
(2017) 01 P&H CK 0051

In the Punjab And Haryana At Chandigarh

Case No : CWP (PIL) No. 17246 of 2016 (O&M)

Manmohan Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 19-01-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Punjab Municipal Corporation Act, 1976 — Section 264, Section 274

Citation : (2017) 2 SCT 250

Hon'ble Judges : S.S. Saron and Darshan Singh, JJ.

Bench : Division Bench

Advocate : H.C. Arora, Advocate, for the Applicants-Petitioners.

Final Decision : Dismissed

Judgement

S.S. Saron, J. - CM-559-CWP-2017

Copy of letter dated 03.08.2016 from the Office of District Education Officer (Secondary Education), Amritsar to the Director Education Department (Secondary Education), Punjab, SAS Nagar (Annexure P-9) and Inquiry Report (Annexure P-10) attached with the civil miscellaneous application are taken on record subject to just exceptions.

C.M. stands disposed of.

CWP (PIL)-17246-2016

The petitioners have filed the present Public Interest Litigation under Article 226 of the Constitution of India for directing the State of Punjab, Secretary Local Bodies and Municipal Town Planner (respondents No.1 to 3) to seal the building of Super Kids Holy Heart School, Amritsar (respondent No.4) inter alia alleging that (i) Super Kids Holy Heart School, Amritsar (respondent No.4) is not entitled to run a school in the building for which "No Objection Certificate" previously issued by the Municipal Town Planner, Municipal Corporation, Amritsar

(respondent No.3) had been cancelled vide order dated 08.06.2015 (Annexure P-2); besides, (ii) the building of Super Kids Holy Heart School, Amritsar (respondent No.4) which comprises of basement in addition to three floors had been constructed in violation of the National Building Code and directions issued by the Hon'ble Supreme Court in Avinash Mehrotra v. Union of India and others (2009) 6 SCC 398, according to which nursery and elementary schools should be housed in single storied buildings and the maximum number of floors in school buildings are to be restricted to three including the ground floor and (iii) in view of the safety norms, Super Kids Holy Heart School, Amritsar (respondent No.4) was not liable to be permitted to run in a four storied building comprising of a basement and three stories above the ground.

2. The petitioners are residents of village Gumtala, Amritsar. It is submitted that the issue being raised by them in the present petition is in the nature of public interest. Therefore, they are entitled to file the present petition. As mentioned, they are aggrieved against the building violations committed by Super Kids Holy Heart School, Amritsar (respondent No.4) which according to them is not only in violation of the judgment of the Hon'ble Supreme Court in Avinash Mehrotra v. Union of India and others (supra), but is otherwise also dangerous to life.

3. We have given our thoughtful consideration to the matter and perused the record.

4. The petitioners by way of CM No.559-CWP of 2017 have placed on record an Inquiry Report (Annexure P-10). In terms of the said report the Inquiry Officer-cum-Deputy District Education Officer (Secondary Education), Amritsar after careful perusal of the statements given by the complainant and others reached at a conclusion that the allegations levelled in the complaint were proved. To end the dispute between the two parties, it is mentioned that the Municipal Corporation, Amritsar should take action regarding the construction of the building. It is also mentioned that the Municipal Corporation, Amritsar had issued "No Objection Certificate" No.2227 dated 25.10.2013 to respondent No.4- School and thereafter, a complaint dated 29.05.2014 was submitted during Sangat Darshan by Shri Jashan Sandhu and Smt. Rupinder Kaur. The Assistant Town Planner, Municipal Corporation, Amritsar acting on the complaint vide order dated 18.06.2015 revoked the "NOC" issued to respondent No.4-School. On cancellation of the "NOC", the Principal of respondent No.4-School sent a legal notice dated 27.02.2016 to the Commissioner, Municipal Corporation, Amritsar with regard to cancellation of NOC. However, cancellation of NOC was intact till the date of making the report. There is no date mentioned in the Inquiry report. However, the Inquiry Officer visited the school on 1.3.2016 for conducting an inquiry.

5. Chapter- XIV of the Punjab Municipal Corporation Act, 1976 ("Act" for short) relates to "building regulation". Section 264 of the Act relates sanction accorded under misrepresentation. The said Section reads as under:-

"264. Sanction accorded under misrepresentation. - If at any time after the sanction of any building or work has been accorded, the Commissioner is satisfied that such sanction was accorded in consequence of any material misrepresentation or fraudulent statement contained in the notice given or information furnished under sections 259, 260 and 261, he may 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 been commenced, erected or done without such sanction:

Provided that before making any such order the Commissioner shall give reasonable opportunity to the person affected as to why such order should not be made."

6. Besides, Section 274 of the Act confers bar on the Municipal Corporation to order building vacated in certain circumstances. The said Section reads as under:

"274. Power to order building to be vacated in certain circumstances. -

(1) The Commissioner may by order in writing direct that any building which in his opinion is in a dangerous condition or is not provided with sufficient means of egress in case of fire or is occupied in contravention of section 272 be vacated forthwith or within such period as may be specified in the order :

Provided that at the time of making such order the Commissioner shall record a brief statement of the reasons therefor.

(2) If any person fails to vacate the building in pursuance of such order the Commissioner may direct any police officer to remove such person from the building and the police officer shall comply with such direction accordingly.

(3) The Commissioner shall, on the application of any person who has vacated, or been removed from any building in pursuance of an order made by him, reinstate such person in the building on the expiry of the period for which the order has been in force according to the circumstances prevailing at that time permit."

7. Therefore, the petitioners in case they have any grievance with regard to the violation of the building regulation by respondent No.-4 School, they are liable to approach the Municipal Corporation authority in the first instance. In fact matter regarding cancellation of the "NOC" earlier granted, according to the Inquiry Report (Annexure P-10), is still pending consideration with the Municipal Corporation, Amritsar. Therefore, we are of the view that writ petition filed at this stage is premature. The petitioners, if so advised, may avail other alternative remedy in the first instance.

The writ petition being premature is accordingly dismissed.