

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

RSA No.2790 of 2012 (O&M)

Date of Decision.30.09.2016

Mahender Kishore Goel (since deceased) through LRsAppellant

Vs.

Municipal Corporation, Gurgaon and anotherRespondents

2. RSA No.2853 of 2012 (O&M)

Smt. Pushpa GoelAppellant

Vs.

Municipal Corporation, Gurgaon and anotherRespondents

Present: Mr. Pankaj Jain, Advocate
for the appellant.

Mr. Ashwani Kumar Bura, Advocate
for the respondents.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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

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AMIT RAWAL J. (ORAL)

C.M. No.7484-C of 2012 in RSA No.2790 of 2012

C.M. No.7662-C of 2012 in RSA No.2853 of 2012

For the reasons stated in the applications, delay of 76 days in
refiling the appeals is condoned.

Applications are allowed.

RSA Nos.2790 and 2853 of 2012

This order of mine shall dispose of two appeals at the instance
of the plaintiffs. RSA No.2790 of 2012 arising out of Civil Suit No.266 of
2004 (hereinafter called as the “1st suit”) titled “Mahender Kishore Goyal

Vs. Municipal Corporation, Gurgaon and another” and the other one is RSA No.2853 of 2012 arising out of Civil Suit No.267 of 2004 titled as “Pushpa Goyal Vs. Municipal Corporation, Gurgaon and another” whereby both the Courts below have dismissed the suit.

Mr. Pankaj Jain, learned counsel appearing for the appellant-plaintiff submits that he had instituted the suit for declaration with the consequential relief of mandatory injunction, on the premise that the plaintiff(s) in both the aforementioned suits are owner in possession of the plot bearing No.13 situated at Housing Board Colony, Jharsa Road, Gurgaon falling within the municipal limits of Gurgaon. The aforementioned area was transferred by Housing Board Colony to the Municipal Committee about 20 years back for all intents and purposes and now the Municipal Committee has full control over the Housing Board Colony. The plaintiff(s) had approached the Estate Manager, Housing Board Haryana for permission to convert the residential house into a commercial building on 04.09.2001 but the same was rejected vide order dated 05.09.2001 on the premise that the same stood transferred to the Municipal Committee.

He submits that the Municipal Committee vide resolution No.2 'b' dated 23.07.1998 had declared the area of 100 sq. yards at Jharsa Road to be a commercial area starting from Shama Restaurant to the Municipal Octroi Post and the aforementioned Resolution was passed as per the provisions of Section 200(e) of the Haryana Municipal Act. Accordingly, a sanction of commercial building plans was sought but the same was rejected vide order dated 18.10.2001 which is without any reasons. The said order was taken in appeal before the Deputy Commissioner and the same also met

with the same fate vide order dated 30.04.2002. Even appeal before the Secretary, Local Self Govt. Haryana did not yield any result and the same was dismissed on 20.05.2003. In this backdrop of the matter, the aforementioned suits were filed.

He submits that both the Courts below have committed illegality and perversity and the judgment and decree passed are erroneous and in violation of Article 14 of the Constitution of India. The witnesses of the defendants had admitted the factum of granting the sanction of the commercial plans in the residential area. The Courts below have patently erred in presuming that sanction of the site plans by the Municipal Committee on the basis of resolution were erroneous. Once, the Municipal Committee had passed the resolution, it cannot reject the commercial site plan but can raise objections with regard to the specifications, thus, urges this Court for setting aside of the judgments and decrees under challenge.

Per contra, Mr. Ashwani Kumar Bura, learned counsel appearing for the respondents submits that the plaintiff(s) had no cause of action to file the suit. It was not competent to sanction the commercial building plan in the residential area which is a colony. Since the area is falling within the Haryana Housing Board Colony, there already exists a commercial complex to cater to the day to day needs. Municipal Committee, Gurgaon was not thus competent to grant the change of land use from residential to commercial. It had vide Resolution No.6 dated 23.07.1998 declared the area of Jhasra Road from Shama Restaurant to Octroi Post on both sides of the road upto 100 sq. yards as commercial area but the same was withdrawn by the Deputy Commissioner and in the subsequent resolution, it was not rectified. Even the alleged discrimination

with regard to the commercial building plot Nos.160-161 and 19 was rejected by the Chief Administration, Housing Board Haryana vide letter dated 13.11.1998 and Estate Manager, Housing Board Haryana objected to passing of commercial building plan in the Housing Board Colony, Jharsa Road, Gurgaon. Therefore, there was no discrimination. None of the building plans of the plots mentioned have ever been sanctioned for commercial purposes. Once the matter had already been rejected by the competent authority, there was no occasion for the appellants-plaintiffs to file the suit, thus, urges this Court for confirming the findings rendered by the Courts below.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submission of Mr. Pankaj Jain, learned counsel appearing for the appellants, for, the area falls within the Housing Board Haryana and there is already planned construction as area for commercial purpose had already been detected. No residential premises can be converted into commercial. The examples of certain plots given in the plaint have yielded no result as the Deputy Commissioner had rejected the site plan. The resolution passed by the Municipal Corporation was withdrawn by the Deputy Commissioner. The appellants-plaintiffs have failed to bring on record any document or material, much less, corroborative evidence in pursuant to the resolution that the respondents have sanctioned any plan submitted for running the commercial activities in the residential area. The action of the respondents-defendants in declining the building plan of the appellants-plaintiffs was in accordance with law, prevailing Rules and Bye Laws. Even otherwise the commercial activity in residential area cannot be permitted as it leads to

traffic congestion and inconvenience in the neighbourhood.

In my view, the findings rendered by the Courts below are perfectly legal and justified and the rejection of injunction was in accordance with prevailing Rules and Bye Laws, much less, no substantial question of law arises for consideration. No ground for interference is made out. Both the second appeals are dismissed.

(AMIT RAWAL)
JUDGE

September 30, 2016

Pankaj*

Whether reasoned/speaking Yes

Whether reportable No