

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-36215-2019

Date of Decision: 15.02.2023

Lakshmi Chand

... Petitioner

VS.

State of Punjab & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Vipul Aggarwal, Advocate for the petitioner

Mr. JS Toor, Advocate for the respondent

Sandeep Moudgil, J.

CRM-M-1968 & 1973-2023

Allowed as prayed for. Documents (Annexure P10 to P14) are taken on record subject to all just exceptions.

CRM stands disposed of.

Main case

The petitioner, *inter alia*, seeks quashing of the complaint No.70 dated 04.10.2018 under Sections 195-A & 228 of the Punjab Municipal Act, 1911 (Annexure P6) and the impugned order dated 02.03.2019 (Annexure P9) vide which charges under Sections 195-A & 228 of the Punjab Municipal Act, 1911 have been framed.

Learned counsel for the petitioner submits that the petitioner had purchased a constructed residential house in 2009 from Puran Singh vide registered sale deed dated 18.03.2009 and is residing there since then. At that time, the said area fell within the Gram Panchayat of Nayagaon and as such no approval/sanction was needed from the Panchayat. However, on 04.10.2018, respondent No.2- Municipal Council, Nayagaon filed a private complaint

(Annexure P6) alleging the petitioner to have constructed the said house without approving the site plan.

Learned counsel for the petitioner contended that the private complaint has been filed without proper authorization letter and if at all there was any authorization, the same could be invoked only under Section 128 of the 1911 Act which deals with removal of latrines etc. near any source of water supply. In fact, the complaint itself is not maintainable as private complaint can only be filed under Section 199, 299 of the 1911 Act.

Further, it is contended that the petitioner had purchased the constructed house in the year 2009 from Puran Singh which was already an old house and constructed long time back and at that time, the house fell within the limits of village Nayagaon and as such, no site plan was required. The Municipal Council, Nayagaon was notified much later after the construction of the house in question.

It is further the case of the petitioner that the action of the respondents is violative of the principle of natural justice as no notice in writing for demolition of unauthorized construction was given to the petitioner. It is well settled that if the owner of a building raises construction without sanction from the authority, notice of demolition is to be issued within 6 months of the date of construction and in the present case, the said period of 6 months has already expired as per the requirement of Section 195-A(1) of the 1911 Act which deals with staying the construction of a building and to stop its construction.

Learned counsel has placed on notice dated 14.03.2017 (Annexure P14) which was furnished to the petitioner through RTI. He contends that the

said notice was never served upon the petitioner Lakshmi Chand as the signature of receiving the said notice has been done in English whereas petitioner always does his signature in Hindi. It shows that the said signature in English were never done by the petitioner and as such the same is forged.

Notice of motion in this case was issued on 30.08.2019 and further proceedings were ordered to be stayed by this Court. Pursuant thereto, the respondent No.2&3 have filed their reply, which is taken on record.

Learned counsel for respondent No.2 – Municipal Council, Nayagaon has filed reply dated 15.09.2022 wherein it has been averred that undoubtedly the constructed house was purchased on 18.03.2009 against sale consideration of Rs.9,75,000/-. On bare perusal of the sale deed reflects that under the head ‘Description of Value of the Property’, no information has been provided regarding floor which clearly suggests that at the time of execution only ground floor was existing and subsequent constructions over first and second floors were carried out in 2017 and as such impugned notice was issued to the petitioner for initiating construction without having the site plan approved. Prior to 2017, during survey of year 2013-14 (Annexure R-2/2), only ground floor was found constructed which is measuring approximately 1100 sq.feet. Reliance has been placed on **State of Haryana vs. Ch.Bhajan Lal & Ors. AIR 1992 SC 604** and **Som Mittal vs. Govt. of Karnataka 2008(2) RCR (Crl.) 92** to contend that criminal prosecution can only be quashed in rarest of rare cases at the initial stage and that the Magistrate is not to weight the evidence so meticulously as he is required to do during trial and is only to see whether or not there is any sufficient ground for proceeding against the accused.

