

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA No.1139 of 2012.
Decided on:-May 28th, 2015.

Parveen Kumar and anotherAppellants.

Versus

Municipal Council, Sangrur.Respondent.

CORAM: HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.

Present:- Mr. Amninder Preet, Advocate
for the appellants.

Mr. Kanwal Walia, Advocate
for the respondent.

Dr. Bharat Bhushan Parsoon, J.

This Regular Second Appeal is directed against judgment and decree dated 23.11.2010 of the lower court vide which suit of the plaintiffs appellants herein, against the defendant respondent herein, for seeking a decree of injunction against the Municipal Council for restraining it from interfering in any manner in the construction already made or being raised by the plaintiffs as also against demolition of the construction existing at the site (as per site plan submitted to the defendant Municipal Committee on 16.10.2006 in respect of the plot owned by the plaintiffs at Sangrur as per details given in the sale deed of 3.11.2003 (Mark B) and of 25.3.2004 (Mark C) as is also reflected in the site plans Mark D and Mark E, was dismissed. The judgment and decree of the first appellate court of 2.12.2011 vide which

judgment and decree of the lower court was affirmed, are also under challenge in this appeal.

2. Before embarking upon the matter in controversy between the parties, the facts about which there is no dispute are being detailed and described as under:

The appellants-plaintiffs filed a suit for permanent injunction as detailed and described earlier against the defendants. Appellants had purchased for consideration a plot measuring 81.63 Square yards bearing Khasra No.291/min/0-2.430 marlas from M/s Tilak Ram Krishan Chand, Sangrur vide registered sale deed of 3.11.2003. Vendor of the appellants had purchased this plot alongwith some other land from the respondents. Total area purchased by the firm was 195.61 Sq. yards. It was vide registered sale deed dated 9.2.2001. This firm was earlier running a petrol pump on the aforesaid plot. Respondents No.1 and 2 had sold the said plot to the firm. Krishan Chand son of Tilak Ram and Sadeep Kumar son of Krishan Chand also sold 260 Sq. yards for consideration vide sale deed of 25.3.2004. The said plot was on the back side of the plot so sold by the respondents.

The plaintiffs submitted the site plan of proposed construction in the office of the respondent Municipal Council for sanction. It was on 16.10.2006. A cheque of Rs.18,942/- had also been sent along.

It was claim of the plaintiffs before the court below that the respondent was bound to sanction or refuse to sanction the site plan of proposed construction within a period of 60 days. Since neither acceptance nor refusal came from the respondent Municipal Council, Sangrur within 60 days, the plaintiffs wanted a presumption to be raised in their favour in terms of Section 193 of the Punjab Municipal Act, 1911 (for short, the Act). It is claimed that in terms of Section 193 of the Act, the proposed site plan after no objection having been raised in 60 days, shall be deemed to have been

approved. The site plan was sent alongwith legal notice through Sh. Yogesh Gupta, Advocate on 16.10.2006 wherein the respondent was requested to sanction the site plan or to return the sale consideration alongwith interest @ 15% per annum. On this communication, the respondent filed reply to the legal notice. It is claimed that since the reply was sent after more than 60 days, therefore, after completion of 60 days, the site plan is deemed to have been sanctioned.

Working on the positive analogy of law, the defendant had made appearance and had taken an objection that the sale deed was executed by M/s Tilak Ram Krishan Chand but it was not executed as per actual dimensions at the spot. On checking, it was found that in the communication sent by the defendant, there was no option. As per claim of the plaintiffs when the defendants failed to fulfil the normative pattern, the defendant Municipal Committee took a tough stand and denied any right, title or interest of the vendor or the vendee in the suit property.

It was explained that site plan submitted by any person can be sanctioned within 60 days only after completion of all the formalities and after depositing of necessary fee. Thereafter, the cheque submitted by the plaintiffs was sent back to them on 3.4.2007 through registered post. In short, it was claimed that the plaintiffs had no legal right to construct the building as per site plan which was neither approved nor sanctioned by the defendant Municipal Council, Sirsa. It was also disclosed that the dispute regarding title of the suit land qua vendors of plaintiffs is already pending before civil court and as such, the plaintiffs have no right to raise construction. Dismissal of the suit was sought.

3. On the pleadings of the parties, following issues were framed by the lower court:

1. Whether the plaintiff is entitled to permanent injunction

as prayed for? OPP

2. Whether suit is not maintainable in the present form?
OPD
3. Whether plaintiff has got no cause of action to file the
present suit? OPD
4. Whether suit is hit by principle of *lis pendens* as matter
regarding genuineness of sale deed is already pending
before the Civil Court? OPD
5. Relief.

4. After receiving oral as well as documentary evidence led by the parties and providing a hearing to their respective counsel, all the issues were decided against the plaintiff and finding no merit in their claim, their suit was dismissed by the lower court vide judgment and decree dated 18.10.2010.

