

118 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-19612-2024 (O/M)
Date of decision : 13.08.2024

Pushpa Rani Petitioner
Versus

State of Haryana and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Robin Mahiwal, Advocate,
for the petitioner. (Through Video Conferencing)
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HARSH BUNGER, J.

1. Petitioner (Pushpa Rani) has filed the instant civil writ petition under Article 226 of Constitution of India, inter alia, seeking an appropriate writ/order/direction to set aside the building/site plan (Annexure P-15), sanctioned by Municipal Committee, Pehowa (respondent No. 2) on 24.07.2024 in respect of plot of respondent No. 4-Balwinder Kaur by ignoring the killa numbers mentioned in the registered sale deed in favour of respondent No. 4, which is different from the Rect. Number/Killa Number mentioned in the revenue record.

1.1 A further prayer has been made by the petitioner for directing respondent No. 2 to direct respondent No. 4 to construct her house on the actual land i.e. Rect. No./Killa No. mentioned in the sale deed.

1.2 Another prayer has been made by the petitioner for directing respondent No. 2 to restrain respondent No. 4 to raise construction and to demolish illegal and unauthorized structure.

2. Briefly, the petitioner is stated to have purchased a constructed house measuring 135 sq. yds. in the year 2006 from one Shri

Sukhwinder Singh and since the date of purchase, the petitioner is stated to be in physical possession of the said house. As per the petitioner, on the back wall of the said house, a ventilation space with grills was carved out by the previous owner for the purposes of air, sunlight and proper ventilation and behind the said house, there was agricultural land measuring about one acre. It is the pleaded case of the petitioner that in the year 2014, some private colonizers have purchased the said piece of agricultural land and carved out plots thereon, which includes a plot measuring 142 sq. yds. which has been carved out at the backside of petitioner's house, which has been purchased by respondent No. 4 in June, 2024. It is stated that respondent No. 4, after purchasing the said plot falling on the rear side of the house of the petitioner, started construction thereon without getting the building/site plan sanctioned. According to the petitioner, she alongwith her children had approached respondent No. 4 with a request to her that the ventilation space at the backside of petitioner's house be not blocked and some space be left for the purpose of ventilation, air and sunlight, however, the said request is stated to have turned down by respondent No. 4.

2.1 It appears that the petitioner submitted an application before the Municipal Committee, Pehowa (respondent No. 2) complaining that the construction by respondent No. 4 was being carried out in an illegal and unauthorized manner. As per petitioner's own case, respondent No. 2 had issued a notice under Section 208 of Haryana Municipal Act, 1973, to respondent No. 4, restraining her from raising any construction whatsoever on the said plot till further notice, however, the petitioner claims that respondent No. 4 is continuing to raise illegal construction. In

this regard, the petitioner is stated to have submitted representations to the municipal authorities, however, it is claimed that no action has been taken thereon.

2.2 Petitioner states that when she again approached respondent No. 2 on 08.07.2024, she was told that respondent No. 4 had applied for sanctioning of building/site plan and she has been permitted to resume construction and, thereafter, upon going through the documents shown by respondent No. 2, the petitioner claims to have noticed some discrepancies in the map of the colony.

2.3 It is stated that earlier the petitioner filed CWP-16925-2024, which came to be disposed of by this Court, vide order dated 23.07.2024 (Annexure P-10), directing respondent No. 2 to consider and decide the representations submitted by the petitioner, within a period of four weeks from the date of receipt/production of certified copy of said order.

2.4 Now, the present writ petition has been filed on the plea that the representations dated 20.06.2024, 24.06.2024 and 09.07.2024 (Annexure P-2, Annexure P-4 and Annexure P-9, respectively in CWP-16925-2024) submitted by the petitioner were limited to the extent of sanctioning the building/site plan by respondent No. 2 in accordance with the provisions of Haryana Building Code, 2017 (in short '2017 Code') as at the time of filing the said petition, the building/site plan pertaining to respondent No. 4's plot was not sanctioned by respondent No. 2. It is submitted that on 24.07.2024, the building/site plan submitted by respondent No. 4 has been sanctioned by respondent No. 2 without taking into account the difference between the description of the property in registered sale deed, mutation and jamabandi of respondent No. 4's

