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2025:PHHC:098717



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP-5613-2025

Date of Decision: 04.08.2025

Saini Mahasabha, through its President/Secretary
Sh. Paramjit Singh Saini

..... Petitioner

Versus

Municipal Corporation, Pathankot and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. V.K. Sandhir, Advocate
for the petitioner.

Mr. Sanjeev Soni, Advocate
for the respondents.

HARSH BUNGER J. (ORAL)

Prayer in the present writ petition filed under Articles 226/227 of the Constitution of India, *inter alia*, seeking issuance of a writ in the nature of Certiorari for setting aside the order dated 04.01.2024 (Annexure P-9) passed by the learned Commissioner, Municipal Corporation, Pathankot and also the order dated 08.04.2024 (Annexure P-10/A) passed by the learned Additional District Judge, Pathankot, whereby the appeal filed by the

petitioner against the order dated 04.01.2024 (Annexure P-9) has been dismissed.

2. Briefly, petitioner (Saini Mahasabha, through its President/Secretary Sh. Paramjit Singh Saini) is stated to have purchased a parcel of land measuring 01 Kanal 01 Marla from the Department of Rehabilitation, Government of Punjab vide Conveyance Deed dated 07.05.1992 (Annexure P-1). It is stated that the aforesaid land purchased by the petitioner fell in Village Daulatpur, under the erstwhile Municipal Council, Pathankot. It is further stated that after the purchase of the aforesaid land parcel, the petitioner raised construction and continued to use the same; however, no objection was ever raised by the Municipal Council, Pathankot.

2.1. It appears that in the year 2011, the Municipal Council, Pathankot, was converted to Municipal Corporation, Pathankot vide a notification dated 26.07.2011. On 04.06.2019, the Municipal Corporation, Pathankot, issued a notice under Section 269(1) of the Punjab Municipal Corporation Act, 1976 (for short, 'the 1976 Act') calling upon the petitioner to show cause as to why the construction/reconstruction of the ground floor (covered area measuring 2400 Feet approximately) be not ordered to be demolished.

2.2. Petitioner is stated to have replied to the aforesaid notice (Annexure P-5).

2.3. It transpires that the learned Commissioner, Municipal Corporation, Pathankot, passed an order dated 04.01.2024 (Annexure P-9), the relevant extract of which reads as under:-

“In view of the above facts & in compliance of the speaking order of worthy Director local govt. The area of building of Saini Maha Sabha measured as per building bye laws found

that Saini Maha Sabha has encroached upon 67'x9'--7" land by putting iron mesh grill which is required to be removed and further building of Saini Maha Sabha has covered 100 area of plot which is not permissible as per bye laws and overhanging projection made by Saini Maha Sabha is also required to be removed.

70% area of the building is liable to be demolished only 30% area of the building can be compounded after submission of compromise plan by Saini Maha Sabha & depositing the required fee for the same.

In view of the above, I, Harbir Singh, Deputy Commissioner cum Commissioner Municipal Corporation Pathankot do hereby directed the respondent no.4 Saini Maha Sabha to remove the encroachment immediately made by them & to submit a compromise plan with in fifteen days after removing the non compoundable area failing which the Municipal corporation will demolish the same at its own level at your risk and cost. I, hereby Dispose of (Annexure P-7) served by the Petitioner."

2.4. Feeling aggrieved against the aforesaid order dated 04.01.2024 (Annexure P-9), the petitioner preferred a statutory appeal, which came to be decided by the learned Additional District Judge, Pathankot (Annexure P-10/A); the relevant extract of which reads as under:-

“ - x - x - x - x
 9. The perusal of record further reflects that a notice bearing No.551 dated 04.06.2019 under Section 269(1) of the Punjab Municipal Corporation Act, 1976 was issued by the Municipal Corporation, Pathankot to appellant Saini Mahasabha. Saini Mahasabha had filed reply dated 24.10.2019 taking all the said pleas in the same. One Sushil Kumar and others have filed a complaint that Saini Mahasabha/appellant had raised constructed by encroaching upon public park. One Civil Writ petition was also filed by Sushil Kumar bearing CWP No.8651