5. The appeal filed by the plaintiffs before the first appellate court was also dismissed vide judgment and decree dated 2.12.2011.

6. Following substantial questions of law are found to be existent, needing determination by this Court:

- (i) Whether the respondent has complied with the Section 193 of Punjab Municipal Act, 1911?
- (ii) Whether the judgments and decrees passed by the learned courts below are illegal and perverse?
- (iii) Whether the findings of the learned lower courts below suffer from an apparent perversity on the face of it being contrary to law and facts on record?
- (iv) Whether the impugned judgments and decrees suffer from apparent illegality and perversity because of ignoring the material piece of evidence having direct impact on decision of the case?
- (v) Whether the impugned judgment and decrees cannot

be allowed to be sustained especially when the same are result of consideration of irrelevant facts and non-consideration of relevant facts?

- (vi) Whether the learned courts below have committed serious irregularities and illegalities, in dismissing the suit of the plaintiffs-appellants?
- (vii) Whether the findings recorded by the learned lower courts are perverse in nature?
- (viii) Whether the learned lower courts have misread and misconstrued the evidence on the file and have failed to consider the material evidence on the file and thus have committed serious illegality?

7. At the outset, learned counsel for the appellants has urged that the plaintiffs are owners for consideration of the suit property. It is urged that the first appellate court should have allowed the appeal in favour of the plaintiffs-appellants as the issue was only with relation to sanction under Section 193 of the Act. As per Section 193 of the Act, when the site plan is not sanctioned within the stipulated period of 60 days, it is deemed to have been sanctioned. It is urged that both the courts below did not comprehend the factual matrix as also the law applicable. It has been argued that the respondents have no hassles but do not want to co-operate and co-ordinate with the plaintiffs.

8. Counsel for the respondent, on the other hand, has urged that when the suit of the plaintiffs was hit by the principle of *lis pendens* as the matter regarding genuineness of sale deed in favour of M/s Tilak Ram Krishan Chand i.e. vendors of the plaintiffs, was already pending before the civil court, there is no title of the vendors. It was further urged that M/s Tilak Ram Krishan Chand got the sale deed executed by mentioning wrong dimensions and that too below the collector rate. It is further urged that the defendant, respondent herein, was not bound to sanction or to refuse the site plan within a period of 60 days and the plaintiffs had no right to raise

construction.

9. Hearing has been provided to the counsel for the parties while going through the paper book.

10. M/s Tilak Raj Krishan Chand sold a plot alongwith other land measuring 195.61 Square yards against a sale consideration of Rs.13,93,864/-. Out of this plot, it sold 81.63 Square yards on 3.11.2003. M/s Tilak Raj Krishan Chand had sold a plot measuring 260 Square yards for consideration vide sale deed of 25.3.2004. The respondent- Municipal Committee has put up a very different perspective. The plaintiffs, appellants herein want to take benefit of statutory provision of Section 193 of the Act whereby a legal fiction has been introduced to construe automatic sanction for construction if the sanction or refusal does not come within the statutory period of 60 days of submission of the application. Section 193 of the Act is reproduced as under:

“193. Powers of committee to sanction or refuse erection or re-erection of building: - *The committee (or the Executive Officer as the case may be), shall refuse to sanction the erection or re-erection of any building in contravention of any bye-law made under sub-section (1) of section 190 or in contravention of any scheme sanctioned under sub-section (3) or sub section (4) of Section 192 unless it be necessary to sanction the erection of a building in contravention of such a scheme owing to the committee’s inability to pay compensation as required by section 174 for the setting back of a building.*

(1-a) When the erection or re-erection of a building is likely, in the opinion of the Committee (or the Executive Officer, as the case may be) to interfere with the enforcement of a scheme proposed under section 192, the Committee may refuse its sanction and in such case shall communicate its refusal in writing together with the grounds therefore, to the applicant within sixty days of the receipt of his application, and the applicant may thereafter by written notice require the committee to proceed with the preparation of the proposed scheme with all possible speed. The application shall be

deemed to have been sanctioned if an order or refusal is not passed by the committee (or the Executive Officer as the case may be) within the time specified above, or if the proposed scheme has not received the sanction of the State Government within twelve months of the date of delivery of the applicant's written notice hereinbefore referred to:

Provided that should a resolution refusing such sanction be suspended under section 232, the period prescribed above shall commence to run afresh from the date of communication of final orders by the State Government under section 235.

