

**Chandigarh Administration and another v. Mrs. Harinder Pannu
(R. S. Mongia, J.)**

petitions, and the learned Single Judge should not have interfered in writ jurisdiction. No such point was urged before the learned Single Judge. The learned Single Judge having exercised his discretion under Article 226 of the Constitution of India, the learned counsel cannot be permitted to raise the point of delay in filing the writ petition at this stage.

(12) For the reasons recorded above, these Letters Patent Appeals fail and are dismissed with costs, which are quantified at Rs. 500 in each case.

(13) As far as L.P.A. No. 458 of 1984 is concerned, which has been filed by Batala Improvement Trust, the learned Single Judge had relied on the judgment of the Single Bench against which the above-mentioned Letters Patent Appeals have been dismissed. In this case, the publication of the first notice under Section 36 of the Act in the newspaper was on 31st October, 1975 and the first notification under Section 36 in the official Gazette was published on 21st November, 1975. The notification under Section 42 of the Act was on 20th/21st November, 1978. For the view we have taken in L.P.As Nos. 127, 128 and 129/1983 that the starting point for limitation of publication of a notification under Section 42 of the Act is the first notice published in the newspaper or the official Gazette, whichever is earlier, the notification under Section 42 of the Act in the present case having been issued after three years of 31st October, 1975, was rightly quashed by the learned Single Judge. We find no merit in the present Letters Patent Appeal and dismiss the same with costs, which are quantified at Rs. 500.

P.C.G.

Before J. V. Gupta, C.J. & R. S. Mongia, J.

CHANDIGARH ADMINISTRATION AND ANOTHER,—Appellants.

versus

MRS. HARINDER PANNU,—Respondent.

Letters Patent Appeal No. 371 of 1989.

25th September, 1990

Capital of Punjab (Development and Regulation) Act, 1952—S. 15—Punjab Capital (Development and Regulation) Building Rules, 1952—Rl. 5—Construction in contravention of Rules—Notice of demolition served after six months of completion of illegal construction—Demolition illegal—Such construction—Whether stood compounded.

Held, that it is apparent from the proviso to Rule 15 of the Punjab Capital (Development and Regulation) Building Rules, 1952 that notice is to be issued within six months of the alleged unauthorised construction, the starting point being as to when the alleged construction had begun or completed as the case may be. That being the position in law, no notice could have been issued to the writ petitioner for demolition after six months of the construction. The learned Single Judge has correctly held that the demolition on the basis of such a notice was illegal. The learned Single Judge in his judgment has observed "that by lapse of time, the construction stood impliedly compounded and legalised".

(Para 5)

Appeal under Clause X of the Letters Patent against the Judgment dated 3rd February, 1989, passed in CWP No. 717 of 1987, by Hon'ble Mr. Justice M. S. Liberhan.

Deepak Agnihotri, Advocate, for the Appellants.

P. S. Patwalia, Advocate, for the Respondent.

JUDGMENT

R. S. Mongia, J.

(1) This is a Letters Patent Appeal filed on behalf of Chandigarh Administration, against the judgment of learned Single Judge dated 3rd February, 1989, accepting the writ petition of respondent (writ-petitioner) Mrs. Harinder Pannu, by which it was held that the action of the appellants in demolishing a portion of the stores in House No. 31, Sector 8-A, Chandigarh, owned by the respondent, was illegal and that the respondent was entitled to reconstruct the demolished portion at her own costs.

(2) Briefly the facts giving rise to this appeal are that respondent is the owner of House No. 31, Sector 8, Chandigarh. She was issued a notice dated 17th September, 1982 (Annexure P-1) by the Chief Administrator, Union Territory, Chandigarh, under Section 15 of the Capital of Punjab (Development and Regulation) Act, 1952, mentioning therein that she had constructed temporary stores in the court-yard of the house, in contravention of Rule 5 of the Punjab Capital (Development and Regulation) Building Rules, 1952. She was asked to demolish the aforesaid unauthorised construction within 15 days of the issue of the notice. Reply was given to the said notice that she could not be asked to demolish the alleged unauthorised construction. However, an order dated 17th August, 1983 was

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issued by the Chief Administrator, Union Territory, Chandigarh, ordering the demolition of the unauthorised construction. However, no action was taken till 23rd December, 1986, when the alleged unauthorised construction was demolished. The respondent, Mrs. Harinder Pannu filed a writ petition challenging the action of the Chandigarh Administration in demolishing the so called unauthorised construction.

(3) The only argument which was addressed before the learned Single Judge and which prevailed before him was that proviso to Rule 15 of the 1952 Rules provides that the Chief Administrator can require the building erected in contravention on buildings Rules to be altered or demolished by a written notice delivered to the owner thereof within six months of its having begun or having been completed and since in the present case the notice for demolition was admittedly after six months of the completion of the alleged unauthorised construction, the same could not be ordered to be demolished, but the alleged illegal construction in contravention of the rules could only be compounded.

(4) In the present case, the Building Inspector on 15th March, 1982, reported regarding the alleged unauthorised construction and it was mentioned in his report, a copy of which is attached as Annexure R-1, that the construction appears to be less than six months' old. The notice for demolition was issued on 17th September, 1982. Admittedly, the notice issued was after six months of the construction inasmuch as even the report regarding the alleged unauthorised construction was made on 15th March, 1982. Proviso to Rule 15 of the 1952 Rules may be noticed :—

“Provided that if a building is begun, erected or re-erected in contravention of any of the building rules, the Chief Administrator shall be competent to require the building to be altered or demolished by a written notice delivered to the owner thereof within six months of its having begun or having been completed, as the case may be. Such notice shall also specify the period during which such alteration or demolition has to be completed and if the notice is not complied with, the Chief Administrator shall be competent to demolish the said building at the expense of the owner.”