

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.104+239

Case No. : CR No.8073 of 2018 (O&M)

Date of Decision : February 16, 2024

N. D. Vats Petitioner
vs.
Haryana Urban Development Authority
and others Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Ashwani Gaur, Advocate and
Ms. Shivangi Sharma, Advocate
for the petitioner.

Mr. Anil Chawla, Advocate
for respondents no.1 and 2 – HUDA.

Mr. Sandeep Jain, Advocate
for respondent no.3 – Caveator.

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GURBIR SINGH, J. :

1. **CM-27593-C-II-2018** : This is application under Section 151 CPC for placing on record photographs as Annexure P-7 (in continuation of the earlier annexures appended with the petition) in furtherance of the order dated 10.12.2018 passed by this Court. For the reasons mentioned in the application, the same is allowed and Annexure P-7, as mentioned above, is ordered to be taken on record, subject to all just exceptions. The application stands disposed of.

2. **CM-5775-C-II-2020 and Main Case** : Challenge in this petition is to the order dated 30.07.2018 (Annexure P-3), passed by learned Civil

Judge (Senior Division), Hisar (hereinafter referred to as – Trial Court), whereby application moved by respondent no.3, for vacation of ad interim injunction order dated 21.12.2017 and for permitting him to raise further construction, has been allowed. Further challenge is to the order dated 31.10.2018 (Annexure P-5), whereby appeal preferred by the plaintiff/petitioner against the aforesaid order dated 30.07.2018, has been dismissed by learned Additional District Judge, Hisar (for brevity – Appellate Court).

3. The brief facts of the case, as culled out from the paper-book, are that the plaintiff/petitioner filed a suit for permanent and mandatory injunction for restraining defendant/respondent no.3 from raising construction of basement of plot no.758-BP, PLA, Hisar, at a distance of 2.4 meters from the adjacent building of House No.758-A, PLA, Hisar, which belonged to plaintiff/petitioner and further, to demolish the construction of basement already constructed and also for direction to defendants/respondents no.1 and 2 to revoke sanction of building plan and they be also directed to get the construction of basement demolished. Further, for restraining the defendants from raising further construction. Along with the suit, application for grant of temporary injunction was filed. Vide order dated 21.12.2017 passed by learned Trial Court, the said application was allowed. Relevant extract of the said order reads as under :-

“..... The respondent-defendant no.3 is restrained from raising any further construction in his entire plot i.e. basement, ground floor, first floor of any kind till further orders. It is pertinent to mention here that if respondent-defendant no.3 alters the construction of

basement of his building on written notice of respondents-defendants no.1 and 2 by making compliance of Clause 7.16 sub para 6 of Haryana Building Code, 2017 and respondents-defendants no.1 and 2 give a certificate regarding altering of basement as per said provision of Haryana Building Code 2017 to their satisfaction, the respondent-defendant no.3 shall be at liberty to approach the Court for vacation of injunction order granted today in accordance with law for raising further construction in his entire building.”

4. Defendant/respondent no.3 moved application for vacation of injunction order on the ground that after passing of order of injunction, a Committee was constituted for physical verification of the basement in question and after visiting the site, it was reported that the basement in question was constructed after 2.4 meters clear space towards the plot of the plaintiff/petitioner except the lift portion and defendant/respondent no.3 was directed to rectify the said lift portion, which has been rectified by removing lift portion wall and by constructing a fresh wall, leaving clear space of more than 2.4 meters towards the plot of the plaintiff/petitioner. A certificate bearing Memo No.9212 dated 30.03.2018 was also issued by defendants/respondents no.1 and 2 to defendant/respondent no.3 in this regard.

5. The learned Trial Court, vide order dated 30.07.2018, observed that the competent authority had already issued the certificate, as required vide order dated 21.12.2017, therefore, the stay granted vide order dated 21.12.2017 stood vacated.

6. Aggrieved against the said order, the plaintiff/petitioner filed

appeal, which has been dismissed by the learned Appellate Court.

