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

**RSA-486-2013 (O&M)
Date of decision : 05.04.2016**

Ram Avtar Goel (Deceased through LRs)

...Appellant

Versus

Municipal Corporation, Gurgaon

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sudhir Aggarwal, Advocate
for the appellant.

Mr. V. K. Kaushal, Advocate
for the respondent.

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?

AMIT RAWAL, J. (ORAL)

CM-3195-C-2014

Prayer in this application filed under Order 22 Rules 3 and 10 read with Section 151 CPC is for impleading the legal representatives of appellant, namely, Ram Avtar Goel.

For the reasons stated in the application, the application is allowed and the legal representatives of appellant, namely, Ram Avtar Goel, are permitted to be brought on record for the purpose of prosecuting the appeal.

CM stands disposed of.

RSA-486-2013

The appellant-plaintiff is aggrieved of the finding rendered by the lower Appellate Court, whereby the suit for permanent injunction has been dismissed, in essence, the judgment and decree of the trial Court decreeing the suit, has been set aside.

Mr. Sudhir Aggarwal, learned counsel appearing on behalf of the appellant-plaintiff submits that after purchasing the plot, in question, vide sale deed dated 09.09.1996, site plan was submitted for raising construction, which was sanctioned on 30.09.1999. The appellant-plaintiff raised the construction, but more than what was prescribed in the sanctioned plan and thus, submitted revised plan and also an application for compounding of the alleged construction. Vide resolution dated 26.03.2002, it was decided to accord compounding and resultantly, compounding fee on 02.05.2002 was deposited. However, on 18.10.2002, notice under Section 208 of the Haryana Municipal Act, 1973 (hereinafter called 'the 1973 Act'), was served informing, that the resolution granting compounding had been cancelled by the Haryana Government. The decision dated 11.10.2002 of the Government has not seen the light of the day, vide which the resolution was cancelled, nor the compounding fee has been refunded. The trial Court noticing the aforementioned facts decreed the suit, but the lower Appellate Court relying upon the provisions of Section 252 of the 1973 Act, dismissed the suit and urges this Court that all the factors are necessary for adjudication of the *lis*, much less, have not been noticed by the lower Appellate Court, thus, substantial question of law arises for determination.

Mr. V.K. Kaushal, learned counsel appearing on behalf of the

Municipal Corporation, Gurgaon, submits that similar type of notices were also sent to the similarly situated persons, which was assailed by filing the CWP No.1030 of 2000 and CWP No.1348 of 2000. The contention was not only with regard to not having heard before cancelling the resolution, but the Division Bench of this Court after taking into consideration the fact, that the compounding was not within the provisions of the bye-laws, much less, the Deputy Commissioner had the power to cancel the resolution, but did not have the power to pass any other order as per the provisions of Section 246 of the 1973 Act dismissed rent petition and thus, prays for affirming of the judgment and decree of the lower Appellate Court.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit in the appeal for the reason that Hon'ble Division Bench of this Court had already taken into consideration the fact that alleged compounding granted by the Municipal Committee, was not commensurating with the existing bye-laws. It is a matter of fact that the site plan was sanctioned in respect of 2779.86 square feet, whereas the construction is of 4451 square feet. It is, on account of the violation, the resolution was cancelled. The bye-laws only permit the violation on deposit of the compounding fee, but not of such a larger extent. Section 252 has rightly been interpreted by the lower Appellate Court while accepting the appeal and dismissing the suit.

Keeping in view the aforementioned facts and circumstances, I do not intend to differ with the finding rendered by the lower Appellate Court which is based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination.

With the aforesaid observations, the appeal stands dismissed.

05.04.2016
yogesh

(AMIT RAWAL)
JUDGE