IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4857 of 2012 (O&M)
Date of decision : 24.05.2016

Jugal Kishore

...Appellant

Versus

State of Punjab and another

...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. Munish Gupta, Advocate for the appellant.

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AMIT RAWAL, J. (Oral)

The appellant-plaintiff is aggrieved of the concurrent findings of fact, whereby following two relief sought has been declined:-

i) Declaration of resumption order dated 20.08.1976 without jurisdiction as no opportunity of hearing has been granted. Secondly, resumption order has been passed by relying upon Section 13 of the Punjab New Mandi Township (Development and Regulation), Act 1960 which has been declared ultra-vires as per the Division Bench judgment of this Court in *Dharam Pal and others Vs. State of Punjab and another, 1978 PLJ 396*.

ii) For mandatory injunction directing the respondents to accept the due amount and executed the conveyance deed.

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Mr. Munish Gupta, learned counsel appearing on behalf of appellant submits that resumption order has been passed by invoking the provision of Section 13 of the Act which has been declared ultra-vires as noticed above and, therefore, authority was enjoined upon to call upon the appellant to pay the outstanding amount along with certain interest on payment of the penalty charges. No doubt suit was filed in the year 1999. There was a delay but the fact remains that for the purpose of mandatory injunction, Court could have granted the relief as there was breach of obligation on their part in not taking the decision in terms of directions contained in view of ratio decidendi culled out in Dharampal case (Supra). The aforementioned fact has not been noticed by both the Courts below and non-suited on the ground of delay and secondly challenge to the notice which was issued as per the provision of Section 13 of 1960 Act and thus urges this Court to frame the following substantial questions of law:-

"i) Whether the provisions of Section 13 of New Mandi Township Act, which was struck down in the judgment of this court in Dharampal's case would apply retrospectively or prospectively?

ii) Whether the notices issued to the appellant prior to resumption (although not received) are in consonance with the law laid down in Dharampal's case and as per the new Section 13 of the Act?

iii) Whether the findings of the Courts below that the appellant has failed to prove non-receiving of the notices Ex.P2 and P-3 are illegal, as neither the respondents filed any written statement nor have led any evidence?

iv) Whether there is any limitation for setting aside of a void order?"

There is no representation on behalf of respondent Nos.1 and 2-contesting respondent and they were proceeded ex parte vide order dated 05.03.2014 . Accordingly, I proceed to decide the appeal.

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The plaintiff has confined his prayer in only seeking relief of mandatory injunction for appropriate direction to respondent No.2 to receive the outstanding amount along with interest and penalty charges if any. They should not have stuck to their decision taken in the order of resumption and alleged notice sent prior thereto. It is categoric case of plaintiff that notice, preceding to the passing of resumption was not received. Be that as it may, once Division Bench of this Court has already struck down applicability of provision of Section 13, the defendant was enjoined upon obligation to assess the outstanding amount along with applicable interest and penalty charges instead of defending the order of resumption. Courts below ought to have issued direction to respondent No.2 by affording opportunity to the appellant by giving breakup of the outstanding amount along with interest and penalty etc. as order of the resumption should sparingly be passed by relying upon Section 13 of the Act as has been rendered in the judgment in *Express Newspaper Pvt. Ltd. and others Vs. Union of India and others, 1986 AIR (SC) 872*.

No doubt the appellant-plaintiff had been callous and tardy in invoking the door of the Court but defendant No.2 did not discharge the obligation as per the ratio decidendi culled out in Dharampal Case (Supra) and, therefore, claim qua mandatory injunction could not to have been rejected for want of the limitation.

In view of aforementioned reasons, Substantial questions of law as noticed above are answered in favour of appellant-plaintiff and against the respondent-defendant.

With the foregoing reasons, judgment and decree of both the Courts below are set aside. Mandatory injunction is issued to the respondent-

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defendant No.2 on the premise that resumption order issued prior to the declaration of Section 13 is declared null and void and would not have any binding force and further direction is issued to the respondent-defendant No.2 to call upon the appellant-plaintiff by sending the notice for making the outstanding amount along with interest and penalty, if any and in case plaintiff does not make the outstanding amount within time granted it shall be at liberty to initiate the proceedings in accordance with law. The aforementioned exercise be done preferably within a period of five months.

Suit of the appellant-plaintiff is partly decreed.

Let copy of this order be sent to the respondent No.2 for compliance.

Appeal stands partly allowed.

24.05.2016 **(AMIT RAWAL)**
pawan **JUDGE**

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