7. During pendency of the present revision petition, on request of the parties, vide order dated 29.08.2023 passed by this Court, the Executive Engineer of defendants/respondents no.1 and 2 was directed to visit the spot and give report. The relevant extract of the said order reads as under :-

“During the course of arguments it transpires that main dispute is whether there is a wall constructed for basement by respondent No.3 between the building of the petitioner within the distance of 2.4 meter.

The learned counsel for petitioner and respondent No.3 submits that in order to resolve the dispute, that Local Commissioner can be appointed for the above said purpose.

Keeping in view that dispute between the contesting parties and it is the duty of Urban Development Authorities that there is no violation of building bye laws. So Executive Engineer of respondents No.1 and 2 posted as on today, shall visit the spot on 04.09.2023 at 11:30 A.M. and shall report (I) whether there is wall of basement or any construction including any foundation within 2.4 meter of the building of petitioner; (ii) He shall file his report within a week of inspection along with copies which shall be supplied to parties through counsel.

Learned counsel for the parties shall inform the respective parties and no further notice shall be given. The counsel for respondents No.1 and 2 shall ensure that order is conveyed to respondents No.1 and 2 for compliance.”

8. In terms of order dated 29.09.2023, a copy of report was furnished on behalf of defendants/respondents no.1 and 2 was furnished, contents whereof reads as under :-

“On the direction Hon'ble Punjab & Haryana, High Court, Chandigarh, A committee was constituted vide Estate Officer, HSVP, Hisar memo No. 211826 dated 03.10.2023, the committee visited the site on 09.10.2023 at 3.15 P.M. The report for the committee is as under:-

1. There is a wall of basement and construction of foundation exists at plot of House No. 758-BP Sector-PLA, Hisar with a distance of 2.003 M towards House No. 758-A Sector-PLA, Hisar. However no structural load has been taken on common wall of plot No. 758-BP & 758-A Sector-PLA, Hisar.

2. Owner of House No. 758-BP Sector-PLA, Hisar has constructed the building as per approved building plan issued vide Estate Officer, HSVP, Hisar letter No. 157070 dated 23.08.2017. However the owner has also constructed a additional wall in basement with a setback of 2.56 M taken from existing adjacent House No. 758-A Sector-PLA, Hisar.”

9. Learned counsel for the plaintiff/petitioner has argued that the first wall of the basement is the load-bearing wall and second wall has been constructed to mislead the authorities. The construction has been raised in violation of the building bye-laws. The Certificate issued by defendants/respondents no.1 and 2 is mere eye-wash and is totally against the factual position depicted before this Court. The main wall of the basement is still at 6 feet distance, which is required to be removed. Defendant/respondent no.3

has played fraud with the Court by making misleading statement.

10. Learned counsel for defendant/respondent no.3 has argued that the basement is at a distance of 2.4 meters from the wall of the house of plaintiff/petitioner and the same is specifically mentioned in the report submitted by the concerned Authority, before this Court. The earlier wall is there, but no construction has been raised thereon and instead of removing the same and filling earth, the said wall remains there. The entire construction is as per the building bye-laws. Since there is clear-cut report that wall of the basement is at a distance of 2.4 meters from the house of plaintiff/petitioner, and there is nothing on record that the wall earlier built at the distance of 6 feet for the basement is a load-bearing wall, so, prima facie, it cannot be said that there was any violation of provisions of Clause 7.16 sub para 6 of Haryana Building Code, 2017. For grant of temporary injunction, a party is required to prove prima facie case, balance of convenience and irreparable loss and injury. There is nothing on record that construction is raised on first wall and same is load-bearing wall. Construction is already made. None of the ingredients mentioned above exists. Everybody has right to use his property in a lawful manner. It is not a case where temporary mandatory injunction can be issued. The plaintiff/petitioner can prove, by way of evidence, whether there is any violation of building bye-laws and only thereafter, mandatory injunction can be issued to demolish the same.

11. Accordingly, in view of the foregoing discussion, the present revision petition is found to be without any merit and the same is

accordingly dismissed.

12. However, it is made clear that nothing stated herein above shall be construed to be an expression of opinion on the merits of the case.

13. Pending applications, if any, shall stand disposed of along with this judgment.

February 16, 2024
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.