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2023:PHHC:050629

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

COCp-71-2021 (O&M)
Date of decision: 12.04.2023

The Pink Rose Co-operative House Building 1st Society Ltd.

... Petitioner

Vs.

Arun Kumar Gupta and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. R.S. Bains, Sr. Advocate with
Mr. Sourabh Bedi, Advocate
for the petitioner.

Mr. Anil Mehta, Advocate and
Mr. Mayank Sharma, Advocate
for the respondents.

ARVIND SINGH SANGWAN, J. (ORAL)

The petitioner alleges violation of the order dated 29.05.2019, vide
which following order was passed: -

*“Prayer for grant of occupation/completion certificate, regular
sewerage and water connections etc. In this regard the petitioner
submitted various applications to the respondents which have not
been decided so far.*

We would, without commenting on the merits of the claim of

the petitioner, deem it appropriate to dispose of the present petition with a direction to the official respondents to consider and decide the applications moved by the petitioner by passing speaking orders thereon as expeditiously as possible, preferably within a period of two months from the date of receipt of certified copy of the order. Ordered accordingly.”

Respondent No.3 Sub Divisional Officer (Buildings), South Estate Officer, Sector-17, Chandigarh has filed reply on behalf of respondents No.1, 3 & 4. As per this reply, an inspection report was sought regarding occupation certificate for regularization of the water connection and other related issues. It is stated that the report dated 09.08.2019 was prepared by a team of Junior Engineers, after verifying the work and status of completion of the work of the petitioner-Society, which pointed out various violations and objections regarding the structure raised by the petitioner. It is further stated that again on 01.11.2019, office of Chief Architect, U.T. Chandigarh forwarded report submitted by the Junior Engineers regarding violation by the petitioner-Society to Architectural and Town Planning Members of PAC (Upper) and for fresh inspection report and a noting dated 06.11.2019 was sent to the Town Planning Wing regarding objections. It is also stated that on receiving the letter dated 18.11.2019 from the Department of Urban Planning, Chandigarh, wherein instructions were issued to respondent No.4, a meeting was convened, however, till date, the petitioner-Society never responded to rejection letter dated 26.11.2019. It is next stated that the petitioner filed the writ petition by not highlighting all the aforesaid facts that its claim already stands rejected on

26.11.2019, as the petitioner-Society never responded to the objections raised by the Department of Town Planning Wing as well as Architectural Wing of U.T. Chandigarh. The affidavit is supported by the report of Junior Engineers and communication sent to the petitioner.

Learned senior counsel for the petitioner has submitted that in fact, no speaking order has been passed. It is further submitted that in the order dated 26.11.2019 in Form F sent to the petitioner-Society, objections from Sr. No.(a) to (m) were raised and a request was made to remove the objections as raised by the Chief Architect vide letter dated 18.11.2019. It is also submitted that as per this letter dated 18.11.2019, Chief Architect, Department of Urban Planning, Chandigarh has communicated to the SDO (Building), Estate Officer, Chandigarh that the matter was examined and observations of the department are on NP 8 to 10 and the original plan file was received and returned for taking further necessary action. However, no action is taken.

Learned senior counsel has raised an argument that there is no compliance of the order dated 29.05.2019 passed by the Writ Court, as no speaking order has been passed.

On the face of it, all these arguments, which learned senior counsel for the petitioner has raised before this Contempt Bench, whose jurisdiction is only to see whether there is a willful disobedience regarding any directions issued by the Court of law and not to look into merits of the case, were never raised before the Writ Court, when the writ petition was decided on

29.05.2019.

At the cost of repetition, it is observed that in the order dated 29.05.2019 passed by the writ Court, it is clearly mentioned that **without commenting on the merits of the claim of the petitioner**, the official respondents are directed to pass a speaking order. Neither the order dated 29.05.2019 records the arguments raised on behalf of the petitioner as now raised before this Court nor it is noticed that office of Chief Architect, U.T. Chandigarh as well as SDO (Building), Estate Officer, Chandigarh has already issued notice to the petitioner to remove the objections regarding the construction raised at the spot, as noticed in the communication dated 18.11.2019 and 26.11.2019. The writ Court has passed the order like a post office as the representation, which is attached by the petitioner, was sent to the U.T. Chandigarh for disposal of the same, however, without recording to any legal arguments or points raised by the petitioner, on the basis of which, the respondents were to decide the same, by passing a speaking order.

The Hon'ble Supreme Court in **Kranti Associates Private Limited and another Vs. Masood Ahmed Khan and others, (2010) 9 SCC 496**, while referring to a number of other judgments, held that in a judgment, reasons have virtually become as indispensable component of decision-making process by observing principles of natural justice.

In another judgment in **Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota Vs. Shukla and**

Brothers, (2010) 4 SCC 785, the Hon'ble Supreme Court has held as under: -

*“The increasing institution of cases in all Courts in India and its resultant burden upon the Courts has invited attention of all concerned in the justice administration system. Despite heavy quantum of cases in Courts, in our view, it would neither be permissible nor possible to state as a principle of law, that while exercising power of judicial review on administrative action and more particularly judgment of courts in appeal before the higher Court, providing of reasons can never be dispensed with. **The doctrine of audi alteram partem has three basic essentials. Firstly, a person against whom an order is required to be passed or whose rights are likely to be affected adversely must be granted an opportunity of being heard. Secondly, the concerned authority should provide a fair and transparent procedure and lastly, the authority concerned must apply its mind and dispose of the matter by a reasoned or speaking order. This has been uniformly applied by courts in India and abroad.**”*

A perusal of the order clearly reflects that the arguments, which are now being raised, were never raised before the writ Court. Even no copy of writ petition is placed on record to find if the annexures referred to in the representation filed after passing of the order dated 29.05.2019 were in fact part of writ petition.

In view of the above, no willful disobedience is made out.

Dismissed.

However, liberty is granted to the petitioner to avail the alternative remedy, in accordance with law, if so advised.

[ARVIND SINGH SANGWAN]
JUDGE

12.04.2023
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No