner but under the possession of private people.

* The building was sanctioned for commercial and Cinema use. As per Building Bye-laws, the parking area requirements under commercial and cinema components are 157 Equivalent Car Space (ECS) and 51 ECS, respectively, in total 208 ECS but on the site (65 ECS in open and 62 ECS covered/Basement area) total 127 ECS are available.

* The height of the building as per technical clearance letter No. DTP (LG)-15/2523 dated 24.8.2015 is 68 feet 9 inches whereas the

height of the building on site is 98 feet from road level.

* The setbacks required for 98′0″ height for the purpose of fire safety are at least 9 meters or 29′-6″ all around the site, whereas, on site, the rear setback is 24 feet on average and side set back is 21′6″ on average (on the left) and 21′ on average (on the right side).

* The maximum permitted FAR as per the Building Bye-laws is 1:1.75 or 78608 sft. On a plto area of 4991 square yards. But as only 3509.22 square yards plto area is available onsite therefore; (I) the building cannot be considered under the category of Multiplex, in addition, for the available site area of 3509.22 square yards under the possession of the owner, the total permissible covered area is 55270 sft. As per 1:1.75 FAR whereas the owner has already achieved total area coverage of 83762 sft.

* The service area has been provided in the basement-2. In the Basement-1, an area of 66′ x 106′ = 7022 sft. is occupied under room/hall. Therefore, if this area is taken under FAR then the total covered area works out to be 83762 + 7022 sft. = 90784 sft. and FAR 1:2.87.

* As per the Building Bye-laws for Multiplex, a handicapped ramp is required but the same is not provided on site.

* Since there are two basements at site and height of building is 98′, therefore, as per instructions of the Government, Structure Safety Certificate is required to be obtained from an IIT whereas the Structure Safety Certificate obtained by the applicant is from Giani Jail Singh Technical University, Campus Bathinda, Punjab.

* Further, on site, it has been found during site inspection that 2 beams in the ground floor slab have been cut in L-shape, therefore, regarding this the examination report from IIT is mandatory w.r.t. safety of the structure.

The report was submitted for orders to the Government.

8. The report has been examined by the Senior Town Planner and Director, Local Government, Punjab who have made following observations :-

(a) The total area of the site as per sanctioned plan was 4991 square yards but on site the plot area of building is, only 3509 square yards area and rest is under occupancy of other persons. Accordingly, as per the provisions of "The Punjab Model Municipal Building Bye-laws" 2010 under which the plan of building was sanctioned and also as per prevailing Bye-law, the minimum plot area required for a Multiplex is 4840 square yards. This violation is not compoundable under the Building Bye-laws/ one time settlement policy.

(b) The height of the building on site is 98 feet. The setbacks required for 98'-0 height as per the Bye-laws and also for the purpose of fire safety is at least 29'-6", whereas, on site, the rear setback is 24 feet and side set back is 21'6" (on the left) and 21 feet (on the right side). This violation is also not compoundable under the Building Bye-laws/ One Time Settlement Policy.

(c) The Structure Safety Certificate is required to be obtained from the IIT, since there are two basements at site and height of building is above 15 meters whereas the Structure Safety Certificate presented by the applicant is from Giani Jail Singh, Punjab Technical University. Further on site, cutting of 2 beams on ground floor has been reported, therefore, regarding this the examination report from IIT is mandatory w.r.t. safety of the structure. The weakening and tempering of the load bearing structure is dangerous, not advisable and involves safety issues. This violation is not compoundable under the Building Bye-laws/ One Time Settlement Policy.

(d) According to the report of DDR Amritsar, parking area as per plan is 208 ECS whereas, on site, parking area provided is 127 ECS.

(e) As per the report the basement are not being used fully for parking and there are rooms/structure in the basements.

In addition to the above, there are many other violations reported such as less than 10% of area under landscaping, handicapped ramp is not provided, FAR is in excess.

As per Point No.1 to 3 of the report sent by Deputy Director the building cannot be considered under the One Time Settlement Policy, moreover, the OTS Act was valid upto 5.3.2020."

