

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

RSA-2517 of 2016 (O&M)

Date of decision: 19.05.2016

Braham Dutt and another

...Appellants

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Harish Bhardwaj, Advocate
for the appellants.

Jitendra Chauhan, J. (Oral)

The suit for permanent injunction filed by the plaintiff/appellants (for short 'the appellants') was dismissed by the trial Court vide judgment and decree dated 07.10.2015.

2. Aggrieved against the findings of trial Court, the appellants filed an appeal which was dismissed by the learned first Appellate Court, vide judgment and decree dated 02.03.2016.

3. The 1st Appellate Court affirmed all the findings recorded by the trial Court after discussing and evaluating the oral as well as documentary evidence on record, hence, the instant appeal at the behest of the appellants.

4. It is contended that both the Courts have gravely erred in dismissing the claim of the appellants. The appellants are co-owners in possession of the suit land comprising of shops and tin shed in khewat No.1080, khata No.1378, Rect. No.68, khasra No.26(0-7), situated in village Jharsa, Tehsil and District Gurgaon, as per jamabandi for the year 2001-02. The appellants had already raised construction over the suit land more than 15 years ago and they had deposited the development charges to the tune of Rs.13315/- with the Municipal Committee, Gurgaon in the year 2002. The suit property is beyond the purview of controlled area as the same is situated within the Municipal limits and the learned first Appellate Court has also observed in its judgment to the effect that village Jharsa, where the property in question is situated, is not a controlled area for the purpose of Punjab Scheduled Roads and Controlled Area Restrictions of Unregulated Development Act, 1963. Both the Courts below have wrongly held that the appellants have raised unauthorized construction over the suit property. No show cause notice was served upon the appellants by the Municipal Corporation regarding illegal construction. As the area in dispute falls in the municipal limits, therefore, the District Town and Country Planner (DTP), Gurgaon has no jurisdiction to issue show cause notice Ex.DW1/D.

5. Heard, the learned counsel for the appellants and perused the record carefully.

6. It had come on record vide Ex.DW1/B that the area in dispute was within the purview of the controlled area in the Municipal limits of Gurgaon. On 02.06.2008, the area became a corporation and the appellants were bound to seek approval of competent authority of DTP Department to raise construction on their land. In the instant case, the appellants were in possession of the suit land, as per jamabandi for the year 2001-02, Ex.P2 and khasra girdawari for the year 2001-02, Ex.P3. The appellants have asserted that on 16.04.2002, they had deposited Rs.11,000/- towards development charges with the office of DTP and thus, the construction raised cannot be termed as unauthorized or illegal, however, it was admitted by them that no sanction within two months of the date of application was granted. The office of DTP had served show cause notice Ex.DW1/D dated 26.04.2010 upon the appellants against raising illegal construction. Even assuming the fact that the area in dispute does not fall within the limits of DTP and the Department has no jurisdiction to issue show cause notice Ex.DW1/D, even in that eventuality, the appellants were required to get the site plan sanctioned from the District Town Planner to raise construction, but no such sanction was obtained.

On the one hand, the appellants have alleged that the construction was raised about 15 years ago and on the other hand, they have taken the plea that on 16.04.2002, they had deposited the construction/development charges. No plausible explanation has come on record in this regard. The plea that after expiry of two months of application, the sanction is deemed to be granted, is not at all justified. The construction raised by the appellants for commercial purposes over the suit land is rightly held to be unauthorized. No indulgence can be shown to unauthorized occupants. Thus, in view of the above facts and circumstances of the case, this Court feels that there is no merit in the present appeal and the findings recorded by the Courts below neither suffer from any perversity or illegality nor any material point has been left unaddressed.

7. These are pure findings of fact. No question of law, much less substantial question of law, arises in the present appeal.

Hence, no interference is called for.

Dismissed.

19.05.2016

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(JITENDRA CHAUHAN)
JUDGE