

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****128****CR-3251-2025 (O&M)
Date of decision: 27.05.2025****Meena Ghosh****...Petitioner(s)****Vs.****Haryana Sahari Vikas Pradhikaran (HUDA)****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:- Ms. Pallavi Babbar, Advocate
for the petitioner.***********NIDHI GUPTA, J.**

The present civil revision petition has been filed by the petitioner/plaintiff, under Article 227 of the Constitution of India for setting aside order dated 29.11.2023 (Annexure-P-5) passed by Ld. Civil Judge (JR. Division), Gurugram in civil Suit no.3292 of 2023 title as 'Meena Ghosh versus HSVP (HUDA)', which is now pending for 08.07.2025 for plaintiff evidence, whereby application under order 39 rule 1 and 2 read with section 151 of CPC for ad-interim injunction restraining the officials/agents of the respondent/defendant from demolishing and restraining from interfering in the peaceful possession and enjoyment of the petitioner and restraining from demolishing the suit property of the petitioner and directing the respondent to de-seal the subjected premises mentioned in the plaint with immediate effect, be issued in favor of the petitioner and against the respondent, till the



decision of the suit, has been rejected; and setting aside the impugned order dated.07.05.2025 vide which Civil Appeal against the order dated.29.11.2023 was dismissed by the Ld. Additional District Judge Gurugram (Annexure-P-7) and the application filed by the petitioner under order 39 rule 1 and 2 read with section 151 of CPC (Annexure-P-3) may kindly be allowed in the interest of justice.

2. Learned counsel for the petitioner *inter alia* submits that grave injustice, loss and harm shall be caused to the petitioner in case application of the petitioner under Order 39 Rule 1 and 2 CPC is not allowed. Learned counsel states that premises which have been sealed by the respondent-Authority are the residential home of the petitioner. It is submitted that vide show cause notice dated 11.10.2023 (Annexure P-2), petitioner was given 24 hours to remove the alleged violation in the said premises. It is contended that said Notice has been wrongly sent to the petitioner; and that Mandatory statutory provisions of law have not been complied with while issuing notice (Annexure P-2) to the petitioner. Show cause notice dated 11.10.2023 (Annexure P-2) given by the respondent-officials is arbitrary and illegal as the provisions of Section 55 of the Haryana Urban Development Authority Act, 1977 (hereinafter referred to as the "Act") for sealing of the property have not been complied with. However, in passing the impugned orders, the learned Courts below have failed to consider these aspects of the matter. Learned Courts below have failed to appreciate that the house in question is the residential house, and petitioner is residing in the same



house since March 2023 till the sealing of the house by respondent officials. The officials of the respondent sealed the house of the petitioner without giving any legal notice prior to the sealing and the notice which is handed over to the petitioner in the office of the respondents is having date 11.10.2023 in which only 24 hours' time was given to demolish the construction which is totally against natural justice. Moreover, respondent officials visited the house on 13.10.2023 in the absence of the petitioner and sealed the house without giving any effective time to comply with the notice.

3. It is further submitted that the petitioner has a prima facie case in her favor and petitioner suffered irreparable loss due to the wrongful and illegal act done by the respondent as she is moving here and there on rented accommodation along with two daughters and old aged parents despite having her own house which is purchased by the petitioner and her husband with the life time savings. It is submitted that almost 1 1/2 years have passed since the illegal sealing of the property on 13.10.2023 and the petitioner along with her family dispossessed by the respondent in an arbitrary manner without giving any opportunity of hearing which is against the principle of natural justice and violation of right to residence which is a fundamental right in India, specifically guaranteed under Article 19(1)(e) of the Constitution. It is accordingly prayed that the present revision petition be accepted and application under order 39 rule 1 and 2 read with section 151 of CPC filed by the Petitioner may be allowed.



4. No other argument is made by counsel for the petitioner.
5. Heard learned counsel and perused the case file in great detail.
6. It is the pleaded case of the petitioner in the plaint dated 31.10.2023 (Annexure P-1) that the petitioner is owner in possession of residential House No. 401, Housing Board Colony, Sector 17A, Gurugram by way of Sale Deed No. 13024 dated 13.02.2023. Petitioner had moved into the subject premises in March 2023. The subject premises was constructed by the respondent-Board in the year 1980. After purchase, petitioner had initiated renovation work such as painting, change of doors, grills, windows, some plaster work in the walls of the subject premises. However, on 13.10.2023, officials of the respondent had illegally sealed the said house of the petitioner in the morning when petitioner and her husband were not at home. Even no notice was issued prior to the sealing; and it is only subsequently she was informed that a notice dated 11.10.2023 (Annexure P-2) had been issued to her; to which petitioner had filed reply dated 13.10.2023 (Annexure P-2A).
7. Along with the plaint, petitioner had filed application dated 31.10.2023 (Annexure P-3) under Order 39 Rules 1 and 2 read with Section 151 CPC for ad interim injunction restraining the respondent from demolishing and interfering in the peaceful possession of the petitioner over the subject premises. Vide impugned order dated 29.11.2023 (Annexure P-5), the learned trial Court had dismissed the



said application of the petitioner. The petitioner had preferred an appeal dated 11.12.2023 (Annexure P-6); which was also dismissed by the learned Additional District Judge, Gurugram vide order dated 07.05.2025 (Annexure P-7).

