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

CR-5295-2022 (O&M)

Date of Decision: 14.02.2023

Municipal Corporation, Patiala

....Petitioner

Versus

Baljinder Kaur

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Sarthak Soni, Advocate
for Mr. Sanjeev Soni, Advocate
for the petitioner.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 02.07.2018 (Annexure P-5) passed by learned Civil Judge (Jr. Division), Patiala as well as order dated 01.04.2022 (Annexure P-6) passed by learned First Appellate Court affirming order of learned Trial Court, whereby application under Order 39 Rules 1 & 2 CPC filed by the plaintiff/respondent for grant of ad-interim injunction, was allowed and petitioner Municipal Corporation was restrained from interfering in the construction work being done by plaintiff/respondent.

2. Succinct facts first, as pleaded in the revision petition.

2.1. Plaintiff/respondent had got residential building plan sanctioned and as per the sanctioned site plan (Annexure P-1), at the front 12 feet space had to be left open and thereafter the residential construction has to be started. However, plaintiff/respondent in utter violation of the sanctioned site

plan has started raising construction by covering the open space required to be left in front of the plot and instead of rooms, has constructed a hall with clear intention of using it for commercial purposes. Staff of the Municipal Corporation-petitioner immediately swung into action and issued notice dated 08.09.2017 under Section 270 of the Punjab Municipal Corporation Act, 1976 to stop the construction of the hall against the sanctioned site plan. Thereafter, another notice dated 11.09.2017 under Section 269 (1) of the Punjab Municipal Corporation Act, 1976 was issued to plaintiff/respondent for violation made by him.

2.2. Aggrieved against the said notices the plaintiff/respondent filed a civil suit for permanent injunction restraining the defendant/petitioner from dismantling any part of the said house. Ld. Trial Court granted *Ex Parte* ad interim injunction vide its order dated 20.09.2017 (Annexure P-3). Under the garb of said injunction, plaintiff/respondent continued with unauthorized construction against the sanctioned site plan.

2.3. Upon notice, the Municipal Corporation-petitioner appeared and filed a detailed written statement wherein it was specifically alleged that plaintiff/respondent was raising illegal construction against the site plan. However, vide impugned order dated 02.07.2018 (Annexure P-5), Ld. Trial Court allowed the application under Order 39 Rules 1 & 2 CPC filed by the plaintiff/respondent. Aggrieved by the said impugned order, the petitioner corporation preferred an appeal, but the same was also dismissed vide impugned order dated 01.04.2022 (Annexure P-6). Hence, the present revision petition.

3. Given the nature of order being passed, there is no necessity to issue notice to respondent as no prejudice would be caused to him. Notice to respondent is thus dispensed with.
4. Having heard the arguments of learned counsel for petitioner Corporation and gone through the record, it transpires that petitioner Corporation has not been restrained from taking action in accordance with law against plaintiff/respondent in case the suit property, which is stated to be a commercial shop, is put to use without seeking completion certificate, which is a pre-requisite before the same is put to use.
5. Learned counsel appearing on behalf of petitioner-Corporation states that the Corporation has not issued any completion certificate *qua* the shop in question.
6. Being so, since the petitioner-Corporation is not restrained by learned Courts below from taking action against putting the shop in use without completion certificate, it has liberty to do so i.e. to take action in accordance with law if the shop is put to use without obtaining the completion certificate.
7. Dismissed.
8. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

February 14, 2023
ashish

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No