



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.20694 of 2024
Reserved on 16.09.2024
Pronounced on: 15.10.2024.

Sanjitsihag and another
.....Petitioners
Versus
Union Territory of Chandigarh and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Kanwaljit Singh, Senior Advocate with
Mr. Veer Imaan Singh Gill, Advocate
for the petitioners.

Mr. Sanjiv Ghai, Advocate and
Mr. Parminder S. Kaul, Advocate
for the respondents.

VIKRAM AGGARWAL, J.

1. The petitioners assail the orders dated 16.07.2024 (Annexures P-8 and P-9) vide which the construction raised by the petitioners was ordered to be demolished.
2. It is the case of the petitioners (Sanjitsihag and Amarjit Singh) that they had purchased land measuring 6 Kanals 6.73 Marlas jointly with one Saurabh Mehan vide sale deed dated 25.01.2023 (Annexure P-2) and petitioner No.1 had alone purchased land measuring 5 Kanal 17 Marlas vide sale deed dated 15.12.2023 (Annexure P-1). Both lands are in the same Khasra Number (described in the sale deeds) and are situated at Village Raipur Khurd, Union Territory, Chandigarh.

3. It has been averred that the entire land in Village Raipur Khurd has been utilized by raising construction and private colonies have come up in the said area and that construction up to four storeys has also been raised. Electricity and water connections had been provided to all those who had raised construction including the petitioners. It is the case of the petitioners that 300 shops and hotels and around 2500 residential houses have been constructed in the said area which is evident from the photographs (Annexure P-4).

4. After purchase of the land, petitioners had started raising construction and had raised the same up to the slab level as would be evident from the photographs (Annexure P-5).

5. The petitioners received notices dated 21.03.2024 (Annexures P-6 and P-7) issued under Section 12(2) of the Punjab New Capital (Periphery) Control Act, 1952 (hereinafter referred to as the Periphery Control Act) as per which, the petitioners were stated to have contravened the provisions of the Periphery Control Act by raising unauthorized construction in the nature of houses over agricultural land in Village Raipur Khurd. The petitioners were called upon to appear before the competent authority on 28.03.2024 to state their position. It is the case of the petitioners that they had been going to the office of respondent No.3 on various dates and had also submitted that there were no sanctioned building plans within the entire area of Raipur Khurd and entire construction in the area had been raised without seeking any permission. However, in an arbitrary and illegal manner, demolition orders dated 16.07.2024 (Annexures P-8 and P-9) were passed. It has been averred that though an inquiry is stated to have been conducted, no inquiry report has been discussed in the said demolition order

nor any opportunity was given to the petitioners to peruse the inquiry report and to submit a representation and further that no opportunity of hearing had been granted before passing of the demolition orders after three months of the so called hearing.

6. It has also been averred that on one hand the demolition orders (Annexures P-8 and P-9) were passed and on the other hand, vide notices dated 10.07.2024, the petitioners were called upon to appear before the authorities for an opportunity of hearing on 25.07.2024. It has been averred that when the petitioners went to the office of respondent No.3 on 25.07.2024, the case was adjourned to 08.08.2024 and subsequently to 05.09.2024 leading to the filing of the instant writ petition.

7. Learned Senior counsel representing the petitioners and Mr. Sanjiv Ghai, learned counsel representing the respondents who had caused appearance on advance copy of the petition having been served were heard.

8. Learned Senior counsel representing the petitioners submitted that the impugned orders of demolition are completely illegal and arbitrary as no proper opportunity of hearing was granted and after passing of the same, further notices dated 10.07.2024 have been issued. Learned Senior counsel made pointed reference to the initial notices dated 21.03.2024, the demolition order dated 16.07.2024 and the fresh notices dated 10.07.2024 and submitted that the entire proceedings had been conducted in a most arbitrary manner in gross violation of the principles of natural justice. It was submitted that the enquiry report referred to in the demolition orders was never supplied to the petitioners nor were the petitioners given any opportunity to rebut the same. Learned Senior counsel further submitted that

there was no application of mind before passing of the impugned orders and a bare perusal of the same would show that the orders are cyclostyled orders.