At this stage, learned counsel for the petitioner vehemently contended that the notice itself is bad in law as it does not specify the details of the property and as to what are the illegal constructions, if any, raised by the petitioner. In the reply, the respondents have come up with a stand that there was single storey construction at the time of purchase, however, the petitioner raised subsequent constructions over first and second floors in 2017 but the said fact is totally missing in the notice.

Having heard learned counsel for the parties and after going through the record, this Court is of the considered opinion that this petition ought to succeed.

Section 195 of the 1911 Act provides for penalty for disobedience in regard to a building begun, erected or re-erected and the Committee may issue notice to be '**delivered to the owner**', '**within six months**' from the completion of the building.

“195. Penalty for disobedience:- Should a building be begun, erected or re-erected.-

(a) without sanction as required by section 189(1); or

(b) without notice as required by section 189(2) ; or

(c) when sanction has been refused;

the [committee] may by notice delivered to the owner within six months from the completion of the building, require the building to be altered or demolished as it may deem necessary within the period specified in such notice; and should it be begun or erected,

(d) in contravention of the terms of any sanction granted; or

(e) when the sanction has lapsed; or

(f) in contravention of any bye-law made under section 190; or in the case of a building of which the erection has been deemed to be sanctioned under section 193(4), if it contravenes any scheme sanctioned under section 192; the [committee] may by notice to be delivered to the owner within six months

from the completion of the building require the building to be altered in such manner as it may deem necessary, within the period specified in such notice:

Provided that the committee may, instead of requiring the alteration or demolition of any such building, accept by way of compensation such sum as it may deem reasonable...”

A perusal of the above would show that it is provided under the Act that the notice for violation of Section 189(1)&(2) has to be delivered to the owner and that too within 6 months of the completion of the building requiring to alter or demolish that portion of the building that has begun, erected or re-erected. In the present case, the petitioner has disputed the signature regarding receipt of the notice as the same are inscribed in English whereas the petitioner is does not know English and always inscribes his signature in Hindi.

Secondly, the construction is admittedly prior to the year 2009 and at that time, no notice was issued as according to the respondent, the survey conducted in the year 2013-14, there was no violation. Suddenly, in the year 2017, the respondent found that the petitioner has constructed 2 more floors without getting the site plan approved. The reply is absolutely silent as to when re-survey in the year 2017 was conducted so as to fulfill the requirement of Section 195 that notice has to be issued within 6 months from the completion of the building. The issue of limitation of six months arises only when a person asserts to be owner of the property. Reliance has been placed on Supreme Court decision in **Faridabad Complex Administration vs. Yadu (1997) 3 SCC 491**.

Thirdly, notice itself is silent as to of which portion of the building approval of the site plan is required to be obtained. In the absence of such information, no liability can be fastened upon the petitioner to have violated the

building scheme of the Act as it was incumbent upon the respondents to give details of each and every violation and/or to specify the details of that portion of the building, the construction of which has begun or already erected, which is required to be approved by the statutory authority.

It is also well settled that the object of introducing Section 468 of CrPC was to put a bar of limitation on prosecutions and to prevent the parties from filing cases after a long time, as it was thought proper that after a long lapse of time, launching of prosecution may be vexatious, because by that time even the evidence may disappear and therefore, the prosecution initiated by the respondents after the lapse of statutory period of 6 months is against the general rule of limitation which is based on *vigilantibus, et non dormientibus, jura subveniunt* i.e. one who is vigilant and not the sleepy, are assisted by the laws.

Since the very basis i.e. requirement of the Act for having delivered the notice to the owner within 6 months of the date of construction, itself has not been fulfilled by the respondents, the impugned action cannot withstand the requirement of Section 195 of the 1911 Act.

For the reasons mentioned above, this petition is allowed and the impugned complaint dated 04.10.2018 as well as the order dated 02.03.2019 including the notice dated 14.03.2017 (Annexure P14) are quashed.

15.02.2023

V.Vishal

1. Whether speaking/reasoned?

2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No

Yes/No