

118 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-22864-2024 (O/M)

Date of decision : 10.09.2024

Akshay Sharma

..... Petitioner (s)

Versus

State of Punjab and others

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Prateek Sodhi, Advocate
for the petitioner.

Mr. Nirmaljit Singh Diwana, Senior DAG Punjab.

-. -

-. -

HARSH BUNGER, J. (ORAL)

1. Petitioner (Akshay Sharma) has filed the instant civil writ petition under Articles 226/227 of Constitution of India, inter alia, seeking a writ in the nature of certiorari for setting aside the sanction accorded to the site plan (Annexure P-5) by respondent No. 2-Municipal Corporation, Amritsar in favour of respondents No. 5 and 6. An alternate prayer has been made for directing respondent No. 2 to take a time bound decision on representation dated 29.07.2024 (Annexure P-10), submitted by the petitioner, wherein the petitioner has sought cancellation of the sanction accorded to the site plan (Annexure P-5).

2. Briefly, petitioner claims to be a resident of House No. 1, Inside Partap Steel Mills and further claims to have purchased the said property, vide sale deed dated 25.04.2021. It is alleged by the petitioner that one Jasbir Kaur had purchased a property at Sandhu Colony, Chheharta, Amritsar, vide sale deed dated 26.09.1996 (Annexure P-1),

wherein it is recited that towards the eastern side of the property, there is wall of Partap Mills. Petitioner alleges that respondent No. 6 purchased 66 sq. yds., vide sale deed dated 11.09.2011, which was adjacent to the land owned by Jasbir Kaur. It is stated that, vide sale deed dated 26.09.2023 (Annexure P-2), the aforesaid Jasbir Kaur sold the property to respondents No. 5 and 6, wherein it is illegally mentioned that towards the eastern side of the said property, there is 20 ft. street. Petitioner claims that respondents No. 5 and 6 herein have illegally changed the description of the property purchased by them by representing that the property is surrounded by an open street/gali towards the eastern side. It is further alleged that on the basis of the aforesaid incorrect recitals in sale deed dated 26.09.2023, respondents No. 5 and 6 got sanctioned a site plan by showing an open street on the eastern side of the property and they further got permission to open a back gate to the said public street.

2.1 It is the case of the petitioner that under the garb of illegal sanctioned site plan, private respondents sought to raise construction and to demolish the wall of Partap Mills, whereupon the petitioner alongwith other residents filed a Civil Suit No. 734 of 2024 on 16.03.2024, wherein the trial Court, vide its order dated 16.03.2024 (Annexure P-6), directed the parties to maintain status quo. It is further stated that upon a representation dated 05.04.2024, submitted by petitioner, respondent No. 3-Municipal Town Planner, Municipal Corporation, Amritsar, issued a show cause notice dated 15.04.2024 to private respondents herein and further issued a letter dated 06.05.2024 (Annexure P-7) to Sub Divisional Magistrate, Amritsar, requesting him to look into the matter as regards the

issue that the registry (sale deed) dated 26.09.2023 is not as per the old registry (sale deed) dated 26.09.1996.

2.2 It transpires that, vide order dated 16.07.2024 (Annexure P-8), the learned Civil Court has decided the stay application filed alongwith the civil suit, instituted by the petitioner alongwith other residents by holding as under :-

“5. Arguments heard and record perused. It would be appropriate to deal with the relief prayed against both defendants separately. First of all coming over to the relief prayed against defendant number 2. A perusal of the record reveals that the defendant number two has got sanctioned a site plan from the municipal corporation. A certified copy of the said site plan has been placed on file by the defendant number 2. A perusal of the same reveals that the gate in dispute is shown in the site plan. The learned counsel for the plaintiffs has asserted during arguments that the plaintiffs have applied to the municipal corporation for getting the said site plan cancelled and the proceedings regarding the same are going on. Now, in my view, the present day scenario has to be seen and not what may happen in future. As of today, the site plan in question stands sanctioned. It is to be believed to be validly sanctioned until cancelled. The mother of the defendant number two appears to be owning a plot of 66 yd.² in Gali Pratap Avenue, abutting the other plot of 240 yd.² owned by the defendant number 2 and his mother jointly. Both the plots have been shown in the site plan which was admittedly sanctioned by the municipal corporation. A rear setback and projection has been shown in the site plan towards the plot measuring 66 yd.². Now, if the defendant number 2 carves out a gate from that plot of 66 yd.², then also the area in front of that plot

