

MUNICIPAL CORPORATION, LUDHIANA

v.

INDERJIT SINGH & ANR.

OCTOBER 1, 2008

[S.B. SINHA AND AFTAB ALAM, JJ]

Punjab Civil Municipal Corporation Act, 1976 – ss. 269 and 270 – Notice under, for demolition of unauthorized construction measuring 14 sq. ft. – Reference made to earlier notices issued as also assessment of compounding fee on oral request by owner’s grandson – Order of demolition though injunction order passed restraining Authority from demolishing construction – Challenge to – Held: Demolition order was illegal – Notices issued were vague – It did not contain the description of the property – Opportunity of hearing was not given – Authority acted arbitrarily – Injunction order was granted though for a limited period, but a Statutory Corporation was expected to act thereupon upon informing the court thereabout – Since plan for construction of building was sanctioned, Authorities were under obligation to state the extent of unauthorized construction and apply its mind thereto – Thus, Authority directed to restore constructions for which sanction order had been obtained.

HD-original owner of the property constructed a marriage hall. It is alleged that part of the construction was unauthorized. HD was issued notice dated 10.1.2001 and 1.2.2001 to show cause as to why the illegal construction should not be demolished, though she died in 1999. It is alleged that HD refused to accept the first notice and the other notice was also not served. It is the appellant’s case that the respondent-grandson of HD was aware of the same and on his oral request a compounding fee of Rs.1,95,374/- was fixed. Thereafter, respondent was issued memorandum to pay the amount but he failed to do

A so. Respondent No.1 filed suit for permanent injunction
restraining the appellant from demolishing the said prop-
erty. It was contended that only 14 sq. ft. area was in ex-
cess of the legally sanctioned plan and he was ready to
pay the compounding fee. Trial court restrained the ap-
pellant from demolition of the property in consonance with
B the sanctioned construction till 29.3.2001. On 14.12.2001,
the Commissioner, issued notice u/ss. 269 and 270 of the
Punjab Civil Municipal Corporation Act, 1976 to the first
respondent to demolish the unauthorized construction.
C Reference was made to issuance of the earlier notices as
also the assessment of compounding fee. However, no
cause was shown and on 21.12.2001 demolition order was
issued. Respondent filed appeal which was allowed hold-
ing that although the first two notices had not been served
D but in the meanwhile the alleged unauthorized construc-
tion was demolished. Appellant filed writ petition which
was dismissed. Hence the present appeal.

Dismissing the appeal, the Court

E HELD: 1.1 The appellant in terms of the provisions
of the Punjab Municipal Corporation Act, 1976 was statu-
torily entitled to grant of sanction for construction of struc-
tures in terms of the bye laws framed by it. Subject to
statutory interdict, the appellant-Corporation had the ju-
F risdiction to regularise unauthorized structure on receipt
of a compounding fee. It is a matter of some concern that
according to the appellant a compounding fee of
Rs.1,95,374/- was determined only on the basis of a pur-
ported oral request made by the first respondent, which
prima facie cannot be accepted. How a statutory author-
G ity can pass a statutory order on an oral prayer made by
an owner of the property is beyond anybody's compre-
hension. On what basis the compounding fee was deter-
mined is also not known. [Para 11] [103-C-E]

