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

CWP No.24416 of 2023

Date of Decision: 20.12.2023

Ravinder Kumar and others

..... Petitioners

Versus

**Commissioner, Municipal Corporation,
Amritsar and another**

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Akhilesh Vyas, Advocate
for the petitioners.

Mr. Sanjeev Soni, Advocate with
Mr. Sarthak Soni, Advocate
for the respondents.

RAJESH BHARDWAJ, J. (ORAL)

Present writ petition has been filed for setting aside the order dated 14.01.2020 (Annexure P-14) passed by learned Additional District Judge, Amritsar. Further prayer has been made for restraining respondent No.2 or its officials to demolish the construction raised on the property in dispute bearing No.517 529/11 No.722/XI-6, Khana Shumari situated at Guru Ka Mehal, Guru Bazar, Amritsar.

Present petition has arisen on the dismissal of the appeal filed by the petitioners under Section 269(2) of the Punjab Municipal Corporation Act (hereinafter referred to as 'the Act') against the order

passed under Section 269(1) of the Act, vide impugned order dated 14.01.2020 passed by the learned Additional District Judge, Amritsar.

Learned counsel for the petitioners has submitted that the petitioners purchased the property bearing No.517, 529/11 No.722/XI-6 Khana Shumari situated at Guru Ka Mehal, Guru Bazar, Amritsar in the form of house and shops from Smt. Ramavij vide registered sale deed dated 16.02.2016 for 1/3rd share each. He submits that this property had been subjected to entry in the House Tax Assessment Register. He submits that the petitioners started residing in the said property and raised construction in the same in the month of August, 2017 as the property was in dilapidated condition. He submits that the property was renovated on day to day basis. He submits that the petitioners were asked by the respondents to compound the construction and they issued cheque No.007301 drawn on Allahabad Bank, Amritsar in the name of Municipal Town, Planner, Municipal Corporation, Amritsar along with a covering letter. He submits that prior intimation to the respondents and with the submission of the cheque of the compounding fee were asked for raising the construction and thereafter the petitioners starting raising the construction in the said property. He has submitted that on 09.11.2017, the petitioners were served with the notice stating therein that the notice dated 18.10.2017 had been served as show cause notice on the petitioners as to why the demolition be not made of the property as there was no representation and the construction was alleged to be illegal. He submits that being aggrieved the petitioners filed an appeal under Section 269(2) of the Act on 13.11.2017. He submits that the respondents appeared in

the matter and filed the written statement dated 02.01.2018 denying the contentions raised by the petitioners in their appeal. He has submitted that the petitioners filed an application for additional evidence under Section 384 of the Act read with Order 41 Rule 27 of CPC. He submits that the learned Additional District Judge, Amritsar without appreciating the evidence on record and the law settled, dismissed the appeal by passing the impugned order dated 14.01.2020 and the application for additional evidence has also been illegally dismissed. It has been submitted by learned counsel for the petitioners that during the pendency of the appeal, the petitioners had specifically contended that no show cause notice of any kind whatsoever was served upon them by the respondents, hence, the demolition order passed was illegal and unwarranted. He submits that the petitioners were not provided any opportunity of hearing and as such the demolition could not be carried out without providing any reasonable opportunity of hearing to the petitioners. He submits that the demolition order under Section 269 of the Act could be passed by the Commissioner and not by the Assistant Town Planner whereas the demolition order dated 09.11.2017 in the present case was issued by the Assistant Town Planner. He submits that the application filed for adducing the additional evidence was illegally rejected by the learned Appellate Court. He submits that the petitioners had paid all the requisite fee and it was already in the knowledge of the respondent department that the petitioners were proceeding with the construction but they raised no objection to the same. He submits that the notice dated 18.10.2017 was never served upon the petitioners as they

never received any such notice. He submits that the petitioners received only the notices dated 09.11.2017 and 11.11.2017 but no notice prior to that was received by the petitioners. He submits that the demolition as per the provisions of Section 269(1) of the Act can be carried out only after providing a reasonable opportunity to show cause why such demolition be not made. However, there was no notice given to the petitioners and thus, the impugned notice for demolition is totally illegal. He submits that the learned Appellate Court has failed to appreciate the same and thus, arrived at a wrong conclusion. He has relied upon the judgment passed by this Court in “*Tarlok Singh vs. The Municipal Corporation of Amritsar*”, 1986 (2) PLR 540. He further submits that thus, the impugned notice being totally against the statutory provisions of Section 269(1) and (2) of the Act and the law settled are totally unsustainable in the eyes of law and deserves to be set aside.

Heard.

After hearing learned counsel for the petitioners and perusing the record, it is apparent that the petitioners were served with the notice dated 09.11.2017 under Section 269(1) of the Act wherein they were asked to show cause within three days as to why the order for demolition of the unauthorized construction be not made. The petitioners challenged the same by way of filing an appeal under Section 269(2) of the Act before the learned Additional District Judge, Amritsar. On filing the appeal, the learned Appellate Court issued the notice to the respondents authorities and they duly appeared before the Appellate Court by filing their reply. On the submissions made by learned counsel

for the parties and perusing the record, it has been found that the notice dated 18.10.2017 in compliance of the requirement of proviso of Section 269(1) of the Act was sent to the petitioners but they refused to receive it and hence, the said notice was affixed on the premise of the petitioners at a conspicuous place under the order of the Competent Authority. The refusal to receive the notice was also substantiated from the report of the serving official under the signature on 19.10.2017. Thus, it has been found that it was only after the failure of the petitioners to avail that opportunity to show cause in response to the notice dated 18.10.2017 under Section 269(1) of the Act, final demolition notice dated 19.11.2017 was issued to the petitioners. Though, the petitioners had filed an application under Section 384 of the Act read with Order 41 Rule 27 of the CPC to lead the additional evidence but it has been established that the notice dated 18.10.2017 was issued to the petitioners under Section 269(1) of the Act but the petitioners refused to accept the same. Hence, the Appellate Court has rightly rejected the application. It has been found that show cause notice dated 18.10.2017 had been issued under Section 269(1) of the Act, and no violation of the statutory provisions has been committed by the respondents authorities. Thus, the demolition notice dated 09.11.2017 was issued in accordance with the statutory provisions of the Act and the Appellate Court has appreciated entire evidence on record and the statutory provisions in the light of the law settled.

The appeal filed by the petitioners was dismissed by the learned Additional District Judge vide impugned order dated 14.01.2020.

However, the petitioners earlier filed **CWP No.3358 of 2023**, which was

dismissed as withdrawn with liberty to file a fresh one with better particulars vide order dated 17.02.2023. Thereafter, the present writ petition has been filed. The judgment relied upon by the petitioners is distinguishable on the facts and circumstances of the present case.

In the overall facts and circumstances of the present case, this Court does not find any infirmity in the impugned order dated 14.01.2020 passed by the learned Appellate Court and hence, the present petition being devoid of any merit is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

20.12.2023

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