of 2019 which was disposed of by Hon'ble High Court vide order dated 01.04.2019 by giving directions to Director Local Bodies, Government of Punjab to consider and decide the representation of the petitioner. One another CWP was also filed by said Sushil Kumar bearing No.27027 of 2022 which was disposed of vide order dated 15.09.2023 by giving directions to Commissioner, Municipal Corporation, Pathankot to decide the legal notice of the petitioners within 4 weeks. The Municipal Corporation, Pathankot thereafter has obtained the report dated 28.11.2023 of Tehsildar, Pathankot, who has specifically reported that Saini Mahasabha has raised unauthorized construction at the spot. The total land of Saini Mahasabha is 435 square yards and 100% area has been covered, out of which 254.93 square yards is not compoundable and only 30% is compoundable. It was also reported that appellant had installed an iron mesh grill on the front side and has made encroachment and further 3 feet overhanging projection has also been constructed which is non compoundable. Thereafter the detailed speaking order which has been impugned vide order dated 04.01.2024 by Municipal Corporation, Pathankot as mentioned here-in-before has been passed.

10. It has clearly come up during the course of arguments and from perusal of record that no sanctioned plan is there with the appellants. As mentioned here-in-before, the plan submitted by the appellant Saini Mahasabha was not approved. Meaning thereby that construction which has been raised is without any sanctioned plan and is against bye-laws, so no case in favour of Saini Mahasabha is made out to set aside the impugned order. Thus, it is the case of encroachment and unauthorized construction and further raising construction over 100% of area which is not permissible under bye-laws. 70% area of building is liable to be demolished and only 30% of area can be compounded under rules on depositing the requisite fee.

11. Now so far as the pleas raised on behalf of appellant that no opportunity of being heard to it was granted and the impugned order is non speaking order are concerned, it may be mentioned that a notice under Section 269(1) of the Punjab Municipal Corporation, Act has already been issued to the appellant way back in the year 2019 bearing No.551 dated 04.06.2019. The notice has been replied on behalf of appellant vide its reply dated 24.10.2019. As such, it can not be said that no opportunity has been given to the appellant to present their case, rather on the record it is very clear that there is no sanctioned plan as per building bye-laws in favour of appellant Saini Mahasabha. The impugned order is detailed one and each and everything has been considered while passing the impugned order, so it can not be said that it is non speaking order, as such the pleas taken by the appellant have no merits.

12. In view of above discussion, the appeal filed by the appellant without any merit is hereby dismissed with no order as to costs. Memo of costs be prepared and record file be sent back after retaining copy of the same to the concerned quarter alongwith copy of judgment. Appeal file be consigned to the record room, Pathankot.”

3. In the aforementioned circumstances, petitioner has filed the instant writ petition before this Court seeking relief(s), as noticed hereinabove.

4. During the pendency of the present writ petition, this Court passed the following order on 04.03.2025:-

“Prayer in the present writ petition filed under Article 226/227 of the Constitution of India is for issuance of a writ in the nature of Certiorari, for setting aside order dated 04.01.2024 (Annexure P-9) passed by learned Commissioner, Municipal Corporation, Pathankot, whereby, construction raised by the petitioner has been ordered to be demolished to the extent of 70%.

Learned counsel for the petitioner, inter alia, submits that although the direction to demolish 70% of the construction has been passed against the petitioner, however, it has not been specified as to which portion of the building has to be demolished. He further submits that in case the Municipal Corporation points out the specific areas which have to be demolished, the petitioner would be ready and willing to demolish such construction; so as to bring the building in consonance with the norms/building bye-laws.

At this stage, Mr. Sanjeev Soni, Advocate appears on behalf of respondents-M.C., in pursuance of the advance copy of paper book having already been supplied to Municipal Corporation.

Learned counsel for respondents/MC submits that in fact the petitioner has raised construction on the 100% of the plot without leaving any setback and without complying with any of the building bye-laws. He seeks a short accommodation to place on record the details of the unauthorized constructions raised by petitioner and also specify the constructions/areas which are required to be demolished so as to bring the building within the norms/building bye-laws.

At his request, adjourned to 17.03.2025.

Let the needful be done before the next date of hearing.”

