

(2011) 09 P&H CK 0199

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 10330 of 2010 (O and M)

Capt. Saroop Singh and Others

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision: Sept. 1, 2011

Acts Referred:

- Constitution of India, 1950 - Article 14
- Punjab Municipal Corporation Act, 1976 - Section 246, 246A, 269, 270, 271

Citation: (2012) 1 ILR (P&H) 321 : (2011) 164 PLR 251

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Final Decision: Allowed

Judgement

K. Kannan, J.

The writ petition is at the instance of owner of a building, the stairs of which had been demolished in a drive against encroachments undertaken by virtue of orders passed by this Court in CWP No. 4886 of 2003. The judgment in the said writ petition directed that the Municipal Corporation should have an enforcement through a Monitoring Committee and locate areas which were encroached and take action, proactive as well as preventive, for ensuring that the public spaces are kept free of any encroachments. It also allowed for public spirited person to institute action for contempt, if the Municipal Corporation had not been vigilant about the removal of encroachments. The petitioners, who are the purchasers from the original owner of the property, complained through this writ petition, that on a holiday on 24.04.2010, the 2nd respondent-Corporation, acting through its Joint Commissioner, and respondents 4 and 5, who at that time were Municipal Town Planner and Estate Officer, came upon the petitioners' premises and demolished the stairs leading to the basement from the road. The petitioners would affirm that their constructions conformed to the sanctioned plans and the demolition of constructions was wholly unjustified and spirited by mala fides of the respondents.

2. The State Authority would contend that the petitioners' constructions were not in conformity with the plan and breached the FAR sanctioned by erecting constructions in places reserved for open parking. For instance, according to the counsel for the respondents, the stairs had been constructed in the place reserved for parking and shops at the basement had been constructed by enclosing the open space meant for car parking and renting them as shops. The learned counsel would argue that the permissible FAR for the building was 1:1.50 and that left out of reckoning the spaces meant for parking. By enclosing the walls and converting them as shops and stairs, the petitioners had breached the FAR and would, therefore, justify the action taken by them.

3. During the tendency of the proceedings, this Court had passed an order on 28.01.2011, directing the Commissioner, Municipal Corporation, to remain present with the records and also furnish details of other basements that had direct access from Lawrence Road, which had also been treated similarly and whether such demolitions had taken place. This Court had directed that the details furnished by the Commissioner should be got verified by a local Commissioner at the expense of the Municipal Corporation, if such need arose.

4. The Commissioner has responded to these directions by filing an affidavit and referring to the fact of how anti-encroachment drive was carried out and that it was covered in various newspapers. In para 5 of the affidavit, it is contended that the staircases constructed by offenders having properties on the Lawrence Road to have access to the basements were also removed and an annexure under R-2/5 was said to give details of several buildings along the same road that included the places where shops like, Pizza Hut, Hotel Lawrence Lilliput World, Sony Tower, Bhartia State Bank, Reebok, Liberty, as if to suggest that they had all been treated similarly and demolitions had been carried out including the stairs. This statement in para 5 of the affidavit has been specifically denied again by a reply of the petitioners and they affirmed that in no other showrooms stairs were removed in the manner done for the petitioners' building. At the time of arguments, the counsel for the respondents would not go as far as to say that the plan filed in Court as R-2/S contained details of any other construction where such demolition had been undertaken. This only shows that an averment in the affidavit of Shri. D.P.S. Kharbanda, Commissioner, Municipal Corporation, Amritsar, is false and misleading. The answers sought to be elicited whether any other stairs had been demolished was a manner of obtaining information whether the petitioners were singled out in the demolition drive on a wrong assumption of encroachment. Of course, it cannot be a contention that yet another encroacher had not been treated similarly, for, it is a fundamental precept that there is no Article 14 in illegality or unlawful acts. I will test the action of the respondents only from the point of view of whether the removals made on that day could be taken to be as a part of compliance of the directions of this Court or it was a trigger jerk action on the part of the officials to harass the petitioners in the manner contended by the petitioners.

