

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

DATE OF DECISION: SEPTEMBER 02, 2015

Municipal Corporation, Hisar

.....Appellant

VERSUS

Nirmal Kumar and another

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

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

**Present: Mr. Dhiraj Chawla, Advocate,
for the appellant.**

AUGUSTINE GEORGE MASIH, J. (ORAL)

There is a delay of 467 days in filing the appeal and the explanation which has been given for the delay is far from satisfactory and, thus, the appeal deserves dismissal on this ground alone. However, keeping in view the insistence on the part of the counsel, the matter was heard on merits also.

Challenge in the appeal is to the judgments and decree passed by the Courts below vide which the suit for permanent injunction filed by the respondent-plaintiffs stands decreed.

It is the contention of counsel for the appellant that initially the plot in question, on which the construction of a marriage palace has now taken place, was an industrial unit. By bringing down the already existing

construction to the ground, a marriage palace has been reconstructed on the said land without proper prior permission of the competent authority. The construction, which has subsequently come up on the plot in question in the year 2003, is without the approval of the Municipal Committee, Hisar and, therefore, the notice issued under Section 208 of the Haryana Municipal Act, 1973 (for short, "1973 Act") cannot be said to be without jurisdiction and the judgments and decree passed by the Courts below deserve to be set-aside.

Having considered the submissions made by counsel for the appellant and on going through the judgments passed by the Courts below with his assistance, I am of the considered view that the contentions as raised by counsel for the appellant cannot be accepted.

The finding, which has been concurrently returned against the appellant-defendant, is that the notice under Section 208 of 1973 Act could have been issued with regard to the construction, which would have been raised within a period of six months prior to the issuance of notice. The evidence, which has been produced by the appellant-defendant, indicates that the photographs, which have been taken, are subsequent to the issuance of the notice and there is no documentary or cogent evidence to prove that the construction had been made within a period of six months from the date of issuance of notice dated 29.10.2003. None of the witnesses of the appellant-defendant has stated that the construction existing on the land in question was raised within a period of six months prior to the notice dated 29.10.2003, Ex.P20.

It may be pointed out here that earlier thereto notice dated 25.04.2003, Ex.P16, was served by the Municipal Council, Hisar. Report

dated 01.05.2003, Ex.PA, as submitted by the Municipal Engineer did not find mention that construction was made within six months prior to the notice. The Executive Officer, on the basis of this report, filed the notice dated 25.04.2003 on 01.05.2003, Ex.PB. The subsequent notice dated 29.10.2003, on this count, also cannot be said to be justified.

The findings, as recorded by the Courts below, clearly establish that the requirement of the statute, as specified in Section 208 of 1973 Act, were not fulfilled, which would empower the appellant-defendant to act upon the notice served upon the respondent-plaintiffs.

In the light of the concurrent findings recorded by the Courts below, which are based upon proper appreciation of evidence brought on record, the same do not call for any interference by this Court. Further there being no substantial question of law, which arises in the present appeal, the same deserve dismissal.

In view of the above, the appeal stands dismissed.

September 02, 2015
khurmi

(AUGUSTINE GEORGE MASIH)
JUDGE