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

CWP-13024-2022 (O&M)

Date of decision : 28.04.2023

Suman Kumar

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. G.S. Bal, Sr. Advocate with
Mr. Dilshad S. Gill, Advocate for the petitioner.

Mr. Karan Puggal, DAG, Punjab
for respondent No.1.

Mr. Sandeep Khunger, Advocate and
Mr. Saksham Khunger, Advocate for respondent Nos.2 and 3.

Mr. Kamaldip Singh Sidhu, Advocate
for applicant-Ved Parkash Sharma.

VIKAS BAHL, J. (ORAL)

1. This is a Civil Writ Petition filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari quashing the order dated 27.05.2022 (Annexure P-11) whereby the statutory appeal of the petitioner has been rejected.

2. On 02.06.2022, a Coordinate Bench of this Court was pleased to pass the following order:-

“It is submitted that order dated 27.05.2022 is without

jurisdiction as appeal against an order passed under Section 195(d) of the Punjab Municipal Act, 1911 is maintainable 'before the Committee' and not 'before the Executive Officer of the Committee'. This fact was also brought to the notice of the President of the Municipal Council vide communication dated 04.05.2022, yet, the Executive Officer has proceeded to pass an order.

Notice of motion for 25.01.2023.

Mr. Arun K. Kaundal, DAG Punjab accepts notice on behalf respondent No. 1 and waives service.

Meanwhile, demolition of premises of the petitioner shall remain stayed.

Sd/-(SUDHIR MITTAL)

JUDGE

June 02, 2022”

3. Today, short reply by way of an affidavit of the Executive Officer, Municipal Council, Nayagaon, District SAS Nagar (Mohali) on behalf of respondent No.3-Municipal Council, has been filed in the Court which is taken on record. Paras 3 to 5 of the same are reproduced hereinbelow:-

“3. That according to the provisions of Section 195 of the Punjab Municipal Act, 1911, if the notice is issued by the Executive Officer under Section 195, then the appeal is maintainable before the Committee and according to the provisions of Section 225 of the Punjab Municipal Act, 1911, if the notice has been issued by the committee, then the appeal is maintainable before the Government.

4. That in the case in hand, the notice was issued by the Executive Officer, accordingly the appeal is maintainable before the house of Municipal Council and the same was wrongly decided by the then Executive officer, vide order dated

27.05.2022.

5. *That the deponent is ready to place the appeal filed by the petitioner before the house of Municipal Council for passing appropriate orders in accordance with law. Thus, the present writ petition may kindly be disposed of as such.*”

4. Learned counsel for respondent No.3 has submitted that as per the said reply, the impugned order has been wrongly passed by the Executive Officer and thus, they have no objection in case, the said order is set aside and the appeal (Annexure P-9) would be presented before the house of Municipal Council for passing of appropriate orders.

5. Learned Senior Counsel for the petitioner has submitted that the said aspect has although, substantially satisfied the case of the petitioner but has further submitted that the interim order of demolition passed by the Coordinate Bench of this Court is continuing since 2022 and thus, prays that till the decision is taken by the Municipal Council, the said interim order be continued and the petitioner be permitted to be represented through his counsel.

6. Learned counsel for the complainant has also prayed that the complainant be permitted to appear before the Municipal Council through his counsel.

7. Keeping in view the abovesaid facts and circumstances, the present Civil Writ Petition is partly allowed and the order dated 27.05.2022 (Annexure P-11) is set aside and the Municipal Council is directed to decide the appeal of the petitioner, in accordance with law. Till the time the said appeal is decided, the interim order passed by the Coordinate Bench of this Court on 02.06.2022 to the effect that demolition of premises of the

petitioner shall remain stayed would continue.

8. The petitioner is permitted to appear through his counsel before the Municipal Council for raising submissions in support of his appeal and the complainant is also permitted to appear through his counsel before the Municipal Council. The Municipal Council would hear the said counsel in case, they appear before the Municipal Council before passing the order of appeal. The Municipal Council would give notice to the petitioner as well as the complainant informing them about the date on which, the said hearing would take place and would permit the counsel for the petitioner as well as counsel for the complainant to address arguments in appeal. The Municipal Council would decide the appeal as expeditiously as possible.

9. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

28.04.2023
Pawan

(VIKAS BAHL)
JUDGE

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