9. Learned Senior counsel further submitted that there are many buildings in the area which have been raised without any permission, but it is only the petitioners who have been targeted for reasons best known to the respondents. Another argument which was raised by learned senior counsel was that it is still not ascertained as to whether actually the Periphery Control Act would apply or not because the area is densely populated. Learned Senior counsel submitted that the least that is expected of the authorities is to provide a proper opportunity of hearing so that the petitioners could at least put their case before the authorities in a proper manner. On a pointed query put by the Court as to whether the petitioners had obtained any permission before raising construction, learned Senior counsel conceded that no such permission was ever taken nor are there any sanctioned building plans.

10. On the other hand, Sh. Sanjiv Ghai, learned counsel representing the respondents submitted that there is no illegality in the demolition orders and that they have been passed after giving due opportunity of hearing to the petitioners. As regards the fresh notices dated 10.07.2024, learned counsel submitted that these notices are with regard to some other construction and not with regard to the construction as regards which the notices had earlier been issued and the demolition orders had been passed. Learned counsel referred to the said notices as also the previous notices and demolition orders to prove his point.

11. We have considered the submissions made by learned counsel for the parties.

12. Section 12 of the Periphery Control Act, lays down as under:-

“Offences and penalties. - (1) Any person who-

(a) Erects or re-erects any building or makes or extends any excavation or lays out any means of access to a road in contravention of the provisions of Section 5 or in contravention of any conditions imposed by an order under Section 6 or Section 7;or

b) Uses any land in contravention of the provisions of sub-section (1) of Section 11; Shall be punishable with imprisonment of either description for a term which may extend to two years and fine which may extend to five thousand rupees and in the case of a continuing contravention with further fine which may extend to five hundred rupees for every day after the date of the first conviction during which he is proved to have persisted in the contravention.

2) Without prejudice to the provisions of sub-section. (1), If the Deputy Commissioner, after making such enquiry as he considers necessary and after affording an opportunity of being heard to the persons concerned, is satisfied that such person has committed a breach of the provisions of the said sub-section he may pass an order requiring that person to restore to its original state or to bring into conformity with the conditions which have been violated, as the case may be, any building or land in respect of which a contravention such as is described in the said sub-section has been committed, and if such person fails to do so within six weeks of the order, may himself take such measures as may appear to him to be necessary to give effect to the order and the cost of such measures shall be recoverable from such person as an arrears of land revenue.”

13. The initial notices dated 21.03.2024 were issued under Section 12(2) of the Periphery Control Act in which it was stated that the petitioners had raised unauthorized construction of houses in the concerned land which had been declared as a controlled area. The petitioners, were, therefore, called upon to appear before the competent authority on 28.03.2024 at 3.00 p.m. The impugned demolition orders dated 16.07.2024 show that on 28.03.2024 the petitioners neither appeared before the concerned authority nor did they submit any document. Thereafter, multiple opportunities were granted to them on 04.04.2024 and 18.04.2024 to explain their position. As per the demolition orders, the petitioners appeared on 04.04.2024 but failed to submit any document supporting their version. They were also asked to submit any permission taken by them from the Chandigarh Administration for raising construction, but they failed to do so. It would be relevant to notice that even while arguing the case, learned Senior counsel had to concede, on a query having been raised by the Bench that no permissions had been obtained by the petitioners before raising construction. It was also mentioned in the order that the concerned Tehsildar/Naib Tehsildar/Kanungo had been directed to conduct an enquiry and submit a report pursuant to which report dated 08.04.2024 had been submitted which stated that it had been verified that the unauthorized residential houses had been constructed at the spot. Under the circumstances, the demolition orders were passed;

“Whereas, you were given first opportunity to appear before the undersigned and to represent yourself on 28-03-2024. But you neither appeared nor submitted any representation/document supporting your version in this case. Further, again multiple opportunities on 04.04.2024 and

18.04.2024 were given to you to explain your position in the mater. You appeared on 04.04.2024 but failed to submit any representation/document supporting your version in this case. You were also directed to submit any permission taken by you from the Chandigarh Administration for raising/constructing this structure but you have failed to provide any supporting document(s) to establish that the construction(s) raised by you on agricultural land is permissible as per the Periphery Act, 1952 nor you have taken any permission from the government for raising this construction.

