

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

RSA No. 717 of 2015 (O&M)

Date of decision: September 17, 2015

Municipal Council Gurdaspur

...Appellant

Versus

Smt. Raj Rani and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

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

Present: Mr. Arun Gosain, Advocate,
for the appellant.

Mrs. Himani Kapila, Advocate,
for the respondents.

K. KANNAN, J. (Oral)

CM No. 2095 C of 2015

For the reasons stated in the application, delay in filing the appeal is condoned.

Main case

1. The appeal is at the instance of the Municipal Council, which has suffered a decree for recovery of Rs. 78225/-, an amount paid admittedly by the plaintiffs to the defendant Council to secure a sanction for construction of a marriage hall. It would appear that the sanction had to be obtained from higher authority in the Planning Division and some objections had been raised and returned to the plaintiffs. The plaintiff had

purported to have written his request for sanction after clearing the objection but still the objection prevailed and the plaintiff could not get the sanction. The suit was filed for recovery of the money stating that the rejection of the sanction for construction of the marriage hall was illegal and not for any valid reason set forth under law. Since the plaintiffs did not get the service for which the amount had been paid, the relief was sought for recovery of the amount through the suit.

2. The defendant took several pleas including the plea that the Government of Punjab was a necessary party and since the ultimate rejection was only by the Town Planning Division of the Government, the plaintiffs cannot file a suit treating the rejection as illegal. Neither the plaintiff nor the defendant let any evidence and the suit came to be decreed. The judgment was confirmed in the appeal and the second appeal is filed by the Municipal Council to urge for the point that the plaintiff who would file the case for return of the money was bound to show that the rejection of permission for construction of the marriage hall was illegal only by the plaintiff and if the plaintiff did not give any evidence, the court could not have granted the decree. Further, the relief could not be granted in the absence of the State. I reject both these arguments as untenable and irresponsible for the Municipal Council to take. If an amount is received by the Municipal Council and for their own administrative reason they would put up the request to some other authority, as far as the applicant-owner is concerned, the case which the plaintiff has to encounter and secure his relief shall only be before the Municipal Council. After all the money is not paid to the Government but paid to the Municipal Council to secure a sanction. If

sanction is not granted then the refusal must be on a ground which must satisfy the test of law. A rule against arbitrariness of action by public authorities is a guaranteed constitutional right under Article 14 of the Constitution and if the claim for return of the money was made contending that the rejection of sanction was arbitrary, it is the duty of the State functionary to explain justification for rejection. It could be on any one of the grounds relating to violation of the bye-law or impermissibility of the user of the particular property for the purpose for which the permission was sought. It is futile to contend in a suit for recovery that the plaintiff must show illegality by any elaborate evidence. The burden of proof in such case is very light. The tenability of claim lies on the mere fact that for the owner applying for sanction, the purpose for which the amount was paid was not realized. If the plaintiff would say, therefore, that there had been no justification for denying the permission, the proof of justification must come from the respondent and not from the plaintiff. Even now when I asked the counsel as to why the request was declined and what was the violation that existed in the plaintiff's plan or permission, the counsel draws blank and states that it should only the plaintiff who must explain the same. It is an untenable contention to persist with and I dismiss the second appeal as devoid of merit.

September 17, 2015
prem

(K.KANNAN)
JUDGE