of 66 square yards would be used only by defendant number 2 and his family for ingress and outgress. In such a scenario, would the plaintiffs have any objection? No. If the defendant number 2 installs the disputed gate at the place mentioned in the site plan, then also the said area would be used by defendant number 2 and his family. In other words, not much difference in situation would be caused if the defendant number 2 carves out the gate through plot measuring 66 square yards or through the other plot measuring 240 yd.². A question arises as to if the defendant number 2 carves out a gate through plot measuring 66 square yards, would an irreparable loss be caused to the plaintiffs. The answer is no. If such is the situation, then even if the defendant number two carves out the gate at the place where he presently intends to as per the site plan, then also no irreparable loss is going to be caused to the plaintiffs. The situation materially remains the same in both the circumstances. The plaintiffs have alleged that the installation of gate in dispute will hamper the security and safety of the plaintiffs. In my view, if the defendant number 2 opens the gate in question, no safety and security of the plaintiffs is going to be hampered as the defendant number 2 is opening a gate towards his house which is under construction and not towards any other street or open area from where antisocial elements may gain ingress into the locality of Plaintiffs. Consequently, in my view, the test of irreparable loss is not satisfied in favour of the plaintiffs. There is a contention of the learned counsel for the plaintiffs that the defendant number 2 cannot open the gate towards other locality as this is illegal. In my view, this decision lies with the concerned municipal corporation authorities. When the municipal corporation authorities have themselves sanctioned a site plan of the defendant number 2, then it

cannot be said at present that the defendant number 2 is illegally carving out the gate in question towards the other locality. Till the site plan in question which has been sanctioned subsists, the legality of the attempt of defendant number 2 to open the gate cannot be assailed. The defendant number two appears to have taken recourse to the due process of law and therefore he cannot be restrained. The gate in question would become illegal only if any illegality is found in the sanctioning of the site plan and the site plan is cancelled by the concerned municipal corporation authorities. Till then, the gate is perfectly legal. Accordingly, no prima-facie case is made out in favour of the plaintiffs. Further, the balance of convenience is also tilted in favour of defendant number two as the defendant number two has got the site plan properly sanctioned from the municipal corporation authorities. Therefore, no relief can be granted against defendant number two. However, in the same vein, it is made clear that the defendant number 2 is opening the gate in question at his own risk. If in future the municipal corporation authorities hold that the site plan was not rightly sanctioned and if they cancel the same and hold that the defendant number two cannot open the gate in question, then the defendant number two will himself bear the consequences.

6. As far as the defendant number 1 is concerned, in my view, he is required to be restrained from opening the wall towards the street of Partap Avenue. This is so because the defendant number 1 has not shown any site plan which he has got sanctioned from the municipal corporation authorities. Only if the defendant number 1 obtains permission from the said authority, the defendant number 1 can open the wall towards the street in question. In the absence of any such sanctioned site plan, the defendant

number one is required to be restrained. In my view, a prima-facie case is made out against defendant number one. If the defendant number 1 opens the wall towards the street in question without getting any site plan sanctioned, an irreparable loss may be caused to the plaintiffs. The balance of convenience is also tilted in favour of the plaintiffs as they would be certainly more inconvenienced than the defendant number one, if the defendant number 1 illegally without seeking permission from the municipal corporation authorities, opens the wall towards the street in question. Accordingly, in my view the defendant number one is required to be restrained.

7. As a sequel to the above discussion, the application in hand stands disposed of. The defendant number one is restrained from encroaching upon the Gali Partap Avenue by opening the wall of his house towards that street. However, it is made clear that nothing in this order shall affect the final merits of the case.”

2.3 Petitioner claims that the site plan (Annexure P-5) has been got sanctioned by respondents No. 5 and 6 by mis-representing the facts and by mentioning wrong details in the sale deed and in this regard, the petitioner has submitted a representation dated 29.07.2024 (Annexure P-10), however, no decision has been rendered thereon till date.

2.4 After arguing for some time, learned counsel for petitioner submits that he restricts his prayer to the alternate relief, sought in the writ petition.

3. Heard.

4. In terms of Section 264 of Punjab Municipal Corporation Act, 1976 (in short '1976 Act'), if in case, any sanction of any building or

work has been accorded and the Commissioner is satisfied that such sanction is accorded in consequence of any material mis-representation or fraudulent statement, contained in the notice given or information furnished under Sections 259, 260 and 261 of Act of 1976, then the Commissioner, may at any time by order in writing, cancel for reasons to be recorded, such sanction and any building or work commenced, erected or done shall be deemed to have commenced, erected or done without such sanction. However, before making any such order, the Commissioner is mandated to give reasonable opportunity to person affected as to why such order should not be made.

4.1 A perusal of the representation dated 29.07.2024 (Annexure P-10), would show that the same is lacking in material particulars and neither the Municipal Commissioner has been called upon to invoke his authority under Section 264 of 1976 Act.

5. In this view of the matter, the writ petition is dismissed, however, leaving it open to petitioner to approach the Municipal Commissioner, Amritsar, by submitting a detailed representation/petition, clearly making out a case in terms of Section 264 of 1976 Act.

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

(HARSH BUNGER)
JUDGE

10.09.2024
sjks

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