Explanation: *A scheme shall be deemed to have been proposed under section 192 if a requisition for its preparation has been received by the committee from the Deputy Commissioner or if the preparation of the scheme is under the consideration of the committee.*

(2) The committee (or Executive Officer, as the case may be) may refuse, to sanction the erection or re-erection of any building for any other reason, to be communicated in writing to the applicant, which it (or he as case may be) deems to be just and sufficient as affecting such building, be if the land, on which it is proposed to erect or re-erect such building is vested in the Government or in the committee, and the consent of the Government concerned or, as the case may be, of the committee has not been obtained, or if the title to the land is in dispute between such person and the committee or any Government.

(3) Subject to the provisions of sub-section (1) the committee' or the Executive Officer, as the case may be may sanction the erection or re-erection of any building either absolutely or subject to such modifications in accordance with the bye-laws and rules as it (or he as the case may be) may deem fit.

(4) Notwithstanding anything contained in sub-section (1) or sub-section (2) but subject to the provisions of sub-section (2) of section 190 and sub section (1-a) of this section] if the committee or the Executive Officer as the case may be neglects or omits within sixty days of the receipt from any person of a valid notice of such person's intention to erect or re-erect a building, or within one hundred and twenty days, if the notice relates to a building on the same or part of the same site, on which sanction for the erection of a building has been refused within the previous twelve months, to pass orders sanctioning

or refusing to sanction such erection or re-erection, such erection or re-erection shall, unless the land on which it is proposed to erect or re-erect such buildings belongs to or vests in the committee, be deemed to have been sanctioned, except in so far as it may contravene any bye-law, or any building or town planning scheme sanctioned under section 192.

Provided that should a resolution conveying or refusing such sanction be suspended under section 232, the period prescribed by clause (4) shall commence to run afresh from date of communication of final orders by the State Government under section 235.

Provided further that if not less than one-fifth of the members present vote against a resolution conveying sanction, the sanction shall be deemed not to have been conveyed until after the lapse of fourteen days from the passing of the resolution.”

11. From close perusal of this provision, it transpires that the presumption is not absolute. It is hedged with certain conditions. Compliance is to be made. During the course of arguments, it has not been denied that litigation of M/s Tilak Ram Krishan Chand qua the property in litigation was pending at the time of sale of disputed plot to the petitioner. It continues to be so. It is also clear that mere sending of application and cheque etc. ipso facto was not sufficient. Relevant observations made by the lower court in this regard are as below:

“When the site plan was submitted, only cheque was sent alongwith the site plan. Plaintiffs were also bound to obtain No Objection Certificate from the office of Municipal Council, which was not obtained. Plaintiffs were bound to comply with the requirements which defendant council required for sanction of site plan.”

12. Further observations made by the lower court are as under:

“Plaintiffs were also bound to complete all the formalities i.e. Submissions of No Due Certificate alongwith the application and proposed site plan, which they did not comply.”

13. It is worth notice that when the present litigation had entered the courts, sale deed dated 9.2.2001 executed in favour of M/s Tilak Ram

Krishan Chand itself was under challenge. Thus title of the vendors of the appellants was inchoate. Municipal Council, Sangrur was not bound to sanction the site plan which had been submitted by the plaintiffs without the applicants having completed the formalities. When the requirements were not complete, there was no legal duty of the Council to sanction the site plan. At this stage, relevant observations of the lower court for ready reference are appended as below:

“When the present suit was filed, sale deed dated 9.2.2001 executed in favour of M/s Tilak Ram Krishan Chand was under challenge. Municipal Council, Sangrur was not bound to sanction the site plan which was submitted by the plaintiffs without completing the formalities. The matter relating to the legality of sale deed dated 9.2.2001 was already pending before the Civil Court. Therefore, I agree with the contention of defendant Council to the extent that when the present suit was filed, the property purchased by the plaintiff was under litigation.”

14. The first appellate court after re-appreciating the evidence while considering the attending facts and circumstances expressed full agreement with the stand of the counsel for the respondent. Relevant observations of the first appellate court in this regard are as below:

“The “no due” certificate having not been issued by the quarters concerned its production alongwith the site plan was out of question. It is needless to state that in the absence of such a “no due” certificate the site plan cannot be said to be validly submitted.”

15. Mere assertion of the appellants that a cheque of Rs.18,942/- with the proposed site plan was sent, is not enough. There is no assertion or deposition that the plaintiffs had submitted the complete site plan after compliance of the other conditions. It was conceded by plaintiff Parveen Kumar that his proposed site plan with cheque was returned by the Municipal Council, Sangrur through his counsel on 3.4.2007.

16. In view of the above discussion, the concurrent findings recorded by the courts below being correct on law and facts are hereby affirmed. As such, all the substantial questions of law are answered against the appellants-plaintiffs.

17. Sequelly, affirming the impugned judgments and decrees of the courts below, this regular second appeal, being devoid of any merit, is dismissed. Decree sheet be prepared.

May 28th, 2015
'Yag Dutt'

(Dr. Bharat Bhushan Parsoon)
Judge

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