5. The learned counsel for the Corporation points out that the constructions no doubt fell within the petitioners' own boundary and they may not partake character of an encroachment, but they were surely unauthorized constructions. If they were unauthorized constructions, then removal of unauthorized constructions is contemplated by the provisions laid down and the procedure set forth under Sections 269 to 271 of the Punjab Municipal Corporation Act of 1976. Section 269 makes provision for ordering demolition or stoppage of building in cases where the construction has commenced and is being carried on or completed contrary to the sanction obtained. Assuming that the conversion of a parking area at the basement as showroom constituted such contravention, then Section 269 mandates that the Commissioner shall make an order directing that such erection or work shall be demolished at whose instance the erection or work has commenced. The procedure prescribed u/s 269 is fairly elaborate, for, it is literally a police action that results in demolition of an existing construction and contains adequate safeguards for a person, who had put up construction to test even the correctness of the order by means of an appeal to the District Court. Section 270 applies in cases where a building is in progress and where it is not completed. Admittedly, in this case, the building had been completed and Section 270 could not have been invoked. Section 271 deals with the situation of erection of a building against the plan which could be directed to be removed within 3 months after the completion thereof by a written notice. The learned senior counsel appearing on behalf of the petitioners is fair to state that there is sufficient authority for the position that the period of 3 months does not take away the right of a public authority to remove any unauthorized construction, but he would also point out that, under no provision of law, it would become possible for a Commissioner to direct removal of an existing construction within the boundary of the owner. It has to be noticed that no portion of street, channel, drain, well or tank is encroached to invoke the provisions of Section 246 or 246-A for removal of encroachments. The High Court's directions, which were contained in CWP No. 4886 of 2003, cannot be applied for unauthorized constructions within their own boundaries, which were deviations from sanctioned plans. The High Court was addressing the situation to remove all encroachments from public street that constituted public nuisances and that was why, it even allowed for any public spirited person to approach the Court complaining of constructions or action on the part of public authorities and to keep constant vigil and secure removal of encroachment.

6. The respondents' action in removal of the stairs is not in conformity with law. It cannot also be taken as a bona fide exercise of authority in compliance of the directions of this High Court in CWP No. 4886 of 2003. I am not prepared to examine a disputed question of whether the construction of the petitioners by converting a car parking area as stairs or enclosing the space reserved as parking at the basement constituted a change in FAR or not. If they do, then surely the Corporation would be competent to take such action as it is possible for restoring the property in

the manner that was originally sanctioned if it is not compoundable. The issue of whether the conversions constitute a violation of FAR would have to be undertaken by actual measurement at the property and the Corporation shall exercise the powers provided under the Act, if they desire any such action. In any event, a demolition without having any definite material or without serving notice and passing an order in the manner contemplated u/s 269 is indefensible.

7. The counsel for the respondents states that during the course of the proceedings, the petitioners have reconstructed the stairs. The petitioners state that they had spent Rs.4.66 lakhs. I cannot again assess the actual cost that they would have incurred without appropriate proof for such assessment. While upholding the petitioners' contention that the action of the respondents was not in conformity with law, I direct that the respondents 2 to 5 shall become liable for a provisional assessment at Rs. 50,000/-. The petitioners shall be at liberty to work out their own claim for damages in an independent action, where parties would be at liberty to let in appropriate evidence. The respondents shall also be at liberty to take such action as it is possible if it were to find that there are deviations. Such an assessment is possible under the provisions of the Act and they shall at liberty to proceed in such manner as the law provides for.

8. Having regard to the change in circumstance since the institution of the petition that there has been a restoration of the stairs, there is no scope for ordering the restoration as sought for. The petitioners also seek for direction for initiating departmental proceedings against the respondents 3 to 5 and also to initiate criminal proceedings against the said respondents and other guilty persons. While I find that the action of the respondents was not in conformity with law, I will not attribute any criminal intentions but I would only take their action to be a clear misreading of the directions of this. Court that a removal of encroachment included also a direction for removal of unauthorized constructions not in conformity with sanctioned plans. The award of damages provisionally assessed and making the respondents liable for such damages by independent civil action ought to itself leave appropriate discretion with the superior officers to take such action as they deem fit and they would not require to be monitored by a Court direction for any departmental action.

9. The writ petition is allowed to the extent of awarding provisional damages. The respondents shall also bear a cost of the writ petition which I assess at Rs. 25,000/-.