H 1.2 A finding of fact has been arrived at that the no-

ances dated 10.01.2001 and 01.02.2001 were not served on the respondent. The said notices were also found to be absolutely vague. They did not contain the description of the property in question. Indisputably, they were issued in the name of a dead person. It is of some significance to notice that whereas in the first two notices objections was called for and/or directions to stop construction was issued, by reason of the third notice, a direction was issued upon the first respondent to demolish the structures. No opportunity of hearing was granted. No notice to show cause was issued. It is on that basis that a purported demolition order was passed which, indisputably, has been carried out. Therefore, it is not correct to contend that the notice dated 14.12.2001 was not final and by reason thereof merely the first respondent was asked to file his show cause. Where a noticee, fails to carry out such direction, demolition can be carried out by the Corporation at the cost of the owner. In effect and substance, therefore, an order of demolition was passed in terms of the notice dated 14.12.2001. It was a final order. Thus, an appeal thereagainst was maintainable. Appellant furthermore acted arbitrarily insofar as it demolished the structures, despite pendency of the suit. It is assumed that the order of injunction was granted for a limited period, but it is expected of a Statutory Corporation to act thereupon upon informing the court thereabout. It is not in dispute that a plan for construction of the building was sanctioned. Therefore, it was obligatory on the part of the authorities of the appellant to categorically state as to how much area, if any, was the subject matter of unauthorized construction. [Paras 13, 14 and 15] [105-A-G]

1.3 Respondent No.1 preferred an appeal against the order of the Commissioner directing demolition of the construction. The Appellate Court was entitled to consider as to whether the mandatory legal provisions had been complied with or not. The proviso appended to Section

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A 269 of the Act in no uncertain terms provides for an opportunity of hearing before an order of demolition is passed. It is imperative in character but the said provision had not been complied with. The action on the part of the appellant, therefore, was highly arbitrary. [Para 16] [106-B-C]

B *Aligarh Muslim University & Ors. v. Mansoor Ali Khan* (2000) 7 SCC 529; *S.L. Kapoor v. Jagmohan & Ors.* (1980) 4 SCC 379 – Held inapplicable

C 1.4 Had a proper show cause notice been served upon the first respondent, he could have shown that the alleged violation of the provisions of the Act is of negligible character which did not warrant an order of demolition. Respondent No.1's contention that only an area of 14 sq. ft. was the subject matter of unauthorized construction should have been considered by the appellant and an appropriate order thereupon should have been passed. It was in a situation of this nature, the appellant was statutorily obligated to apply its mind in regard to the nature and extent of unauthorized construction, if any. Therefore, it would be proper to direct the appellant to restore such constructions for which order of sanction had been obtained. To the said extent the impugned order is modified. [Paras 17 and 18] [107-B-D]

CASE LAW REFERENCE

F (2000) 7 SCC 529 Held inapplicable Para 16
(1980) 4 SCC 379 Held inapplicable Para 16

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 5948 of 2008

G From the final Judgment and Order dated 12.12.2006 of the High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition No. 19605 of 2006

H P.S. Patwalia, Tatini Basu and Sudhir Nandrajog for the Appellant.

Moha Wasay Khan and R.S. Suri for the Respondents. A

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

2. This appeal is directed against a judgment and order dated 12.12.2006 passed by the High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition No.19605 of 2006 whereby and whereunder the writ petition filed by the appellant herein questioning the validity and/or legality of an order dated 5.9.2006 passed by the Additional District Judge and Fast Track Court, Ludhiana allowing an appeal preferred by the respondent herein; was dismissed. B C

3. The basic fact of the matter is not in dispute.

One Hira Devi was the owner of a property bearing No.B-XXI-12652 situated at Link Road near Pratap Chowk, Ludhiana. First Respondent is her grandson. She constructed a marriage hall. Inter alia, on the premise that a part of the said construction was unauthorized, a notice dated 10.1.2001 was issued asking her to show cause as to why the purported illegal construction of shed measuring 60' x 40' should not be demolished. She was asked to file a reply to the said notice of show cause within three days. Allegedly, Hira Devi refused to accept the said notice. Another notice was issued on 1.2.2001 which was also not served. Appellant, however, contended that the respondent was fully aware of the contents thereof as an application for compounding that portion of the construction which was within the compoundable limit was filed. On an oral request made by the first respondent, a compounding fee of Rs.1,95,374/- was fixed. Allegedly, a memorandum was issued asking him to pay the said amount but he failed and/or neglected to do so. D E F G

