

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****CMPMO No.474 of 2023****Date of Decision : 24.11.2025**

Municipal Corporation, Shimla**..... Petitioner*****Versus*****Mukesh Mahajan and another****.....Respondents**

Coram:**The Hon'ble Mr. Justice Bipin Chander Negi, Judge***Whether approved for reporting?¹*

For the petitioner : Mr. Mukul Sood, Advocate.

For the respondents : None.

Bipin Chander Negi, Judge (oral)

The present petition has been preferred against the impugned judgment dated 28.09.2022, passed by learned District Judge, Shimla, exercising the powers of Appellate Authority under Himachal Pradesh Municipal Corporation Act, 1994, in Civil Misc. Appeal No.25-S/14 of 2022, titled *Mukesh Mahajan and another vs. Municipal Corporation, Shimla*, whereby an appeal preferred by the respondents, herein, has been accepted and order dated 02.04.2022, passed by the Commissioner, Municipal Corporation, Shimla in Case No.56/AP/2021, has been set aside.



2. Heard learned counsel for the petitioner, perused the impugned order and the documents appended along-with the present petition.

3. The proceedings, in the case at hand, were initiated on the basis of a complaint made by one Umesh Pratap Singh dated 30.06.2020. The said complaint was diarized with the petitioner-Corporation vide Diary No.2060/Mukhya/20 dated 30.06.2020. In the complaint so made by Umesh Pratap Singh, it had categorically been averred that the building, in the case at hand, is owned by Chanan Singh, who had let out the building to Mukesh Mahajan, present respondent No.1. The allegation in the complaint is that an unauthorized construction has been raised by said Mukesh Mahajan (present respondent No.1) by raising a double storeyed structure, in the case at hand.

4. In pursuance to the complaint so made, the site was visited and inspected by a Junior Engineer of the Corporation on 08.01.2021, who submitted his report. From perusal of the site inspection report, it is evident that Mukesh Mahajan was asked to show the sanction plan of the work carried out at the spot, but he failed to show. The dimension of the unauthorized construction had been detailed in the site inspection report.

5. Based on the aforesaid, proceedings were initiated by the Corporation by issuance of notice to present respondent No.1 under



Sections 242, 253 and 254(6) of the Municipal Corporation Act, 1994. Before the Commissioner, the respondents were proceeded against ex parte. The Commissioner had called for a site report while adjudicating the matter. He opined that he is satisfied with the report submitted by the Junior Engineer duly endorsed by the Architect Planner. Since the respondents had failed to produce on record any valid sanction, therefore, an order of demolition of unauthorized construction was passed by the Municipal Commissioner.

6. Feeling aggrieved by the same, an appeal was preferred by the present respondents before the District Judge, Shimla. The same was allowed vide impugned judgment dated 28.09.2022. The first Appellate Court was of the view that in order to establish the unauthorized construction, sanction was required to be placed on record by the present petitioner/Corporation in order to show the deviation or construction in excess thereof. Since the present petitioner/Corporation had failed to show the same, therefore, the appellate Authority was of the view that the unauthorized construction could not be established, in the case at hand.

7. Insofar as issuance of notice under Sections 242, 253 and 254(6) of the Municipal Corporation Act, 1994 is concerned, the same can be issued either to owner or the occupier depending upon as to who had carried out the unauthorized construction, in the case at hand. Since, in the case at hand, notice had been issued only to the occupier



of the building, therefore, it was incumbent upon the petitioner/ Corporation to establish that the unauthorized construction was raised by the occupier. On this count, the petitioner/ Corporation has failed to show that it is the occupier who has raised the unauthorized construction. Keeping in view the allegation qua unauthorized construction made by the Municipal Corporation, in my considered view it would be appropriate if the petitioner/Corporation qua the present cause of action is permitted to initiate action both against owner and the occupier.

8. The present petition is disposed of in the above terms. Hence, both the judgments passed by the learned District Judge dated 28.09.2022 and by the Municipal Commissioner dated 02.04.2022 are quashed and set aside. Action qua which liberty has been granted be initiated at the earliest and proceedings in this respect be completed within six months from today.

The pending miscellaneous application(s), if any, shall also stand disposed of.

November 24, 2025 (KS)

(Bipin Chander Negi)
Judge