

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 2313 of 2013
Date of Decision : 16.03.2015

Deepak Jain

....Petitioner

Versus

Municipal Council, Jind and others

...Respondents

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

Present: Mr. Mani Ram Verma, Advocate
for the petitioner.

Mr. Jagdish Manchanda, Advocate
for respondents no. 1 and 2.

R.P. Nagrath, J.

The petitioner is plaintiff no. 2 before the trial Court and seeks to invoke the jurisdiction of this Court under Article 227 of the Constitution of India to challenge the orders passed by the Courts below. The learned trial Court dismissed the prayer of the plaintiffs for grant of *ad interim* injunction under Order XXXIX Rules 1 and 2 CPC which was affirmed in appeal. Respondents no. 3 and 4 herein are co-plaintiffs.

2. Ajit Kumar Jain father of the plaintiffs was the tenant in the shop in question. Ajit Kumar Jain having died on 24.03.2007, the tenancy devolved upon the plaintiffs. The intended action of the Municipal Council in serving notices to demolish dangerous

structures is subject matter of challenge in the litigation pending before the trial Court.

3. It was stated that the landlord got moved an application through his relative Vinay Goyal to the Municipal Council which issued notice to the tenants for demolishing the shop in question. The notice was addressed to Manoj Kumar-respondent no. 3 asking him to demolish the shop within six hours. The notices are challenged on the ground that no resolution was passed by the Municipality and thus the notice is without jurisdiction.

4. Respondents no. 1 and 2 pleaded that Pankaj Singh, Junior Engineer of the respondent-council surveyed the town and prepared the report dated 05.09.2012 and found that 21 buildings situated in densely populated area are unfit and unsafe for human habitation. Accordingly, notices under Section 120 of the Haryana Municipal Act, 1973 (hereinafter referred to as "the Act") were issued. It was further stated that on the directions of Deputy Commissioner, Jind, Sub Divisional Engineer submitted report dated 11.01.2012 that the disputed property is unfit to use further. It was denied that the Executive Officer of Municipality does not have the power to issue notice.

5. I have heard learned counsel for the parties, perused the impugned orders and the paper-book.

6. Learned Appellate Court while dismissing appeal observed as under:-

".....From the pleadings of the parties, it

is evident that the disputed shop is located in the abadi of Jind town. Photographs have been placed on the file indicating that shop in dispute alongwith adjoining shops of the said building is a corner located building and two roads adjoin the same. As per report dated 05.09.2011 of Pankaj Singh JE as many as 21 buildings of the Jind town were found in ruinous condition including the present building. It is proved from the said report that disputed shop under the tenancy of the plaintiffs is a part of the main building, which has been chosen for demolition. In fact the entire building of which the disputed shop is a part and other 20 buildings were found to be in ruinous condition. Sub Divisional Engineer Provincial Sub Division No. 1, PWD (B&R), Jind in compliance of the letter no. 15 of 05.01.2012 of Deputy Commissioner found that as per visual appearance and existence of signs for structured failure i.e. settlement in foundation, cracks in walls, damaged roof (photographs). The building is unsafe to use further. The photographs have also been placed on the file.

The contention of learned counsel for the appellants that SDE did not give a report that the building in question is in ruinous state or in any way dangerous would be untenable as the report of SDE

clearly indicates that building is unsafe to use further. Thereafter, JE Pankaj Singh also made report that this building is in ruinous condition. Argument that committee did not pass any separate resolution for demolition of the building or the disputed shop, hence notice of demolition is illegal, is also untenable as Section 119 and 120 of Haryana Municipal Act are required to be read together as both deal with the dangerous or insanitary buildings or places and are meant to be applied for public interest. Whenever there is danger of falling of any building which is in ruinous condition then action is to be taken by Municipal Authority under Sections 119 and 120 of the Haryana Municipal Act. Individual rights of the owner or occupier give way to the larger interest of general public so as to safeguard the public in general and also occupants of said building. Section 120 of the Haryana Municipal Act does not provide for giving any prior notice to the occupier and only issuance of notice to the owner is mentioned therein. The contention that plaintiffs were not properly heard and no notice was served upon them would also be untenable as the defendants have placed on record copy of notice sent to Manoj Kumar plaintiff who refused to receive the same and a copy thereof was affixed at the spot. Any

building unsafe for human habitation is to be identified and ascertained by Municipal Authority so that the same could be vacated, repaired or demolished to prevent danger to general public as so ruled by our Hon'ble Court vide order dated 30.08.2012 in Civil Writ Petition No. 12185 of 2012, titled as Court on its Own Motion vs. State of Haryana. Order for demolition was passed after Deputy Commissioner, Jind had ordered for report and SDE concerned inspected the shop in dispute alongwith main building and found that to be unsafe.....”

