

(2014) 05 P&H CK 0345

High Court Of Punjab And Haryana At Chandigarh
Case No: Civil Writ Petition No. 16096 of 2013 (OandM)

Sudesh Pawar

APPELLANT

Vs

Chief Administrator,
Union Territory of
Chandigarh

RESPONDENT

Date of Decision: May 29, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226, 227

Citation: (2014) 176 PLR 804

Hon'ble Judges: Jaspal Singh, J; Ajay Kumar Mittal, J

Bench: Division Bench

Advocate: J.P. Sharma, Advocate for the Appellant; Harkesh Manuja, Advocate for the Respondent

Judgement

Ajay Kumar Mittal, J.

C.M. No. 6978 of 2014

1. The affidavit filed by the petitioner alongwith the application is allowed to be taken on record. CM stands disposed of.

C.W.P. No. 16096 of 2013 Through the present petition filed under Articles 226/ 227 of the Constitution of India, the petitioner prays for issuance of a writ of mandamus directing the respondent authorities to entertain and process her application being exclusive owner-in-possession of second floor of H. No. 2892, Sector 38-C, Chandigarh for erection/re-erection/additions as per rules and process the same in accordance with the building bye-laws and not to insist upon joint application alongwith respondents No. 3 to 7, to sanction the building plan of the said floor of the house, in view of judgment of this Court dated 6.8.2009, Annexure P.6 rendered in CWP No. 18788 of 2007 (Deepak Bhasin v. Union Territory of Chandigarh and

others).

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is exclusive owner in possession to the extent of 20% share in the house in question. As per bye laws of Chandigarh Administration, 20% share constitutes entire area on the second floor. Respondents No. 3 to 7 are the legal heirs of original allottee Prem Raj in whose favour the residential site was allotted vide allotment letter dated 6.1.1976, Annexure P.1 on lease hold basis. Thereafter, the deed of conveyance was executed in favour of respondents No. 3 to 7 on 9.3.2007, Annexure P.2 on free hold basis. The petitioner purchased 20% share from respondents No. 3 to 7 vide sale deed dated 18.4.2007, Annexure P.3 on the basis of which, ownership rights to the extent of 20% share of the site in question stood transferred in favour of the petitioner vide letter dated 17.8.2007, Annexure P.4. In spite of sale and transfer in favour of the petitioner, the property in question continues to be mutated as joint ownership of all the six co-sharers. By virtue of transfer letter dated 17.8.2007, Annexure P.4 read with sale deed dated 18.4.2007, Annexure P.3, the petitioner became exclusive owner of the second floor of the house which comprises of 20% share. The petitioner is entitled to use and occupy the whole of second floor, raise construction to the extent as permissible under the regulations framed by the Estate Office. According to the petitioner, as per amended provisions, 10% additional built up area has been permitted by Estate office. Accordingly, the permissible built up area of second floor stood increased. The optimum utilization in terms of amended provisions is permitted subject to approval of revised plans by the Estate Office. The petitioner got the revised plan prepared in respect of second floor through an architect. Thereafter, the application for approval of revised plan was prepared by the petitioner and she approached the office of Estate Officer on 4.5.2013 alongwith the requisite number of revised plans seeking permission to erect/re-erect and add or alter the construction on the second floor. The office of respondent No. 2 refused to entertain the application signed by the petitioner stating that the same was required to be signed jointly by all the co owners of the site. The petitioner relied upon decision of this Court dated 6.8.2009 in Deepak Bhasin's case (supra) in which the department entertained and sanctioned the building plan regarding first and second floor without joint application from all the co-owners. The Letters Patent Appeal filed against the said decision was also dismissed by this Court vide order dated 18.1.2010, Annexure P.7. The petitioner served legal notice dated 16.5.2013, Annexure P.8 calling upon to respondents to entertain and process her application for approval of building plan. Having received no response, the petitioner is before this Court through the present petition.

3. We have heard learned counsel for the parties and perused the record.

4. On May 27, 2014, the following order was passed by this Court:--

"Learned counsel for respondents No. 3 to 7, co-sharers of the property in dispute states that respondents No. 3 to 7 have no objection if the petitioner after getting the building plans sanctioned raises construction without damaging the portion of the ground floor as well as of the first floor.

Learned counsel for the petitioner prays for time to file an affidavit in this regard. Adjourned to 29.5.2014, as prayed."

5. Accordingly, the petitioner has filed the affidavit, which reads thus:--

"1. That the deponent is exclusive owner in possession of second floor (20% share) of House No. 2892, Sector 39-C, Chandigarh.

2. That the deponent wants to carry out permissible addition and alteration in respect of second floor area only without interfering the plans of ground floor and first floor, occupied by other co-sharers i.e. Respondent Nos. 3 to 7.

3. That the additions and alterations sought to be approved will not damage or affect the building plans of ground floor and the first floor, which are further subject to scrutiny and approval by the competent authority."

In the light of the affidavit of the petitioner filed in Court today, which has not been opposed by the learned counsel for the respondents, as also in view of the decision of this Court in Deepak Bhasin's case (supra), we dispose of the writ petition by directing respondent No. 2 to sanction revised building plan submitted by the petitioner as per law without insisting upon the application submitted by her being signed by all the co-owners. The needful shall be done within one month from the date of receipt of a certified copy of this order.