

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-29146-2023(O&M)
Date of decision: 15.01.2024

Kailash Chander Kaushal @ Kailash Kaushal
... Petitioner
Versus
Chandigarh Administration and others
... Respondents

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

Present: Mr. Vikas Jain, Advocate, for the petitioner.
Mr. Ajay Jagga, Additional Standing Counsel, and
Mr. Saurabh Goel, Govt. Panel Counsel,
for the respondent(s)-UT, Chandigarh.

ARUN PALLI, J. (Oral)

The petitioner has prayed for the following substantive relief:

“Civil Writ Petition under Article 226/227 of the Constitution of India for issuing writ of mandamus directing Respondent No.1 to No.5 to de-seal 1st Floor of SCO No.12-A, Sector 7-C, Madhya Marg, Chandigarh (CP-1685), which has been illegally and arbitrarily sealed on 02.09.2023 (Annexure P-9) passed by Respondent No.3 exercising the powers of Respondent No.2 in pursuance to Show Cause Notice bearing Memo No.4878/SDO(B)/CP-1685 dated 17.06.2021 (Annexure P-3) issued under Rule 14 and Rule 10 of the Chandigarh Estate Rules, 2007 read with Section 8-A of the Capital of Punjab (Development & Regulation) Act, 1952.”

Learned counsel for the petitioner submits that in essence, the petitioner is aggrieved by the order dated 21.07.2023 (P-9), whereby the

competent authority (Sub-Divisional Magistrate, East, UT, Chandigarh), owing to multiple building violations/deviations in SCO-12A, Sector 7C, Madhya Marg, Chandigarh, had directed the concerned official(s) to seal the said premises. He submits that, in fact, the petitioner had already submitted revised building plan on 15.06.2021 (P-4), which was sanctioned by the concerned authority on 25.08.2021 (P-5). Therefore, he asserts that without any spot inspection, and adequate opportunity to the petitioner, sealing of his premises (1st Floor) was totally unwarranted. So much so, he submits that petitioner had even approached the Sub-Divisional Magistrate (East), Union Territory, Chandigarh, by filing an application under Rule 10 & 14 of the Chandigarh Estate Rules, 2007, dated 04.09.2023 (P-16), which too has mechanically been rejected, vide order dated 11.10.2023 (P-17).

Served with the advance copy of the petition, Mr. Ajay Jagga, Additional Standing Counsel, UT, Chandigarh, is present in Court on behalf of the Chandigarh Administration. At the outset, he fairly submits that other occupants of the same premises, who too were aggrieved by the order dated 21.07.2023 (P-9), had appealed to the competent authority (Chief Administrator, UT, Chandigarh). And, vide order dated 25.09.2023 (P-14), the said appeal has since been allowed. Thus, he submits that petitioner being identically placed/circumstanced, ought to have availed the statutory remedy of appeal, rather than approaching this Court, in the first instance.

As always, he fairly submits that even now, if the petitioner prefers an appeal within a week from today, against the order dated 21.07.2023 (P-9), the appellate authority shall take cognizance thereof forthwith. And,

after hearing the petitioner, shall pass the necessary orders within a period of three weeks from the institution of the said appeal, in accordance with law.

Learned counsel for the petitioner is in agreement with the course suggested by the learned counsel for the respondent(s). Accordingly, he submits that let this petition be disposed of in terms of his statement, and the petitioner be relegated to avail the remedy of appeal. He submits that petitioner shall file an appeal at the earliest raising all possible pleas and all the relief that he is entitled to in law.

In the wake of the position sketched out above, the petition is disposed of in terms of the statements made by learned counsel for the parties. The petitioner is accordingly relegated to file an appeal.

Needless to assert that this order shall not constitute any expression of opinion on the merits of the case of either party, for, as indicated above, the competent authority shall examine the concerns/grievances of the petitioner, strictly in accordance with law.

(Arun Palli)
Judge

(Vikram Aggarwal)
Judge

15.01.2024
Rajan

Whether speaking / reasoned:
Whether Reportable:

YES/NO
YES/NO