5. In compliance of the aforesaid order dated 04.03.2025 passed by this Court, a short reply dated 13.03.2025 by way of affidavit of Mr. Aditya Uppal, Commissioner, Municipal Corporation, Pathankot, has been filed. The relevant extract of which reads as under:-

“ - x - x -

3. *That on the last date of hearing i.e. 04.03.2025, the counsel for the petitioner argued that they are ready to bring the excess construction within the norms laid down by the Building Bye-Laws, but in the demolition order, the answering respondent has failed to point out as to which portion of the*

building is not in consonance with the Building Bye-Laws. Thereafter, the Hon'ble Court had afforded an opportunity to the answering respondent to get the survey conducted and point out which portion of the building is not in consonance with the Building Bye-Laws, and the unauthorized portion be demolished.

4. *That accordingly the survey of the plot conducted and survey report alongwith a map was prepared. It was found that the total area of the plot (as per sale deed) was 525 Sq. Yds. Or 4725 Sq. Ft. and Total Area of the plot on site was 435 Sq. Yd. Or 3919 Sq. Ft. from this area available on site, permissible coverage according to the Building Bye-Laws is 1176 Sq. Ft. (i.e. 30% of the Total Plot) and the Area to be demolished (Shown in Yellow Colour) is 2743 Sq. Ft. The copy of the report, the relevant extract of the Building Bye-Laws and the Map are annexed herewith as **Annexure R-1, R-2 and R-3** respectively.”*

5.1 The above extracted reply has been filed along with the report, extract of applicable Building Bye-Laws and also a map indicating the portion which is required to be removed by the petitioner.

6. Today, learned counsel for the petitioner has tried to counter the short reply filed on behalf of the Municipal Corporation, Pathankot, by stating that the same is motivated, however, I find no merit in the same. Apparently, the petitioner has raised construction over 100% of the area of the plot, whereas as per the norms (Annexure R-2) which have been attached along with the short reply filed on behalf of the Municipal Corporation, Pathankot, only 30% of the total area of the site is permitted as maximum ground coverage with maximum FAR of 1:2.00.

7. The *Hon'ble Apex Court in Rajendra Kumar Barjatya and another Versus U.P. Avas Evam Vikas Parishad & ors. (2024 SCC Online*

SC 3767), has observed as under-

“20. In the ultimate analysis, we are of the opinion that construction(s) put up in violation of or deviation from the building plan approved by the local authority and the constructions which are audaciously put up without any building planning approval, cannot be encouraged. Each and every construction must be made scrupulously following and strictly adhering to the Rules. In the event of any violation being brought to the notice of the Courts, it has to be curtailed with iron hands and any lenience afforded to them would amount to showing misplaced sympathy. Delay in directing rectification of illegalities, administrative failure, regulatory inefficiency, cost of construction and investment, negligence and laxity on the part of the authorities concerned in performing their obligation(s) under the Act, cannot be used as a shield to defend action taken against the illegal/unauthorized constructions. That apart, the State Governments often seek to enrich themselves through the process of regularisation by condoning/ratifying the violations and illegalities. The State is unmindful that this gain is insignificant compared to the long-term damage it causes to the orderly urban development and irreversible adverse impact on the environment. Hence, regularization schemes must be brought out only in exceptional circumstances and as a onetime measure for residential houses after a detailed survey and considering the nature of land, fertility, usage, impact on the environment, availability and distribution of resources, proximity to water bodies/rivers and larger public interest. Unauthorised constructions, apart from posing a threat to the life of the occupants and the citizens living nearby, also have an effect on resources like electricity, ground water and access to roads, which are primarily designed to be made available in orderly development and authorized activities. Master plan or the zonal development cannot be just individual centric but also must be devised

keeping in mind the larger interest of the public and the environment. Unless the administration is streamlined and the persons entrusted with the implementation of the act are held accountable for their failure in performing statutory obligations, violations of this nature would go unchecked and become more rampant. If the officials are let scot-free, they will be emboldened and would continue to turn a nelson's eye to all the illegalities resulting in derailment of all planned projects and pollution, disorderly traffic, security risks, etc.”

8. Apparently, the petitioner has raised construction(s), which are in violation of applicable provisions of Punjab Municipal Corporation Act, 1976 and also the Rules and Building Bye laws framed thereunder.

9. In view of the above discussion, I find no merit in the present writ petition and the same is accordingly dismissed.

9.1. Municipal Corporation, Pathankot, is directed to proceed in the matter, in accordance with law.

10. All pending application(s), if any, shall also stand closed.

04.08.2025
Pd

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No