4. A suit was filed by the respondent No.1 for permanent injunction restraining the appellant from demolishing the said property. In the plaint of the said suit, it was, inter alia, averred that there was no excess covered area in terms of the sanctioned plan and if there be any, the plaintiff was ready to pay the H

A compounding fee. The contention of the plaintiff in this behalf was that only an area of 14 sq. ft. was in excess of the legally sanctioned plan. The Civil Judge (Senior Division), Ludhiana, on an application filed by the first respondent passed an interim order on 26.3.2001, directing :

B “This court doth orders and restrained you till 29.3.2001 from demolition of the property of the plaintiff as far as it is in consonance with the sanctioned construction do not demolish.”

C 5. It is now not in dispute that the original owner of the said property Hira Devi died in the year 1999.

D On or about 14.12.2001, a notice purported to be under Section 269 and 270 of the Punjab Civil Municipal Corporation Act was issued in the name of the first respondent, the operative portion whereof reads as under:

E “I, K.S. Bhalla, Assistant Town Planner, Municipal Corporation, Ludhiana who has been authorized by the Commissioner, Municipal Corporation Ludhiana vide his order 664/DRG/C dated 2.1.2000 to exercise the powers under Section 269 and 270 of the Punjab Municipal Corporation Act, 1976, issue you this notice under Section 269, 270 of the Punjab Act, 1976 to demolish the unauthorized construction within three days from the receipt of this notice. If you failed to demolish the unauthorized construction within the stipulated period, then the Municipal Corporation, Ludhiana will demolish the same at its own level and the expenses will be recovered from you.”

F The subject matter of the said notice was stated to be :

G “Show Cause Notice under Section 269(1) and 270(i) of the Municipal Corporation Act, 1976.”

H 6. In the said notice, averments were made with regard to issuance of the earlier notices as also the assessment of compounding fee on a purported oral request made by him. On the

premise that no cause was shown, a demolition order was issued on 21.12.2001.

7. An appeal preferred against the said order dated 14.12.2001 in the Court of District Judge, Ludhiana was allowed holding that although the first two notices dated 10.01.2001 and 01.02.2001 had not been served but in the meanwhile the alleged unauthorized construction was demolished. It was directed:

“In the present case, the appellant had challenged the order passed by Municipal Corporation to demolish the construction. Ld. Addl. District Judge, Ludhiana was seized of the matter and passed an order dated 22.12.2001 restraining the respondent from demolishing the construction. Even in spite of injunction order, the respondents demolished the same. Parties are therefore to be relegated to the position as if no demolition was done. I, therefore, allow the present appeal with costs holding that the order of respondents threatening to demolish the construction is illegal and void and same is accordingly set aside except so far that the construction was not in accordance with the sanctioned plan. The respondents are directed to restore the construction at its own costs and expenses as it stood at the time when the order dated 22.12.2001 was passed by Ld. Addl. District Judge, Ludhiana as if demolition has not taken place. The restoration work shall be done by the respondents within three months from today, needless to mention that the respondents may recover the costs of construction from its employees responsible for the illegal demolition of construction. Counsel fee is assessed as Rs.5000/-. File be consigned to the record room.”

8. A writ petition filed by the appellant questioning the legality of the said order dated 5.9.2006 has been dismissed by a Division Bench of the High Court by reason of the impugned judgment.

- A The High Court, in its judgment, inter alia, held :
- (i) That notices were issued against a dead person;
 - (ii) The correct description of the property was not disclosed and it was otherwise vague; and
 - B (iii) No opportunity of hearing having been given to the first respondent, the order of demolition was wholly illegal. The High Court, furthermore opined that the appellant and its officers acted illegally and without jurisdiction in demolishing the structures although a civil suit had been filed and an order of injunction had been passed therein.
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D 9. Mr. Patwalia, learned counsel appearing on behalf of the appellant, raised the following contentions in support of this appeal :

