

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

1. RSA No.2328 of 2013 (O&M)
Date of decision : 15.11.2016

Raj Kumar

...Appellant

Versus

Municipal Corporation, Bathinda and others

..Respondents

2. RSA No.2859 of 2014 (O&M)
Date of decision : 15.11.2016

Devinder Kumar Soni

...Appellant

Versus

Municipal Corporation, Bathinda and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Rajan Bansal, Advocate for the appellant in both the cases.

Mr. V.K. Sandhir, Advocate for
Mr. Sanjeev Soni, Advocate for respondent Nos.1 and 2
(In RSA No.2859 of 2014)

Mr. Sanjeev Sharma, Advocate for respondent Nos.1 and 2
(In RSA No.2328 of 2013)

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of two appeals arising out of the decision of two civil suits filed by different plaintiffs seeking injunction against the proposed action of the Municipal Corporation, Bathinda for demolition of the alleged encroached portion, which has been dismissed by the lower Appellate Court, in essence, judgment and decree of the trial Court decreeing the suit, has been set aside.

Mr. Rajan Bansal, learned counsel appearing on behalf of appellant-plaintiff submits that action of the defendant-Municipal Corporation in initiating proceedings under Section 246-A of the Punjab Municipal Corporation was totally unauthorized and not in accordance with law. Having left with no other option, suit was filed. The trial Court decreed the suit, but the Lower Appellate Court has, erroneously, reversed the findings. In RSA bearing No.2328 of 2013, this Court while issuing notice of motion had also stayed the judgment and decree of the lower Appellate Court.

Mr. Sanjeev Sharma, learned counsel appearing on behalf of respondent Nos.1 and 2 in RSA No.2328 of 2013 and Mr. V.K. Sandhir, Advocate for Mr. Sanjeev Soni, Advocate for respondent Nos.1 and 2 in RSA No.2859 of 2014 submits that suit of the appellant was not maintainable in view of the provisions of Section 269 of the Act. Any measures taken by the Municipal Corporation would be subject to the domain of the appeal and this aspect can always be taken at any stage.

I have heard learned counsel for the parties and appraised the paper book.

For the sake of brevity, Section 269 of the Punjab Municipal Corporation Act, 1976 reads as under:-

“269. Order of demolition and stoppage of buildings and works in certain cases and appeal. - (1) Where the erection of any building or execution of any work has been commenced, or is being carried on or has been completed without or contrary to the sanction referred to in section 262 or in contravention of any condition subject to which such sanction has been accorded or in contravention of any of the provisions of this Act or bye-laws made thereunder, the Commissioner may, in addition to any other action that may be taken under this Act, make an order directing that such erection or work shall be demolished by the person at whose instance the erection or work has been commenced or is being carried on or has been completed within such period (not being less than three days from the date on which a copy of the order of demolition with a brief statement of the reasons therefor has been delivered to that person) as may be specified in the order of demolition :

Provided that no order of demolition shall be made unless the person has been given by means of a notice served in such manner as the Commissioner may think fit, a reasonable opportunity of showing cause why such order should not be made :

Provided further that where the erection or work has not been completed, the Commissioner may by the same order or by a separate order, whether made at the time of the issue of the notice under the first proviso or at any other time, direct the person to stop the erection of work until the expiry of the period within which an appeal against the order of demolition, if made may be preferred under sub-section (2).

(2) Any person aggrieved by an order of the Commissioner made under sub- section (1) may prefer an appeal against the order to the Court of the District Judge of the City within the period specified in the order for the demolition of the erection or work to which it relates.

(3) Where an appeal is preferred under sub-section (2) against an order of demolition, the Court of the District Judge may stay the enforcement of that order on such terms, if any, and for such period, as it may think fit :

Provided that where the erection of any building or execution of any work has not been completed at the time of the making of the order of demolition, no order staying the enforcement of the order of demolition shall be made by the Court of the District Judge unless security, sufficient in the opinion of the Court, has been given by the appellant for not proceeding with such erection or work pending the disposal of the appeal.

(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 to restrain him from taking any action or making any order in pursuance of the provisions of this section.

(5) Every order made by the Court of the District Judge on appeal and subject only to such order, the order of demolition made by the Commissioner shall be final and conclusive.

(6) Where no appeal has been preferred against an order of demolition made by the Commissioner under sub-section (1) or where an order of demolition made by the Commissioner under that sub-section has been confirmed on appeal, whether with or without variation, the person against whom the order has been made shall comply with the order within the period specified therein, or as the case

may be, within the period, if any fixed by the Court of the District Judge on appeal, and on the failure of the person to comply with the order within such period, the Commissioner may himself cause the erection of the work to which the order relates to be demolished and the expenses of such demolition shall be recoverable from such person as an arrear of tax under this Act.”

Proposed action to be taken against the appellant was contemplated under Section 246(A) of 1976 Act, whereby there is direction that no person shall in any way encroach upon any land, premises or public place, not being private property whether such land, premises or public place belongs to or vests in a Corporation or not, by raising a temporary or permanent structure thereon or by occupation thereon in any manner, whereas Section 269 of 1976 Act deals with the contravention of any of the provision of this Act or bye laws made thereunder and would also envisage the alleged breach of Section 246-A of the Act and, therefore, remedy if any for the appellant-plaintiff was to approach within the time specified therein. Be that as it may, but the fact remains that once the plaintiff has availed the remedy of the suit under Section 9 of the Code of Civil Procedure, I am of the view that appellant should have been taken the aid of the aforementioned provisions.

Since much time has elapsed, I deem it appropriate that in case appeal is filed within a period of one month from the date of receipt of certified copy of the order, the delay in filing the appeal, if any, shall deemed to be condoned in view of pendency of the civil suits and RSAs and there shall be interim order till then thereafter the appellant shall be at

liberty to seek interim order before the District Judge in accordance with law who shall decide the appeal if filed within a period of 10 months.

However, it is made clear that under the garb of interim order, appellants-plaintiffs shall not misuse the same and encroach upon any other area except the area already in occupation.

Accordingly, both the appeals are disposed of.

15.11.2016

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(AMIT RAWAL)
JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No