Sufficient time has also been granted lo you to restore the land to its original state and use the same for agricultural purposes or purposes subservient to agriculture. Despite valid service of notice, you have failed to respond to the notice by stopping the unauthorized use of the agricultural land. The Tehsildar (Periphery)/ Naib-Tehsildar (Periphery)/ Kanungo (Periphery)/ Patwari (Periphery) on dated 04.04.2024 was directed to conduct an enquiry and submit present status of the above property to this Court. Now, they have furnished their report on dated 08.04.2024 wherein stated that the above property has been verified at the site which stands as it is.

In view of your failure to comply with the provision of Periphery Control Act, 1952 to set night the violation even after giving the multiple opportunities, I am left with no other option but to pass demolition-orders. Therefore, I, Nitish Singla, PCS, Sub-Divisional Magistrate (East), exercising the power of the Deputy Commissioner, U.T., Chandigarh under the Punjab New Capital (Periphery) Control Act, 1952 direct you to demolish the unauthorized construction immediately and restore the land to its original state within six weeks of issuance of this order as per Section 12 (2) of the Punjab New Capital (Periphery) Control Act, 1952.

Whereas on account of non compliance of these orders,

action under the aforesaid provisions of the Act ibid for demolition of unauthorized construction shall be taken by the office. It is also intimated that you shall also be liable to pay demolition charges, in case the Enforcement staff of Estate Officer carries out the demolition of the aforesaid structures. Further, this office shall also be constrained to file criminal proceedings against you for such violations, if you fail to remove the unauthorized construction within six weeks from the issuance of this order.

In case you have obtained any permission from the Chandigarh Administration or have any Stay order from Hon'ble Court regarding the erection of this structure, you may submit the same to this office immediately.

The orders were reserved on 18.04.2024 and announced today.”

14. We see no illegality in the said orders. Due opportunity of hearing was granted to the petitioners. They were also called upon to produce documents in their favour in the nature of permissions etc. but they could not produce any such document. In the considered opinion of this Court, there would have been no necessity to supply a copy of the enquiry report to the petitioners because it was an enquiry made internally just to ascertain the position at the spot and as per the demolition orders, it was stated in the enquiry report that the construction as stated in the notices existed at the spot. The argument that the orders are in a cyclostyle format is also devoid of merit because apart from issuing a show cause notice as regards the illegal construction and then recording that the same had not been removed nor had any document been produced to prove that there were some permission to raise construction, no other fact was required to be considered and no further application of mind was required. The argument that many other unauthorized buildings exist in the area is also devoid of

merit for it is well settled that such illegalities would not entitled anyone else to commit an illegality. As regards the applicability of the Periphery Control Act, it is the categoric stand of the respondents that the area concerned is a controlled area.

15. As regards the subsequent notices dated 10.07.2024, it is the stand of the respondents that the same were for a separate construction and not for the construction as regards which the previous notices and demolition orders were passed. Even a bare perusal of the notices dated 10.07.2024 shows that some fresh unauthorized construction has been raised in the form of a pillar of some foundation whereas the previous construction was that of houses. It is, therefore, clear that these notices are in no manner connected to the previous notices and demolition orders.

The aforesaid discussion would clearly show that the case of the petitioners is devoid of merit. Accordingly, finding no merit in the writ petition, the same is dismissed.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

Pronounced on: 15.10.2024
Rekha

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