- 1. Notices were issued in the name of Hira Devi as it was not known that she had expired.
- E 2. The said notices were served on Hira Devi and/or respondent No.1 as copy thereof was pasted on the building in question.
- F 3. The order of demolition dated 21.12.2001 having been appealed against, the learned District Judge had no jurisdiction to entertain the appeal as merely a notice to show cause was issued by the appellant in terms of the notice dated 14.12.2001.
- G 4. Even assuming that the principles of natural justice had been violated, the District Judge and consequently the High Court could not have exercised their jurisdiction without arriving at a finding that by reason of such non-service of notice, the first respondent was prejudiced.
- H 5. In any event, the Courts below should have determined the extent of illegal construction.

10. Mr. Moha Wasay Khan, learned counsel appearing on behalf of the respondent, on the other hand, urged : A

(1) Even the notice dated 14.12.2001 did not contain any description of the property.

(2) The constructions were raised in terms of a sanctioned plan as would appear from Annexure R-1 to the counter affidavit and only an area of 14 sq. ft. was the subject matter of unauthorized construction which could have been regularized on receipt of a compounding fee. B C

11. Indisputably the appellant in terms of the provisions of the Punjab Municipal Corporation Act was statutorily entitled to grant of sanction for construction of structures in terms of the bye laws framed by it. It is also not in doubt or dispute that subject to statutory interdict, the appellant-Corporation had the jurisdiction to regularise unauthorized structure on receipt of a compounding fee. It is a matter of some concern that according to the appellant a compounding fee of Rs.1,95,374/- was determined only on the basis of a purported oral request made by the first respondent, which prima facie cannot be accepted. How a statutory authority can pass a statutory order on an oral prayer made by an owner of the property is beyond anybody's comprehension. On what basis the compounding fee was determined is also not known. D E

12. The power of demolition is conferred on the Corporation in terms of Sections 269 of the Act, the relevant portions whereof read as under : F

"269. Order of demolition and storage of buildings and works in certain cases and appeal.—(1) Where the erection of any building or execution of any work has been commenced, or is being carried on or has been completed without or contrary to the sanction referred to in section 262 or in contravention of any condition subject to which such sanction has been accorded or in G H

A contravention of any of the provisions of this act or bye
laws made under, the commissioner may , in addition to
any other action that may be taken under this Act, make
an order directing that such erection or work shall be
demolished by the person at whose instance the erection
B or work has been commenced or is being carried on or
has been completed within such period (not being less
than three days from the date on which a copy of the order
of demolition with a brief statement of the reasons therefor
has been delivered to that person as may be specified in
C the order of demolition :

 Provided that no order of demolition shall be made unless
the person has been given by means of a notice served
in such manner as the Commissioner may think fit, a
reasonable opportunity of showing cause why such order
D should not be made:

(2) Any person aggrieved by an order of the
Commissioner made under sub-section (1) may prefer an
appeal against the order to the Court of the District Judge
of the City within the period specified in the order for the
demolition of the erection or work to which it relates.
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(3) ...

(4) Save as provided in this section no court shall
entertain any suit, application or other proceeding for
injunction or other relief against the Commissioner to
restrain him from taking any action or making any order in
pursuance of the provisions of this section.
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(5) Every order made by the Court of the District Judge on
appeal and subject only to such order, the order of demolition
made by the Commissioner shall be final and conclusive.”
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 Section 270 of the Act authorizes the appellant to stop
construction work where the erection of any building has been
commenced or is being carried out (but not completed) without
H or contrary to the sanctioned plan.

13. A finding of fact has been arrived at that the notices dated 10.01.2001 and 01.02.2001 were not served on the respondent. The said notices were also found to be absolutely vague. They did not contain the description of the property in question. Indisputably, they were issued in the name of a dead person. It is of some significance to notice that whereas in the first two notices objections was called for and/or directions to stop construction was issued, by reason of the third notice, a direction was issued upon the first respondent to demolish the structures. No opportunity of hearing was granted. No notice to show cause was issued. It is on that basis that a purported demolition order was passed which, indisputably, has been carried out.

