

(2017) 05 P&H CK 0011
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 12280 of 2017

Madhu Bala

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 30-05-2017

Acts Referred:

Citation : (2017) 05 P&H CK 0011

Hon'ble Judges : Amit Rawal, J.

Bench : Single Bench

Advocate : Puneet Bali, Senior Advocate with Vibhav Jain, Advocate, for the Petitioners in CWP No.12280 of 2017.; Sanjay Kaushal, Senior Advocate with Arjun Shukla, Advocate, for the Petitioners in CWP No. 12284 of 2017.; K.S. Khehar, Advocate, for the Petitioners in CWP No. 12355 of 2017.

Final Decision : Disposed Off

Judgement

Amit Rawal, J.—The petitioners have been constrained to approached this Court as in pursuance to the letter dated 26.05.2017 (Annexure P-9), whereby the Executive Officer, Municipal Council, Naya Gaon had sought the police assistance from the Deputy Commissioner, Mohali for the purpose of carrying out the demolition of the alleged illegal construction identified as per the alleged survey reflected in Annexure P-11.

2. Mr. Puneet Bali, learned Senior Counsel assisted by Mr. Vibhav Jain, learned counsel appearing on behalf of petitioners in CWP No. 12280 of 2017, Mr. Sanjay Kaushal, learned Senior Counsel assisted by Mr. Arjun Shukla, learned counsel appearing on behalf of the petitioners in CWP No.12284 of 2017 and Mr. K.S. Khehar, learned counsel appearing on behalf of the petitioners in CWP No. 12355 of 2017, submits that in the alleged survey, the petitioners were never associated or joined, much less, given any show cause notice to apprise whether the construction is not in consonance with the site plan or master plan as promulgated way back in the year 2006 as the portion shown in the yellow colour in the master plan i.e. Final Zonal Plan -B, has been dedicated as residential

zone. All the houses of the petitioners are constructed in the residential zone, therefore, there cannot be said to be illegal construction. Moreover the orders dated 14.03.2011 and 14.05.2012 passed by this Court were further clarified by the Hon"ble Supreme Court in SLP (Civil) No.17889 of 2012 in the following manner:-

"Issue notice. Dasti, in addition, is permitted.

In the meanwhile, we direct the petitioners in both Special Leave Petitions and all other persons that they would not make any constructions in the area in question, and the respondents would not demolish the constructions, which have already been made till 21.05.2012.

In view of the aforesaid order, if any of the petitioners or any other person would still continue to make construction, then the Court would be at liberty to get the construction of such person demolished.

We further clarify that the Division Bench of the High Court would still be at liberty to proceed with the matter pending before it."

Thereafter, there is no fresh order of demolition. The entire exercise has been done owing to the filing of the contempt petition bearing COCP No.3088 of 2015, wherein the order dated 26.05.2017 showing the alleged identifications of 80 illegal constructions have been brought to the notice by the State Counsel, on instruction from the Mr. K.K. Yadav, Special Secretary, Local Bodies, Punjab, who was present in Court. A reference has been made to the photographs and as well as receipt (Annexure P-2) of payment of development charges, building application fees, waste structure fee, boundary wall, file charges and in other words, the case of the petitioners is that construction is dedicated in residential zone. In case, the construction has been done against the sanction plan or new construction has been done, the same could have been demolished, but not the entire construction. Even the construction is also not done either in forest or agricultural area.

Notice of motion.

3. Mr. Yatinder Sharma, Addl. A.G., Punjab accepts notice on behalf of respondent Nos.1 & 3 in CWP No.12280 of 2017, respondent Nos.1 to 4 in CWP No.12284 of 2017 and respondent Nos.1 & 2 in CWP No.12355 of 2017.

4. On the directions of this Court, Mr. Sandeep Khunger, Advocate, who is present in Court, accepts notice on behalf of the Municipal Council, Naya Gaon i.e. respondent Nos.2 & 4 in CWP No.12280 of 2017, respondent No.5 in CWP No.12284 of 2017 and respondent No.3 in CWP No.12355 of 2017.

5. Learned counsel for the petitioners are directed to supply the requisite copies of the paper book.

6. In the meantime, the Executive Officer, Municipal Council, Naya Gaon, is restrained from carrying out any demolition.

7. Mr. Yatinder Sharma, Addl. A.G., Punjab and Mr. Sandeep Khunger, Advocate are directed to convey the interim order passed by this Court to the Secretary to Government of Punjab, Local Government Department/respondent No.1 and Municipal Council, Naya Gaon, for compliance.

8. Adjourned to 11.08.2017.

9. A copy of this order be given to the learned counsel for the parties under the signatures of the Reader attached with this Court.

10. A photocopy of this order be placed on the files of connected cases.