7. The bone of contention for the petitioner was that the notices have not been issued by the authorities competent to do so and, therefore, the proposed action is illegal and cannot be sustained. The other contention was that the building in question has not been proved to be in a dangerous state requiring demolition by taking support of the report of building experts of the tenants. That report is dated 23.04.2013 which was prepared after the dismissal of the appeal by the Appellate Court.

8. Mr. R.K. Jaglan, Civil Engineer of the plaintiffs visited the spot on 18.04.2013 and prepared his report dated 23.04.2013, Annexure P-8. It is observed by the Engineer as under:-

“There is no crack in walls, roofs and floors listed below as is clear in the photographs attached with this report. The age of the building is about 60 years. The

overall condition of the shop in question is good and the same can be used after necessary repairs.

The sketch plan of the building is also attached with this report.

- (i) Pictorial view of the building is shown in the Photo No. 1.*
- (ii) Internal photograph of building are shown in photo no. 4.*
- (iii) There are no cracks in the walls photo no. 5.*
- (iv) All the walls are held vertical as tested by me by using plumb-bob.*
- (v) There is no displacement of cement plaster.*
- (vi) The jack-arch roof is all O.K. without having deflection as shown in photo nos. 6 and 7.*
- (vii) Brick bond of walls is perfectly all right.*
- (vii) There is no leakage from roof.*
- (ix) Cement floors are having neither deflection nor cracks.*
- (x) Minor repairs by way of cement plaster on the top roof are only required.*
- (xi) The brick ballast and other building materials placed on roof as shown in photo nos. 2 and 3.”*

Mr. Jaglan holds degree in Civil Engineering.

9. The petitioner also relied upon report (Annexure P-9) made by G.D. Dass, who holds diploma in Architecture, and he

also submitted his report of his spot visit on 18.04.2013. The architect has reported that after dismantling of the rest parts of the building in question, the brick ballast and other building materials is stored on the first floor of the building, now roof of the shop, which can cause blockage of the rain water, which may ultimately cause harm to the shop in question. There is some recent damage to the first floor of the building, now terrace of the shop in question, which appears to have happened during the demolition of the rest of building, hence the same required some minor repair to the roof of the shop in question.

10. The ruinous state of the building is even apparent from the photographs clicked by the expert of the petitioner. Even if there is scope of contending that the structure of this building would not instantly crumble down it would not be safe to keep such a building intact under the protection granted by the courts. That would result into greater harm to the occupants of the building as well as passers-by.

11. The inside portion of the shop in question seems to have been painted and whitewashed recently in order to conceal its real condition but matter would be apparent from the photographs (Annexure R-1) placed on record by the respondents. These are 10 photographs obviously taken by the respondents much before the visit of the Engineer of the petitioner. The ruinous and dangerous condition of the entire building is apparent from these photographs.

12. The learned counsel for the petitioner contended that the landlord was out to dispossess the tenant, but the eviction order was ultimately set aside by Hon'ble Supreme Court in Civil Appeal No. 859 of 2010 arising out of SLP(C) No. 30304 of 2008 decided on 15.01.2010. This contention would be untenable as the eviction order was passed on the ground of the tenant having ceased to occupy the demised shop since August, 1989. Order of this Court in Civil Revision No. 5631 of 2003 decided on 05.11.2008 titled Ajit Kumar (deceased through LRs) vs. Atul Kumar Jain shows that the eviction petition was filed on 12.01.1990 i.e. about 25 years ago.

13. No motive *prima facie* can be attributed to the Municipal Council as general survey was conducted in the town and 21 buildings were found to be in dangerous condition.

14. Learned counsel for the petitioner further contended that the Municipal Committee and not an officer of the Committee is authorized to issue notices under Sections 120 and 235 of the Act of 1973.

15. Annexure P-1 is the notice dated 07.09.2012 sent to the owner in terms of Section 120 of the Act of 1973. Annexure P-2 is another notice dated 05.10.2012, sent to the owner of the building under Section 235 of the Act of 1973 and the notice which was served upon Manoj Kumar Jain-respondent no. 4-co-plaintiff, asking him to remove the structure within six hours is dated 02.11.2012 (Annexure P-3). All these notices are issued by the

Executive Officer of the Municipal Committee and it cannot be said that these notices were not issued under the authority of the Committee. Moreover, the suit is being contested by the Municipality by filing the written statement and it is not suggested that the Municipal Council has disowned these notices.

16. Here is a case where rest of the building of which the shop in question is part has since been demolished. The courts below have discussed the matter in the light of principles applicable and there is hardly any scope of interference by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India unless the impugned orders are passed on palpably wrong and incorrect application of settled principles.

17. No ground for interference. Dismissed.

March 16, 2015
jk

(R.P. NAGRATH)
JUDGE