

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

**Regular Second Appeal No.4619 of 2011 (O&M)
Date of Decision: February 13, 2015.**

Municipal Corporation, Gurgaon

.....APPELLANT(s).

VERSUS

Smt. Sarika Singla and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Vivek Gupta, Advocate for
Mr. G.S. Hooda, Advocate
for the appellant

Mr. R.K. Gupta, Advocate
for respondents No.1 to 3, 5 to 8, 16, 18 and 20.

SURINDER GUPTA, J.

The respondents-plaintiffs filed suit (civil suit No.675 of 2002)
seeking the relief of injunction as follows:-

“A decree for permanent injunction in favour of the plaintiffs restraining the defendant from taking forcible possession of their shop and from causing any sort of damage or loss or demolition of any part of the premises bearing No.P-17/5, known as Vinayak Plaza (earlier bearing no.160 and 161) Housing Board Colony, Gurgaon site plan attached with the plaint marked by letters ABCD comprising of basement, ground, first and second floors with costs.”

The case of the respondents-plaintiffs, in brief, is that the suit
property bearing plot No.160 and 161 was purchased by respondents-

plaintiffs No.20 and 21 vide registered sale deeds dated 19.03.1990 and 03.09.1998. Under a collaboration, agreement with respondent-plaintiffs No.20 and 21, M/s Cityqueen Express Travels and Finance Services Private Limited (respondent-plaintiff No.22) agreed to develop a commercial complex and building plans were got sanctioned from appellant-defendant vide order dated 29.09.1998. There was some deviation and some changes from the approved site plans and a notice was served on respondents-plaintiffs No.20 and 21 that the construction was not being raised in conformity with the sanctioned site plans. On receipt of notice, reply was submitted and on paying the composition fee and penalty, revised site plan was submitted which was sanctioned on 26.02.1999. Thereafter, the construction over the suit property was raised. After completion of construction, the shops were sold to the other plaintiffs, who have been paying house tax, sales tax etc. Moreover, three years have elapsed after the construction. A notice bearing No.6368 dated 18.10.2002 was issued under Sections 208 and 209 of Haryana Municipal Act, 1973 (for short 'the Act'), vide which they have been called upon to alter the building in question as per sanctioned site plan dated 26.02.1999. Terming the notice as illegal, respondents-plaintiffs filed the present suit with the plea that after the expiry of more than six months of completion of building, appellant-defendant had no authority to issue them notice and the same was unauthorized and illegal.

In the written statement, appellant-defendant contested the claim made by the respondents-plaintiffs inter-alia pleading that after the sanction of the revised site plan, plaintiffs No.20 and 21 have raised illegal construction by way of addition and alteration and vide impugned notice, they were asked to alter the building as per site plan dated 26.02.1999. The

construction raised by respondents-plaintiffs No.20 and 21 was not in conformity with the sanctioned plan dated 26.02.1999.

The suit was dismissed by Civil Judge (Junior Division), Gurgaon. The plea of the respondent-plaintiff that notice under Section 208 and 209 of the Act had been issued after six months of the completion of the building was discarded on the ground that no certificate of completion of building issued by the appellant-defendant was placed on record; no evidence was produced as to when the building was completed; even otherwise, a building which has been erected in contravention of Regulation 12 of Haryana Municipal Building By-laws or Town Planning Regulations cannot be deemed as regularized by virtue of paying house tax; the notice issued under Section 208 of the Act dated 18.10.2002 was held as valid and justified. The Courts also observed that under Section 208 of the Act a person who has been served with notice, could file appeal under Section 209 of the Act and the civil suit was not maintainable.

Not satisfied, the respondents-plaintiffs filed appeal which was allowed by Additional District judge, Gurgaon and the appellant was restrained from taking forcible possession, dispossessing the plaintiffs or otherwise interfering in any manner in the peaceful use and enjoyment of their respective shops and from causing any sort of damage or loss or demolition of any part of the suit premises.

Against the judgment and decree passed by the first Appellate Court, Municipal Corporation Gurgaon, has come up with instant appeal.

I have heard learned counsel for the parties and have perused the paper book with their assistance.

This fact is not disputed that after the sanction of the building

plan vide order dated 29.09.1998, the construction was raised over the suit property by respondents-plaintiffs No.20 and 21. That construction was not in conformity with the sanctioned site plan, as such, they were served with a notice. Revised plan was filed and regularization of the violation was sought on payment of composition fee and penalty. The revised plan of respondents-plaintiffs No.20 and 21 was sanctioned on 26.02.1999 and they deposited composition fee of ₹2,78,882. The instant notice under Section 208 of the Act bearing No.6368 dated 18.10.2002 was issued calling upon respondents-plaintiffs No.20 and 21 to alter the building as per the revised site plan.

The substantial questions of law which arises for determination in this appeal are as follows:-

- (i) As to whether the appellant-defendant was competent and authorized to issue notice under Section 208 of the Act to respondents-plaintiffs No.20 and 21 seeking removal of violations in contravention of the sanctioned site plan dated 26.02.1999?**
- (ii) Whether the appellant-defendant could be restrained from proceeding against the respondents-plaintiffs in accordance with law and under the provisions of the Act?**

Learned counsel for the appellant-defendant has argued that the Appellate Court below has decreed the suit of the respondents-plaintiffs by taking into account irrelevant facts. The entire onus was shifted on the appellant-defendant to prove that the respondents-plaintiffs No.20 and 21 have not constructed the building in accordance with the revised site plan dated 26.02.1999. The onus to prove that construction at the spot was as per sanctioned site plan, was on the respondents-plaintiffs and on their failure to

prove this fact, they were not entitled to the relief as claimed for. The respondents-plaintiffs have not come up with plea that they have raised construction at the spot as per sanctioned site plan, as such, violators of law and rules, are not entitled to discretionary relief of injunction.

