

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

CR No. 8749 of 2015

Date of decision :29.04.2016

M/s Radhey Gopal Developers Pvt. Ltd.

..... Petitioner.

Versus

Sarojini Malhotra and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Ish Puneet Singh, Advocate
for Ms. Jatinder Jit Kaur, Advocate
for the petitioner.

Mr. Padamkant Dwivedi, Advocate
for respondent no.1.

Mr. Om Parkash Dabla, Advocate
for respondent no. 2.

- 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.**

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred against the order dated 03.12.2015 passed by the learned Civil Judge (Junior Division), Hisar, vide which the application moved by the petitioner under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (for short 'CPC') for rejection of the plaint has been dismissed.

2.

Learned counsel for the petitioner contended that

plaintiff-respondent no.1 has challenged the sanctioning of two site plans. But, the owners of the building, who got sanctioned these site plans, have not been impleaded as party to the suit. He further contended that as per Section 256 of the Haryana Municipal Corporation Act, 1994 (for short 'Act'), the Commissioner of the Municipal Corporation is competent to cancel the sanctioning of the site plan if the same has been obtained by misrepresentation, fraudulently and concealment of material facts. He further contended that the jurisdiction of the Civil Court is barred to entertain any suit for grant of injunction in view of Section 261 (4) of the Act. Thus, he contended that the suit of the plaintiff-respondent no.1 was barred by law and the plaint was liable to be rejected.

3. On the other hand, learned counsel for the respondents contended that the provisions of Section 261(4) of the Act are not applicable as no injunction has been sought against the Commissioner of Municipal Corporation. They further contended that construction is being raised by defendant no.2 on the basis of the impugned site plans. So, there was no need to implead the previous owners. Moreover, if it is found that they were necessary party to the suit, they can be impleaded at any stage. Thus, they contended that the application filed by the petitioner has been rightly dismissed.

4. I have duly considered the aforesaid contentions.

5. Plaintiff-respondent no.1 has filed the suit for

declaration to the effect that sanction of the site plans no. 220 and 221 of 2012 in respect of building bearing property no. 1916 Block XVII (New Property No. 2638 Block No. XX) situated at Railway Road, opposite Red Cross Market, Hisar is illegal, void *ab initio*, result of misrepresentation, fraud, collusion and against the mandatory provisions of the Act. As such the same is liable to be cancelled. Plaintiff also prayed for permanent injunction (Prohibitory and Mandatory) in the consequential relief.

6. Learned counsel for the petitioner pleaded for rejection of the plaint on the grounds that the plaintiff-respondent no.1 has not impleaded the persons who had got the impugned site plans sanctioned who were the necessary parties to the suit, secondly that the Commissioner has power under Section 256 of the Act to cancel the sanctioning of the site plans if the same has been got sanctioned by misrepresentation, fraudulently and concealment of material facts and the jurisdiction of the Civil Court is barred under Section 261(4) of the Act.

7. As per Order 7 Rule 11 (d) CPC, where the suit appears from the statement in the plaint to be barred by any law, the plaint shall be rejected. The Hon'ble Supreme Court in case **P.V.Guru Raj Reddy Rep. By GPA Laxmi Narayan Reddy and another Vs. P.Neeradha Reddy and others etc.2015(2) R.C.R (Civil) 43** has laid down down that it is

only the averment in the plaint that has to be read for the purpose of deciding the application under Order 7 Rule 11 CPC, the stand of the defendant in the written statement or in the application for rejection of the plaint is wholly immaterial. The copy of the plaint is Annexure P-2, wherein the plaintiff-respondent no.1 has challenged the aforesaid site plans being violative of the mandatory rules and laws. It is alleged that the said site plans have been got sanctioned by misrepresentation in an illegal manner. It has also been pleaded that the ownership of the site in question has been transferred to the petitioner-defendant no.1 and the construction is being raised by the petitioner. It is further the case of the plaintiff that her house is adjacent to the disputed property and she has raised the objection for the construction being raised by the petitioner. So, it cannot be stated that the suit filed by the plaintiff is without any cause of action against the petitioner.

8. As far as the non joining of the previous owners are concerned, the suit is at the threshold, if it is found that they were necessary parties to the suit and their presence was required in order to enable the Court to effectively and completely to adjudicate upon and settle all the questions involved in the suit, they can be added as a party to the suit at any stage. So, it cannot be a ground for rejection of the plaint.

The provisions of Section 261(4) of the Act reads as under:-

“(4) Save as provided in this section no court shall entertain any suit, application or other proceeding for

injunction or other relief against the Commissioner or restrain him from taking any action or making any order in pursuance of the provisions of this section.”

The aforesaid provisions of law provides that no Court shall entertain any suit for injunction or other relief against the Commissioner or restrain him from taking any action or making any order in pursuance of the provisions of Section 261 of the Act. Section 261 of the Act relates to the powers of the Commissioner to order demolition and stoppage of the construction without or contrary to the sanction referred to in Section 254 of the Act or in contravention of any condition subject to which such sanction has been accorded or in contravention of any provision of the Act. Admittedly, no relief in this suit has been sought against any order passed by the Commissioner with respect to the demolition or stoppage of the construction work of the building. Thus, *prima facie* the provisions of Section 261 (4) of the Act will not be attracted as per averment in the plaint and it cannot be stated that the suit was barred by law.

9. Consequently, I do not find any illegality in the impugned order passed by the learned trial Court.

10. Thus, the present revision petition having no merits, is hereby dismissed.

29.04.2016

S.khan

(DARSHAN SINGH)
JUDGE