

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

Civil Revision No.4962 of 2014 (O&M)
Date of Decision: November 17th, 2015

Municipal Corporation, Faridabad

...Petitioner

Versus

Raj Kumar & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of 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.Vinod S. Bhardwaj, Advocate,
for the petitioner.

Mr.M.L.Sarin, Senior Advocate with
Ms.Ankita Sambyal, Advocate,
for respondent Nos.1 & 2.

Mr.Surinder Singh, Advocate,
for the applicant in CM No.4620-CII of 2015.

AMIT RAWAL, J. (Oral)

Civil Misc.No.4620-CII of 2015

Prayer in the application is for impleading the applicants as
respondent Nos.8 to 10.

Mr.M.L.Sarin, learned Senior counsel appearing on behalf of
respondent Nos.1 and 2 submits that he has no objection if the applicants
are impleaded as respondents. Accordingly, the application is allowed and
the applicants are impleaded as respondent Nos.8 to 10.

Civil Misc.No.16284-CII of 2014

Exemption granted from filing certified copies of Annexures R-

1/1 and R-1/2. The same are also taken on record.

CM stands disposed of.

Civil Revision No.4962 of 2014

Municipal Corporation, Faridabad is in revision petition against the order dated 31.5.2014, whereby the Executing Court had appointed the Tehsildar of the area for getting the boundary wall constructed over land measuring 8 kanals 6 marlas bearing khasra No.137 at the expense of the decree-holders.

Mr.Vinod S. Bhardwaj, learned counsel appearing on behalf of the petitioner submits that the decree-holders cannot be permitted to raise the boundary wall over the said property until and unless the permission is sought and granted by the Municipal Corporation, though they have taken the possession of the property in pursuance to the judgment and decree dated 28.4.1995, which has attained finality upto the Hon'ble Supreme Court and, thus, prays that the order appointing the Tehsildar is fallacious, much less erroneous and is without jurisdiction and, therefore, is liable to be set-aside.

Mr.M.L.Sarin, learned Senior Counsel assisted by Ms.Ankita Sambyal Advocate, appearing on behalf of respondent Nos.1 and 2 submits that there is no ambiguity, much less illegality in the order under challenge for the reason that the respondent-decree holders have taken the possession of the property measuring 8 kanals 6 marlas bearing khasra No.137 in pursuance to the judgment and decree dated 28.4.1995, which has attained finality upto the Hon'ble Supreme Court vide order dated 6.8.2008 and there is no provisions in the Haryana Municipal Act, 1973 (for short "the Act"), whereby for raising the boundary wall, the sanction/permission is required.

In support of his contention, relies upon the provisions of Sections 250 and

251 of the Act. He further submits that at the moment, the land, aforementioned, is lying vacant and, therefore, in order to protect the land from the encroachers/trespassers, respondent-decree holders intend to raise the boundary wall and an application in this regard had been submitted.

I have heard the learned counsel for the parties and appraised the paper book.

As per the provisions of Sections 250 and 251 of the Act, for raising construction of the building, permission from the Municipal Corporation is required, however, the aforementioned provisions do not envisage any permission for raising the boundary wall. Sections 250 and 251 of the Act read thus:-

250. Power of State Government to give directions.-The State Government may issue directions to any committee for carrying out the purposes of this Act and in particular with regard to-

- (a) various uses to which any land within a municipal area may be put;*
- (b) repayment of debts and discharging of obligations;*
- (c) collection of taxes;*
- (d) observance of rules and bye-laws;*
- (e) adoption of development measures and measures for promotion of public safety, health, convenience and welfare;*
- (f) sanitation and cleanliness;*
- (g) establishment and maintenance of fire-brigade.*

251. Exercise of committee's power pending establishment of committee. -(1) When a new municipality is constituted under this Act, the State Government may appoint a person to exercise the powers, discharge the duties and perform the functions of the committee until the committee is established and he shall for the purpose aforesaid be deemed to be the committee.

(2) The person so appointed under sub-section (1) shall comply with such directions as may be given to him by the State Government, from time to time, for carrying out the said purposes.”

The trial Court while appointing the Tehsildar has observed thus:-

“After hearing submission of both the counsels, I do not find any force in the submission of learned counsel for the JD. It is clear in this case that that case has already attained finality from the lower court to Hon'ble Supreme Court. It is also clear that decree holders have also obtained possession but if possession is given, the boundary wall of the possession also constitutes possess. I have also perused the report dated 25.07.2013 vide which applicants have been handed over the possession but it is settled law that once the possession is given, for protection of their possession the applicants are entitled to raise construction of boundary wall and boundary wall also constitute possession of the property in question. There is no such provision shown by MCF vide which applicants were required to take permission only for raising wall over the possession of the land in question. It is very much clear that for protection of land, boundary wall is very much required and MCF has no right to cause any interference in the boundary wall required to be constructed by decree holders, who have won their case already upto Higher court. Hence, in view of the judgment and decree dated 28.04.1995 and order dated 16.08.1999 of the higher court, concerned Tehsildar of the area is deputed for getting constructed the boundary wall over khasra No.137 land measuring 8 kanals 6 marlas at the expenses of decree holders. MCF and other administration shall not cause any interference in construction of the boundary wall. The fees of the Tehsildar is fixed as Rs.5000/- payable by decree holders.”

I am in agreement with the findings rendered by the Civil Judge

(Senior Division) that there is no provision in the Act, whereby owner of the plot/land is required to seek permission for the construction of the boundary wall as the provisions of Sections 250 and 251 of the Act only pertain to construction/erection of the building. There is no illegality and perversity in the order under challenge. The order cannot be said to have been passed without jurisdiction.

Accordingly, the revision petition is dismissed.

November 17th, 2015
ramesh

(AMIT RAWAL)
JUDGE