At the very outset, this fact was not disputed by learned counsel for the respondents-plaintiffs that if there was violation in the construction of the building as per the sanctioned site plan, the appellant-defendant was competent to proceed against the owner of the building in accordance with provisions of the Act. He, however, argues that no notice under Section 208 of the Act could be issued of expiry of a period of six months after completion of building

The above argument of learned counsel for respondents-plaintiffs has no merit as firstly, there was no evidence on record that after completion of building, any completion certificate was obtained by the respondents-plaintiffs No.20 and 21 as required under Regulation 12 of Haryana Municipal Building By-laws. When no such certificate was obtained, this plea that impugned notice dated 18.10.2002 was issued after the lapse of six months of completion of the building is not available to the respondents-plaintiffs. Secondly, the first Appellate Court, while decreeing the suit had made some observations which were extraneous to the matter in dispute and are irrelevant. It was observed that the appellant-defendant had not produced any evidence to prove as to what illegal construction in violation of the revised site plan has been raised. The matter in issue in this case was as to whether the appellant was competent to issue notice under Section 208 of the Act, alleging building violations. The appellant-defendant had asked the owner of the building to make it inconformity with the revised

sanctioned site plan. If there was no violation, the notice could be replied or the remedy of appeal under Section 209 of the Act could be availed. Instead of availing that remedy, the respondents-plaintiffs rushed to the Civil Court and the first Appellate Court, while observing that unauthorized construction at the spot was not proved, has unnecessary enlarged the scope of the case. Thirdly, it was observed that the construction raised by the respondents-plaintiffs No.20 and 21 was compounded by the appellant-defendant and same was in conformity with the revised site plan which was approved by the appellant. The above observations were erroneous. Respondents-plaintiffs filed suit with the plea that when the construction as per sanctioned site plan dated 29.09.1998 was started, a notice was issued that the construction was not being made in accordance with the sanctioned site plan. Admitting their lapse, they submitted revised site plan and got it sanctioned on payment of composition fee. The onus was on the respondents-plaintiffs to prove that the construction had been raised as per the revised site plan which they have failed to discharge by leading any evidence on file. The Appellate Court below had erroneously observed that the appellant-defendant did not produce any evidence to prove its plea, thereby discharging the plaintiffs of the onus to prove and make out their case. There was no reason or the evidence on record for the first Appellate Court to hold that impugned notice dated 18.10.2002 was illegal, void, unsustainable and not binding on the plaintiffs. The Appellate Court while allowing the appeal and decreeing the suit, erroneously shifted the entire onus on the appellant-defendant, ignoring the fact that the respondents-plaintiffs have to succeed on the basis of positive evidence led by them. Even if, the appellant-defendant had not produced any evidence, the same is not material in the event of the respondents-plaintiffs

failing to prove their case that the construction at the spot was strictly as per the revised site plan.

Learned counsel for the respondents-plaintiffs argues that the appellant-defendant was competent to issue notice but it should have proved in the Civil court as to what violations have been made by the respondents-plaintiffs.

Under Section 208 of the Act, the Municipal Authorities are competent to issue notice and order demolition of the unauthorized construction. Against the order of the demolition, right to appeal has been provided under Section 209 of the Act. In this case, instead of replying the notice of the Municipal Corporation and availing the equally efficacious remedy available under the Act, the respondents-plaintiffs rushed to the Civil Court without making out a case that the construction at the spot is strictly as per sanctioned site plan and the Appellate Court below has also failed to look into this aspect while allowing the relief of injunction.

It has been argued that respondents-plaintiffs No.20 and 21 after getting the building constructed from respondent-plaintiff No.22 have sold various shops to the other respondents-plaintiffs and no notice was issued to plaintiffs No.1 to 19, as such, they were not bound by the directions in the impugned notice. Firstly, in the event of no notice to respondents-plaintiffs No.1 to 19, they had no locus standi or cause of action to file the suit challenging the notice served upon respondent-plaintiff No.20 and 21. The complex was got constructed by respondents-plaintiffs No.20 and 21 and they have been asked to remove the unauthorized construction. There is no evidence produced on file that respondents-plaintiffs No.20 and 21 obtained any occupation certificate as required under Regulation 12 of Haryana

Municipal Building By-laws, 1982 or obtained any 'No Objection Certificate' for sale of the shops to respondents-plaintiffs No.1 to 19 or even intimated the appellant of any sale made by them.

From the above discussion, I am of the considered opinion that the Appellate Court below had allowed the relief of injunction by taking into account the extraneous circumstances and not looking into the facts of the case. The appellant had proceeded against respondents-plaintiffs No.20 and 21 in accordance with law and learned Civil Judge (Junior Division), Gurgaon has rightly reached the conclusion that the relief as prayed for could not be allowed to the respondents-plaintiffs.

As a sequel of my observations above, the substantial questions of law as framed in this appeal are decided in favour of appellant-defendant. Consequently, this appeal is accepted. The judgment and decree passed by the first Appellate Court is set aside and that of Civil Judge (Junior Division), Gurgaon is restored. Keeping in view the fact that the parties have been litigating since long, before proceeding in accordance with the notice dated 18.10.2002, the appellant-defendant will issue a reminder giving a week's time to the respondents No.20 and 21 to comply and then proceed in accordance with law.

February 13, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE