

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

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**RSA No.1359 of 1989 (O&M)
Date of Decision: 05.02.2015.**

**Municipality Bathinda through his Executive officer
.....Appellant**

Vs

Kulwant SinghRespondent

CORAM:HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. J.R. Mittal, Sr. Advocate with
Mr. Kashmir Singh, Advocate
for the appellant.

None for the respondent.

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?*

RAJ MOHAN SINGH, J. (ORAL)

The appeal was admitted vide order dated 20.05.1992 passed by this Court. The respondent was served personally but he failed to appear and thus, proceeded ex parte.

[2]. The substantial question of law involved in the present appeal is whether notices under Sections 195 and 195-A of the Punjab Municipal, Act 1911 (hereinafter referred to as 'the Act') would suffice to demolish the construction allegedly raised by the respondents?

[3]. Municipality, Bathinda, is in second appeal against the concurrent judgment and decrees passed by the Courts below,

decreeing the suit of the plaintiff-respondent for permanent injunction, restraining the Municipality from demolishing any part of the boundary wall existing on the spot in pursuance to the notices issued under the Act.

[4]. Plaintiff-respondent alleged his ownership on the disputed plot bearing Khasra No.2500 and had raised construction of one room and boundary wall over it in the year 1980. At the relevant time the plot was not within the Municipal limits and, therefore, no permission was required to be obtained from the Municipal Committee for raising any construction. The Municipal Committee, issued notices under Sections 195 and 195-A of the Act for demolition of the wall allegedly raised in violation of the provision of the Municipal Act. The plaintiff-respondent sought permanent injunction on the ground that the wall having been raised about 4 years prior to issuance of the notices, could not have been demolished and estoppel was also pleaded against the Committee for issuing the impugned notices. The said suit was contested by the defendants on all customary pleas.

[5]. The core question before the Courts below was in respect of applicability of notices allegedly issued to the plaintiff-respondent under Sections 195 and 195-A of the Act for the demolition of the disputed wall.

[6]. The Courts below have considered the aforesaid aspect with reference to evidence and ultimately concluded that under

Sections 195 and 195-A of the Act only six months old construction can be demolished by the Committee with the aid of aforesaid notices. Nothing incriminating was found on the record to infer any such fact that the wall in question was raised within the span of six months prior to the issuance of the impugned notices. The oral testimony on record viz. statement of Surjit Singh (PW-1) showed that the construction of room and boundary wall was made about 7-8 years ago and at that time the said construction was not even within Municipal limits of Bathinda. The said statement was further corroborated by statement of Jang Singh (PW-2) and even by Girdhari Lal, Building Inspector who appeared as (DW-1) and admitted in cross-examination that room was found existed at the site when he inspected the site on 24.03.1986. The construction of boundary wall whether constructed within the span of six months or beyond that could not be proved by the Municipal Committee with reference to any evidence on record. Both the Courts discarded the applicability of impugned notices and decreed the suit, restraining the defendant-Committee from demolishing any part of the construction on the site.

[7]. Bare perusal of the provisions of the Act reveals that the applicability of said provisions are confined to such construction which was raised within the period of six months prior of issuance of notices under the said provisions. Apparently in view of evidence on record more particularly the evidence of DW-1, no such inference can be drawn whether the construction was raised within a period of

six months from the date of issuance of said notices.

[8]. Consequently, this Court finds that there is no illegality in the impugned judgment and decrees passed by the Courts below.

[9]. Question of law as formulated in para No.2 is answered in negative to hold that applicability of Sections 195 and 196-A of the Act is not attracted to a construction which is found to have been raised prior to six months of issuance of notice under Sections 195 and 196-A of the Act.

[10]. Therefore, this appeal is totally devoid of merit and is dismissed as such.

05.02.2015

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**(RAJ MOHAN SINGH)
JUDGE**