8. It has been contended by the petitioner that only repair/renovation work had been undertaken by the petitioner over the suit property. However, a perusal of the show cause notice dated 11.10.2023 (Annexure P-2) shows that it has been stated therein that construction of stilt + 4 has been undertaken by the petitioner without getting necessary approval and sanction and without getting the building plan approved. The show cause notice also states that petitioner had extended the roof slab/chajja 8-9 feet towards road on both sides of the suit house without getting required permission, and in contravention of the approved zoning plan. As such, petitioner had violated Article 3 of the Haryana Urban Development Authority (Erection of Building) Regulations 1979. Accordingly, by way of the said show cause notice, petitioner was called upon to stop construction immediately as stilt + 4 was banned. Petitioner was also asked to remove the violation within 24 hours failing which the subject premises would be sealed; and further as to why action should not be taken against the petitioner under Section 55 of the Act.

9. A perusal of the entire record of the case shows that it has nowhere been denied by the petitioner that illegal construction has been carried out by her. In fact, on repeated queries put by this Court,



learned counsel for the petitioner has not categorically stated that illegal construction has not been raised by the petitioner. Even in the plaint (Annexure P-1) it has nowhere been stated that there is no illegal construction. All that is repeatedly stated is that great loss and harm will be caused to the petitioner if the premises are kept sealed; and that she had not received notice dated 11.10.2023; and that the premises have been illegally sealed. However, nowhere is it stated either in the plaint or in the application under Order 39 Rule 1 and 2 (Annexure P-3) that there is no illegal construction carried out by the petitioner. Thus, the facts as revealed by the defendant regarding the illegal construction, in respect of raising of stilt + 4, or of extending roof slab/chajja beyond the permissible limits and thereby encroaching upon the common area, have nowhere been denied by the petitioner. In fact, the defendant had produced certain recent photographs of ongoing construction at the subject premises which photographs too, have not been denied by the petitioner.

10. Relevant findings of the learned trial Court in this regard as contained in para 5 of the impugned order dated 29.11.2023 (Annexure P-5) are as under: -

“Thus after having heard the arguments advanced by learned counsel for both the parties and after having gone through the documents on the file, this court is of the considered view that applicant has sought the relief of mandatory injunction for de-sealing the suit property on the grounds that the show cause notice was not given to her. So far as order for sealing the property is concerned, the facts



*have been revealed by defendants which have not been controverted by the plaintiff during arguments on the application under Order XXXIX Rule 1 and 2 CPC. Defendant has taken the plea that plaintiff has illegally raised construction of stilt parking plus four storeys which is not permissible. This fact has not been denied by plaintiff. The defendant has again taken the objection that the plaintiff has extended the roof slabs/projections/chhajja beyond permissible limits and thereby encroached upon the common area. This fact has also not been denied. The two basic violations have been admitted by the plaintiff in a way by necessary implications and this construction appears to be fresh construction as shown in the photographs relied upon by the defendants. Moreover, the two neighbours are claiming themselves to be aggrieved parties. Since, the defendant after having taken necessary permission from Deputy Commissioner had got carried out inspection of spot through JE concerned and property was sealed after giving show cause notice. Otherwise also, even if for the sake of argument the submissions of learned counsel for plaintiff regarding non-giving of show cause notice are admitted what prejudice has been caused to plaintiff in view of violation committed by plaintiff. When prima facie illegal construction has been raised by the plaintiff there is no ground to allow the application for mandatory injunction in favour of plaintiff at this stage who herself appears to be at fault. Otherwise, mandatory injunction is granted to the plaintiff only in exceptional circumstances at this stage of deciding application under Order XXXIX Rule 1 & 2 CPC. In this regard reliance can be placed on a case reported as **Prem Mohan Kalra Vs. State of Haryana, 2011(4) RCR (Civil) 592**. Therefore, the applicant/plaintiff has failed to prove prima*



facie case and balance of convenience in her favour and necessary ingredients for granting mandatory injunction at this stage are not made out in favour of plaintiff and the application moved by applicant/plaintiff is dismissed being without merits.”

11. The learned first appellate Court further found that the petitioner was unable to even prove that she is living in the house as, except for the electricity connection, no other evidence was brought by her in this regard. Further from the photographs, it was clear that fresh construction was going on in the said premises. Relevant findings of the learned first appellate Court as contained in para 9 of the order dated 07.05.2025 (Annexure P-7) are as under: -

“The appellant/plaintiff has filed the present appeal against the impugned order dated 29.11.2023 mainly on the ground that the trial court has not considered that the sealing of the premises is in violation of law as no proper procedure is followed and she has not been given opportunity of being heard before de-sealing it and no show cause notice was served to her. Defendant has taken the plea that plaintiff has illegally raised construction of stilt parking plus four storeys which is not permissible and also plaintiff has extended the roof slabs/projections/chhajja beyond permissible limits and thereby encroached upon the common area. These facts have not been denied by appellant/plaintiff. As such two basic violations have been admitted by the plaintiff in a way by necessary implications and this construction appears to be fresh construction as shown in the photographs relied upon by the defendants. The appellant has not denied that photographs are not of her on going



construction house in question. Prima facie, illegal construction has been raised by the plaintiff there is no ground to allow the application for mandatory injunction in favour of plaintiff at this stage who herself appears to be at fault.”

12. From the above, it is clear that *prima facie* illegal construction had been raised by the petitioner. Therefore, balance of convenience does not lie in favour of the petitioner. Further, as petitioner is unable to prove that she is even residing in the subject premises, it is not made out that irreparable harm will be caused to her in case ad interim injunction is not granted in her favour. Hence, no ground is made out to interfere in the impugned orders.

13. The present civil revision petition, accordingly, stands **dismissed**.

14. Pending application(s) if any also stand(s) disposed of.

27.05.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No