

CWP-4096-2023 (O&M)

2025.PHHC.028825-DB



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-4096-2023 (O&M)
Reserved on 18.12.2024
Date of decision: 28.02.2025**

M/s Rebel Hospitality

....Petitioner

Versus

Chandigarh Administration and others

..Respondents

**CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present:- Mr. Gurminder Singh, Sr. Advocate
with Mr. Akshay Mittal, Advocate
Mr. Vikas Jain, Advocate
Mr. Vishesh Jain, Advocate
for petitioner

Mr. Amit Jhanji, Senior Advocate
with Mr. Sanjiv Ghai, Advocate
Ms. Sukhmani Patwalia, Advocate
for respondent -UT, Chd.

Mr. Manish Bansal, Public Prosecutor, UT, Chd.
Mr. Ankur Bali, Addl. PP, UT, Chd.

Mr. N.S.Boparai, Advocate
Mr. Bikram Singh Dhillon, Advocate
Mr. Pradeep Singh, Advocate
for respondent no.7

Ms. Supriya Garg, Advocate
for respondent no.8

ANIL KSHETARPAL, JUDGE

1. The petitioner inter alia prays for the following reliefs:-

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- a)quash orders passed on 23.12.2022 (Annexure P-2), 24.01.2023 (Annexure P-7), 13.02.2023 (Annexure P-15),
- b)communications Annexure P-18 and P-23 and
- c) Chandigarh Estate (Amendment) Rules, 2009 with other consequential reliefs.

2. The petitioner herein is a tenant of premises located at the backside of SCO no.3-A, Madhya Marg, Sector 7, Chandigarh. By virtue of the order dated 23.12.2012, the Estate Officer-cum-Sub Divisional Magistrate, East has directed immediate sealing of portions of SCO no.3-A, Sector 7, Madhya Marg, Chandigarh where non-sanctionable violations continue to exist despite repeated opportunities to remove the violations. The aforesaid order has been affirmed in appeal by the Chief Administrator, Union Territory, Chandigarh vide order dated 24.01.2017. Advisor to the Administrator sought fresh report with regard to building violations and Sub Divisional Officer, Building informed about the following violations:-

Sr. No.	Violation as per SCN dated 01.04.2022	Allowed as per sanctioned Plan/Rule	Status at site	Action to be required
(i)	Rear elevation changed	Simple brick face with one small window and one opening/gate for the purpose of loading/unloading material/ goods within approximated width of 12 ft.	Elevation defaced by: i. Plastering the wall ii. Putting iron grills on terrace of single storey block in rear elevation iii. By replacing the window with door/gate iv. By providing smoke duts which are totally against the sanctioned plan	Required to be removed/ set right. Neither sanctionable nor compoundable
(ii)	Planning of rear single storey block/store changed against the sanctioned	As per sanctioned plan/ control one room with kitchen, bath, W.C and store allowed at rear side alongwith open yard at entrance	One big size kitchen and restaurant sitting provided and compulsory open yard covered, which is against the sanctioned plan	Compulsory open yard required to set right at site. For rest of the planning of

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	plan			rear side, sanctionability of this violation will be determined on submission of Revised Building Plan and after approval of OBPAS/PAC
(iii)	Open Courtyard covered & planning changed against the sanctioned plan	As per control/ sanctioned plan, open courtyard remains to be opened to sky and no structure shall be provided either temporary or permanent in the area	i. Open courtyard covered by providing retractable roof ii. One pucca staircase constructed at site leading to terrace of single storey block iii. Toilets and RCC platform constructed in open courtyard area against the sanctioned plan	Required to be removed/ set righth. Neither sanctionable nor compoundable.
iv)	Unauthorised structures constructed at the terrace of the single block	As per sanctioned plan, at the terrace of the single storey block (Rear Side) only services such as PVC water tanks, AC units etc. Can be provided	Proper restaurant sitting provided at the terrace of the single storey block by extending the retractable roof over it (i.e one extra floor constructed at site)	Required to be removed/ set right. Neither sanctionable nor compoundable

3. The petitioner undertook to remove the building violations at Sr.no.(i) and (iv) within 15 days. With regard to building violation at Sr.no. (iii), the petitioner was directed to remove the violation within one month from the date of dispatch of the order. The revision petition was disposed of with the following directions:-

“i)That the petitioner will file an affidavit before the Estate Officer within two days from the date of issuance of this order to the effect that he will remove the building violations at Sr.No.(i), (ii) & (iv) within 15 days from the date of filing affidavit and the remaining violation at Sr.No.(iii) be removed within one month from the date of dispatch of this order.

