

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

RSA No.4902 of 2011 (O&M)

Date of decision : 12.04.2016

Municipal Council Now Municipal Corporation Gurgaon

...Appellant

Versus

Sanjay Thakran and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. Mohnish Sharma, Advocate for the appellant.

Ms. Amrita Nagpal, Advocate for the respondent Nos.1 to 5.

AMIT RAWAL, J. (Oral)

CM No.14281-C of 2011

For the reasons stated in the application, which is duly supported by an affidavit, delay of 25 days in refiling the appeal is condoned.

Application stands allowed.

CM No.14282-C of 2011

For the reasons stated in the application, which is duly supported by an affidavit, delay of 39 days in filing the appeal is condoned.

Application stands allowed.

Main Case

The appellant-defendant is aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby suit of the respondent-plaintiff has been decreed and the judgment and decree of the trial Court dismissing the suit has been reversed.

Mr. Mohnish Sharma, learned counsel appearing on behalf of appellant submits that in respect of same property, father of the respondent-plaintiff in the year 2000 had instituted the suit. It has come on record that there were three shops. However, in the present suit, it has come on record that there are ten shops. Though, ownership of Khasra Number 168 to 172 has been proved but the fact remains that construction of the shop is without any sanction or authority. In this regard, Municipal Corporation has already issued notice, therefore, injunction granted by the lower Appellate Court from the demolition of the construction would come as impediment and hindrance in implementation and consequentially affect the alleged illegal construction, thus, urges this Court to formulate substantial questions of law as carved in memorandum of appeal.

Ms. Amrita Nagpal, learned counsel appearing on behalf of respondents No.1 to 5 submits that there is no illegality and perversity in the judgment and decree of the lower Appellate Court as the same is based upon appreciation of the oral and documentary evidence. Question raised before the lower Appellate Court was that whether construction was old or new one. As per the evidence, it was found that construction raised but the appellant did not comply with the notices issued under Sections 208 and 209 Ex.D2 and Ex.D3 and as well as notices under Section 235. He submits

at the best alleged construction can be compounded, there is no necessity of the demolition of the same. Demolition should not be ordered in a haste and parties must be given opportunity to comply with the notices. It is in these respect, suit has been decreed.

I have heard learned counsel for the parties and appraised the paper book and of the view that findings rendered by the lower Appellate Court decreeing the suit vis-a-vis ownership is upheld, but the fact remains that injunction should be subject to the condition that opportunity should be given to the respondent-plaintiff to reply to the alleged show cause notices. The provision of bye laws before taking action of demolition should be adhered. Such observation has been rendered by the lower Appellate Court, thus, Municipal Corporation is not precluded from taking action in accordance with law, and cannot demolished alleged construction without giving opportunity of hearing to the respondent-plaintiff.

With the aforementioned observations, judgment and decree of the lower Appellate Court is affirmed.

No ground for interference is made out.

Dismissed.

12.04.2016

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**(AMIT RAWAL)
JUDGE**