plot. It is further submitted that the construction at site is going on at full speed and due to the inaction of respondent No. 2, respondent No. 4 is raising illegal and unauthorized construction in contravention of building/site plan sanctioned by respondent No. 2 and in gross violation of Haryana Building Code, 2017. It is next submitted that on 25.07.2024, the petitioner submitted another representation (Annexure P-12), however, no action has been taken and the building is being constructed by respondent No. 4 in contravention of the provisions contained in 2017 Code and without leaving the minimum front and rear setback, which according to the petitioner is 8ft and 7ft, respectively as per the building/site plan in respect of plot of respondent No. 4. Petitioner further claims to have submitted the representations dated 29.07.2024 and 02.08.2024 (Annexure P-17 Colly.).

3. In the aforementioned circumstances, the petitioner has filed the instant civil writ petition for the relief(s), as noticed above.

4. I have heard learned counsel for the petitioner and have perused the paperbook with his able assistance.

5. From a perusal of the paperbook, it is borne out that the petitioner is primarily aggrieved against the construction being carried out by respondent No. 4 on a plot, which falls on the rear side of house of the petitioner. The petitioner is claiming that on account of construction being raised by respondent No. 4, the ventilation space left in the rear wall of the house of petitioner, meant for air, sunlight and proper ventilation; has been blocked as the required setback area has not been left by private respondent No. 4. However, learned counsel for the petitioner has failed to point out any material/document to indicate that

the construction raised on her property is in accordance with the approved plans wherein the space left on the rear wall of her house (as reflected in the attached photographs) for air/ventilation/sunlight is approved by the competent authorities.

5.1 Rather, in para-20 of the writ petition, the petitioner has averred as under :-

“20. That it has come to the knowledge of the Petitioner that the Municipal Committees/Corporations allows the wall-to-wall constructions and full coverage of the plot area which is totally gross violation on the part of Municipal Committees/Corporations as the said constructions are harmful for the inhabitants of the residential area and which is also against the spirit of the Code. In the instant case, the construction of the Petitioner's house is 20 years old and in case the ventilation space of petitioner's house is covered by respondent No. 4 then it would result in the blockage of ventilation in the petitioner's house. In case, the Petitioner tries to make a space for ventilation on the lintel (lanter) then there is a likely-hood that lintel (lanter) of her house may fall off and the Petitioner, who is a widow and is living on the pension of her deceased husband, is not financially sound enough to again raise a construction or make some other arrangements for the purpose of ventilation through the roof.”

5.2 Be that as it may, from the averments made in the writ petition, it is observed that besides there being disputed questions of fact, the petitioner appears to be agitating her easementary rights. In my considered view, the remedy as regards claim for easementary rights would lie before the civil court by way of filing a civil suit. That apart, as regards the alleged unauthorized constructions by respondent No. 4 by

way of full coverage of plots in violations of 2017 Code is concerned, the petitioner's plot/house also appears to have constructed with full coverage. In any case, the earlier civil writ petition i.e. CWP-16925-2024 has already been disposed of by this Court, vide order dated 23.07.2024 (Annexure P-10) wherein respondent No. 2-Municipal Committee, Pehowa has been directed to consider and decide the representations dated 20.06.2024, 24.06.2024 and 09.07.2024 within a period of four weeks from the date of receipt/production of certified copy of that order. Apparently, the period of four weeks as stipulated, vide order dated 23.07.2024, has not lapsed and the petitioner is stated to have submitted subsequent representations as well, highlighting the alleged subsequent acts of respondent No. 4. Therefore, the authorities can very well look into those aspects as well and take necessary decision thereon.

5.3 As regards the petitioner's grievance in respect of colony being developed on the rear side of her house is concerned, the petitioner can, if so advised, approach the Haryana Real Estate Regulatory Authority, in accordance with law.

6. In view of the aforementioned facts and circumstances, the present petition is dismissed with the aforesaid observations and with liberty to the petitioner to avail her remedies as available to her before the appropriate authorities/forum, in accordance with law.

7. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

13.08.2024

sjks

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