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ii) The petitioner will undertake to pay violation charges as may be determined by Estate Officer within one month from the date of communication of the same by the Estate Officer.

iii) After removal of the non-sanctionable building violations, by the petitioner, the owner will submit the Revised Building Plan for the violations (i.e remaining violation at Sr.No.(ii)) which is sanctionable/compoundable within 15 days and get the same regularized.

In case the petitioner, failed to submit the affidavit on the point No.(i) & (ii) then the application for grant of stay as well as revision petition would automatically stand dismissed. However, after filing the affidavit by the petitioner, the Estate Officer will immediately open the seal of the site in question. If the owner/occupier fails to comply with any aspect of this order then the order of the Estate Officer dated 23.12.2022 shall become operative.”

4. Vide communications dated 15.02.2023, (Annexure P-18) and 16.02.2023 (Annexure P-23), the petitioner has been informed that the affidavit is not in compliance with the order passed by the Advisor to the Administrator. Hence, fresh affidavit be filed.

5. Detailed pleadings having been filed by the learned counsel representing the parties, which have been perused. Their counsels have also been heard at length.

6. Learned counsel representing the petitioner has made the following submissions:-

- (i) No opportunity of hearing was given to the petitioner before passing the sealing order of the premises on 23.12.2022. He highlighted that show cause notice dated 01.04.2022 was issued only to the owner and not to the petitioner, who is the tenant.
- (ii) The order is discriminatory as no action has been taken against similar violations committed by various owners/occupiers.
- (iii) Coverage of rear courtyard is pending and the need of the hour.

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7. These submissions are opposed by the learned counsels representing the respondents. It may be noticed here that Chandigarh is a well planned city. With respect to showrooms in Sector 7, box type structure is provided on the front at Madhya Marg whereas on the backyard no construction is permitted so as to provide ample space for vehicles to carry out loading and de-loading of the goods. Due to economic pressure, these clubs and bars have come up in the courtyards. The Administration has already permitted 50% area of the rear courtyard in these showrooms on the ground floor in the year 2000. Thus, additional covered area of 23 feet x 47 feet 9 inches was allowed to all showrooms in Sector 7 and 26, on payment basis. The issue of permitting additional box type construction in the back courtyard has been examined at various levels. It has been found that commercial establishments already face extreme parking space crunch due to large footfall on account of huge floor plates for commercial use. There will not be sufficient linkage available between parking at the front and back of these showrooms. Normally, a ratio of 1:3 is to be maintained between the width and depth of the showroom but if demand for full coverage and box type structure is acceded to, the ratio of width to depth will be 1:6 since the plot size is 34 feet 4 inches x 200 feet. The Chandigarh Heritage Committee on 14.09.2023 considered this aspect and did not chose to recommend such changes. It was unanimously decided that no retractable or temporary roofs will be permitted to cover the open areas in these showrooms. This decision has been approved by the Chandigarh Administration.

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8. With reference to opportunity of hearing, the Union Territory has specifically stated that notice was served upon the petitioner on 15.06.2022. The petitioner being occupier came to know of repeated inspections because the first inspection was carried out on 01.04.2023 and thereafter, repeated inspections were conducted. The petitioner was given opportunity on 01.04.2022, 03.08.2022, 23.12.2022 and 22.01.2023 to make modifications and remove the non-sanctionable violations. It has come on record that toilets have been fabricated in the rear courtyard which is also in violation of sanctioned plan. The owner also filed civil suit for want of injunction in which notice was issued to the petitioners. Moreover, more than sufficient opportunities have been granted to the petitioner by the appellate authority as well as the revisional authority. Hence, the petitioner has been granted sufficient opportunities. It is the specific stand of the Union Territory, Chandigarh that proceedings against 44 such like cites have been initiated and are continuing. Hence, there is no substance in the argument based on hostile discrimination.

9. Similarly, there is no substance in the last submission of the learned counsel representing the petitioner because the Chandigarh Heritage Committee has already refused to make recommendation vide decision dated 14.09.2023, which has been approved by the Administration.

10. Moreover, the scope of judicial review against the order passed by the quasi judicial authorities is limited. In exercise of jurisdiction under Article 226 of the Constitution of India, the Court is not expected to sit in appeal against the orders passed by the quasi judicial authorities.

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11. Keeping in view the aforesaid facts, no ground to issue the writ, as prayed for, is made out, as the petitioner has already been granted sufficient opportunities to remove the violations. Consequently, the writ petition is dismissed.
12. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE
28.02.2025

(SHEEL NAGU)
CHIEF JUSTICE

rekha
Whether speaking/reasoned : Yes
Whether reportable : No