Having considered the report submitted by Senior Town Planner and report submitted by the Committee, the present building suffers from numerous violations of various serious nature and, most dangerous being tempering of the load bearing structure have been reported.

In view of these findings given above, I am of the considered opinion that the present AGM Mall cannot be allowed to be operated and is not found a fit case to be taken up and considered even under "The Punjab One Time Voluntary Disclosure @ Settlement of Buildings constructed in violation of the Building Bye-laws Act, 2019".

Counsel for the petitioner-Municipal Council, Gurdaspur has argued that in view of the shortcomings in the report submitted by the Senior Town Planner and Director Local Government, Punjab, the impugned order is liable to be set aside as the case of the respondent-plaintiff was not found fit under the Punjab one time voluntary disclosure and settlement of building constructed in violation of building bye-laws, 2019.

It has also been argued that the defendant No.2 has earlier issued a license under the provisions of the Punjab Cinema

Regular Act, 1952 on 15.6.2017. However, later on, an information was received that without obtaining the NOC, the aforesaid letter was issued and, therefore, the license of the plaintiff was suspended under Section 8 of the 1953 Act.

Counsel for the petitioner-PSPCL has additionally argued that since the communication was sent by the Municipal Council, Gurdaspur regarding withdrawal of the license, the electricity connection was also withdrawn and, therefore, no action of the PSPCL is illegal as the same has been done by following the proper procedure and as per the instructions issued by the Deputy Commissioner, Gurdaspur.

In reply, the learned Senior Cpunsel has argued that the Deputy Commissioner has already withdrawn the letter dated 21.7.2017 issued by the Municipal Council, Gurdaspur as well as the order issued by the Deputy Commissioner suspending the license. It is argued that once the said letters have been withdrawn, the PSPCL in terms of the order passed by the lower Courts are bound to restore the electricity connection.

Learned Senior Counsel has further argued that this petition is pending since 2018 and on account of interim stay for the last four years, the plaintiff is unable to run his business and is suffering heavy financial losses.

Counsel for the petitioners has submitted that Amarjot Singh, Director-respondent No.2 has filed a specific affidavit, which only relates to partial completion of the building and, therefore, the petitioners cannot comply with the impugned order.

Counsel for the petitioners and Punjab State Power Corporation Limited (for short "PSPCL") has additional argued that in the absence of an NOC from the competent authority the electricity connection cannot be released.

In reply, the learned Senior counsel has submitted that the suspension of the license by the Deputy Commissioner has already been withdrawn and, therefore, there is no bar releasing the electricity connection. It is also argued that on account of interim stay granted by this Court for the last four years, the plaintiffs are unable to run its business and are suffering heavy financial losses.

It is also argued that the Mall became operational after passing of the order dated 3.8.2018 by the lower appellate Court and it is only after the interim order was passed by this Court, the business stopped.

Counsel for the respondent has submitted that the action of the respondent is not in the public interest and the larger interest of the State of Punjab as in case the plaintiff is permitted to run the Mall, it will generate revenue in the shape of GST as well as providing employment to hundreds of people.

After hearing the counsel for the parties and considering the fact that it has come in the written statement of defendant Nos. 6 to 10, i.e. PCPCL that no commercial electricity connection can be issued unless NOC is issued by the Municipal Council in the light of the fact that the orders suspending the cinema license of the petitioner stands revoked as well as also in view of the fact that after the show cause notice was issued to the Municipal Council, Gurdaspur to the petitioner, however, no further action was taken, the findings recorded by the lower Appellate Court directing the respondent to restore the connection is upheld and the PSPCL is directed to restore the electricity connection, immediately.

However, in terms of order passed by a co-ordinate Bench that certain shortcoming are reported, as per the report dated 26.12.2020, it will be appropriate to direct the trial Court to decide the main suit expeditiously within a period of six months from today by giving three opportunities each to both the petitioners to lead their respective evidence.

Disposed off.

(ARVIND SINGH SANGWAN)
JUDGE

July 19, 2022
satish

Whether speaking/reasoned : YES / NO
Whether reportable : YES / NO