14. It is, therefore, not correct to contend that the notice dated 14.12.2001 was not final and by reason thereof merely the first respondent was asked to file his show cause. Where a noticee, fails to carry out such direction, demolition can be carried out by the Corporation at the cost of the owner. In effect and substance, therefore, an order of demolition was passed in terms of the aforementioned notice dated 14.12.2001. It was a final order.

15. An appeal thereagainst was, thus, maintainable. Appellant furthermore acted arbitrarily insofar as it demolished the structures, despite pendency of the suit. We would assume that the order of injunction was granted for a limited period, but it is expected of a Statutory Corporation to act thereupon upon informing the court thereabout. Furthermore, the notice was vague. It did not contain any description of the property. How much area of the property was the subject matter of unauthorized constructions had not been disclosed. It is not in dispute that a plan for construction of the building was sanctioned. It was, therefore, obligatory on the part of the authorities of the appellant to categorically state as to how much area, if any, was the subject matter of unauthorized construction.

16. Strong reliance has been placed by Mr. Patwalia on *Aligarh Muslim University & Ors. v. Mansoor Ali Khan* [(2000)

A 7 SCC 529] to contend that in certain situations an order passed in violation/non-compliance of the principles of natural justice need not be set aside by the High Court in exercise of its power under Article 226 of the Constitution of India. We are, however, not concerned herein with such a situation.

B Respondent No.1 preferred an appeal against the order of the Commissioner directing demolition of the construction. The Appellate Court was entitled to consider as to whether the mandatory legal provisions had been complied with or not. The proviso appended to Section 269 of the Act in no uncertain terms provides for an opportunity of hearing before an order of demolition is passed. It is imperative in character but the said provision had not been complied with. The action on the part of the appellant, therefore, was highly arbitrary. In *Aligarh Muslim University* (supra) itself, the Court noticed the decision of the Court in *S.L. Kapoor v. Jagmohan & Ors.* [(1980) 4 SCC 379] wherein it was held that non-compliance of the principles of natural justice by itself causes prejudice. No doubt, the development of law in the field would have also to be kept in mind. The said decision, however, was rendered in the facts of the said case as it was a case of overstay of leave by an employee. It was found that no prejudice had been caused to the petitioner therein.

Mr. Patwalia places strong reliance upon paragraph 21 of the said decision which reads as under :

F “21. As pointed recently in *M.C. Mehta v. Union of India* there can be certain situations in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India. For example where no prejudice is caused to the person concerned, interference under Article 226 is not necessary. Similarly, if the quashing of the order which is in breach of natural justice is likely to result in revival of another order which is in itself illegal as in *Gadde Venkateswara Rao v. Govt. of A.P.* it is not necessary to quash the order merely because of violation of principles of natural justice.”

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It is, therefore, not a case where one statutory order has been set aside by a higher authority. The said principle, therefore, had no application to the fact of the instant case.

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17. Had a proper show cause notice been served upon the first respondent, he could have shown that the alleged violation of the provisions of the Act is of negligible character which did not warrant an order of demolition. Respondent No.1's contention that only an area of 14 sq. ft. was the subject matter of unauthorized construction should have been considered by the appellant and an appropriate order thereupon should have been passed. It was in a situation of this nature, the appellant was statutorily obligated to apply its mind in regard to the nature and extent of unauthorized construction, if any.

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18. We would, however, proceed on the basis that the plan was sanctioned. It would, therefore, be proper to direct that the appellant should be directed to restore such constructions for which order of sanction had been obtained. To the said extent the impugned order is modified.

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19. For the reasons aforementioned, the appeal is dismissed subject to the aforementioned modifications. In the facts and circumstances of this case, the appellant will pay and bear the costs of the respondent No.1. Counsel's fee assessed at Rs.2,00,000/- (Rupees two lacs only.)

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N.J.

Appeal dismissed.