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

CWP No.9909 of 2022

Date of Decision: 13.02.2024

Jagdish Kumar

..... Petitioner

Versus

**Defence Estate Officer, Jalandhar Circle,
Jalandhar Cantt and others**

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Puneet Kumar Bansal, Advocate
for the petitioner.

Mr. Arun Gosain, Senior Govt. Counsel
for the respondents.

RAJESH BHARDWAJ, J.

Present writ petition has been filed for quashing the order dated 25.02.2020 (Annexure P-6) whereby appeal filed by the petitioner was wrongly dismissed. Further prayer has been made for setting aside the order dated 30.04.2019 (Annexure P-4) passed by respondent No.2 whereby order for demolition and removal of alleged unauthorized construction has been passed against the petitioner.

Learned counsel for the petitioner has submitted before this Court that one Harnam Singh was recorded as Holder of Occupancy Rights (HOR) with the respondents in Bungalow No.86 situated at Ferozpur Cantt. He submits that the said property was occupied on Old Grant Terms which are governed under the Governor General Order (for

short 'GGO') No.179 of 12.09.1836. He submits that Rule 6 of the said GGO deals with the manner in which the property is to be allotted as well as the manner in which the property can be used by the HOR. He has submitted that notice under Section 5-B of the Public Premises Act was issued to the petitioner with the allegation that the petitioner raised the unauthorized construction of a shop measuring 12'x14½'. He submits that the petitioner replied to the show cause notice by stating that he had taken the shop on rent from Harnam Singh, who was recorded holder of occupancy rights with the respondent department. He submits that the petitioner was regularly paying the taxes to the Cantonment Board and even the electricity meter has been installed at the spot for the last more than 40 years. He has submitted that no new construction was raised and the property was more than 40 years old. He submits that the Defence Estate Officer had to produce the sanctioned site plan *qua* the construction in property No.86. However, as the same was not produced by the respondent, thus the eviction of the petitioner on the presumption that the construction was unauthorized is totally unsustainable in the eyes of law. He submits that the payment of taxes to Board was for the services provided by the cantonment board and it did not confer any ownership. He submits that the Government of India was the owner of Bungalow No.86 and Harnam Singh was recorded a holder in the GLR maintained by the Department. He has submitted that respondent No.1 passed the impugned order dated 30.04.2019 directing the petitioner to remove the alleged unauthorized construction. Being aggrieved by the same, the petitioner filed an appeal before the learned District Judge.

However, the learned District Judge without appreciating the evidence on record illegally dismissed the same. He submits that the documents including the sanctioned site plan of bungalow No.86 were in possession of the respondents department and they intentionally did not produce the same on record. He submits that once the record is with the department, it was incumbent upon them to produce the said record for proving the allegations regarding the alleged unauthorized construction. He submits that respondent No.1, who was the applicant, himself decided the case and thus, there is a violation of the principle of natural justice. He has submitted that the property in dispute is at least more than 40 years old and thus, the allegation regarding the unauthorized construction is factually incorrect which the Court has failed to appreciate. He submits that the impugned orders having been passed beyond the evidence on record and against the settled principles of law thus, are unsustainable in the eyes of law.

Learned counsel for the respondents however has opposed the submissions made by learned counsel for the petitioner. He has submitted that there is no violation of the principles of natural justice as contended and the order has been passed on the evaluation of the evidence produced by both the sides. He has submitted that the unauthorized construction made by the petitioner was duly proved and thus, the eviction order was passed in accordance with law. He has submitted that there being no infirmity in the order passed, the petition deserves to be dismissed with costs.

Heard.

On hearing learned counsel for the parties and perusing the record, it is deciphered that the land underneath/appurtenant to Bungalow No.86, comprising GLR Survey No.202, admeasuring 3.85 acres belongs to Govt. of India, Ministry of Defence, and falls under the management of the Defence Estate Officer, Jalandhar Circle, Jalandhar Cantt. The said premises is held on "Old Grant" governed by GGO No.179 of 12.09.1836. As per terms and conditions laid down in the said GGO No.179 of 12.09.1836, no sale/purchase can take place without prior permission from the competent authority and no erection/re-erection of the building could be made by any person and no change of purpose can take place without having obtained prior permission for the same from the competent authority. On finding the unauthorized construction having been made by the petitioner, a show cause notice dated 26.10.2006 was issued to the petitioner under sub-section (1) of Section 5-B of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short 'the Act') and the proceedings were initiated before the Estate Officer, Jalandhar Circle, Jalandhar Cantt. The petitioner filed the reply to the same. On hearing both the sides, the Estate Officer passed the order dated 30.04.2019 for demolition and removal of unauthorized construction. The petitioner assailed the same by way of filing an appeal before the learned Additional District Judge, Ferozepur. As evident from the record, the Additional District Judge vide his order dated 04.08.2018 had remanded the case to the respondent authorities for passing a fresh order after affording reasonable opportunity of being heard to the petitioner. Thus, on re-hearing the petitioner, a fresh impugned order dated 30.04.2019

was passed. The learned Appellate Court heard both the sides and perused the complete evidence on record. The unauthorized construction i.e. a shop measuring 12’00”x14’6” was found to have been made and despite having been granted numerous opportunities to the petitioner for producing the sanctioned plan, same was not produced. It is also apparent from the record that the petitioner had failed to produce any document in support of any claim to the right of occupancy on the Old Grant Terms of Bungalow No.86. Thus, the plea taken by the petitioner was appreciated by the learned Civil Court after having been provided due opportunity to the petitioner.

Thus, this Court does not find any illegality in the proceedings carried out by the respondents authorities. The learned Appellate Court had appreciated the grievances raised by the petitioner in accordance with law.

Hence, this Court does not find any infirmity in the impugned orders passed. Resultantly, the petition being devoid of any merit is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

13.02.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No