

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

RSA No.3030 of 2016 (O&M)

Date of Decision: 24.10.2016

**Haryana State Industrial & Infrastructure
Development Corporation Ltd.**

.....Appellant

Vs.

M/s Ellora Arts and Crafts

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:- Mr.R.D.Bawa, Advocate, for the appellant.

RAJ MOHAN SINGH, J.

1. Defendant-Corporation is in Regular Second Appeal against the judgments and decrees passed by the courts below in a suit for declaration and permanent injunction.

2. Plaintiff-respondent filed a suit for declaration to the effect that notice dated 18.01.2012 was illegal, null and void. A decree for permanent injunction was also sought to restrain the defendant-appellant from taking forcible possession of the suit property and from demolishing the construction at the hands of the defendant.

3. Plaintiff was a partnership firm and claimed itself to be a lawful owner of the property which was transferred and reallocated to

the plaintiff by the defendant on 08.04.2004. After purchase of the property, the building plan was submitted to the defendant which was approved vide memo dated 22.04.2003. After sanctioning of the site plan, construction activities were started. Defendant was requested to issue occupation certificate in the month of November, 2010 against lawful deposit of compounding fee to the tune of Rs.2,07,496/- duly deposited by the plaintiff vide Treasury challan dated 29.04.2011. Factum of deposit of compounding fee was duly conveyed to the defendant vide covering letter dated 02.05.2011 which was received by the defendant on 03.05.2011.

4. On 22.12.2011, a letter was circulated by the defendant to the plaintiff intimating that parking spaces available with the defendant could be obtained by the plaintiff on lease. Plaintiff was called upon to submit the application vide letter dated 22.12.2011. The application was to be submitted by 12.01.2012. Till that stage, no allegation was levelled by the defendant in respect of construction existing on the spot not being in conformity with the sanctioned site plan. On 18.01.2012, plaintiff received a letter from the defendant whereby, plaintiff was called upon to remove the construction within

a stipulated period of 90 days. The said letter was issued at the behest of officials of District Town and Country Planning. The partners of the plaintiff-firm contacted the officials of the defendant and explained that there was no illegality committed by the plaintiff. The construction existing on the spot was compoundable in nature. No spot inspection was done by the defendant in the presence of the plaintiff. The compounding fee of Rs.2,07,496/- had already been deposited by the plaintiff. The plaintiff had also requested the defendant to accord permission for leasing out the property in favour of M/s Spice Jet Ltd., which was granted by the corporation vide letter dated 27.01.2011.

5. It was further alleged that on 06.03.2012, the plaintiff received a notice from the defendant wherein, it was stated that construction existing on the spot was non compoundable in nature as the same existed in excess area beyond compoundable limits at the spot. Another show cause notice dated 07.06.2011 was issued. However, the same was never received by the plaintiff and plaintiff was threatened for withdrawal of the lease permission as well. The suit property had already been leased out, therefore question of

raising unauthorized construction in the year 2012 never occasioned. Plaintiff submitted a reply to the notice dated 06.03.2012. There were no mention of any particular to the violation allegedly committed by the plaintiff. In order to ascertain the cost and details of constructions allegedly raised by the plaintiff according to the plea of the defendant, the plaintiff sought sometime from the defendant. The defendant dispatched letter dated 30.04.2012 intimating that defendant had already issued a show cause notice dated 06.03.2012 but the same did not make any reference of the violations. Plaintiff was called upon to clarify alleged zoning violation on the spot within stipulated period of 7 days. The plaintiff replied to the said letter dated 30.04.2012, communicating that the files of the plaintiff were in the office and the period of 7 days was wholly inadequate. Consequently, plaintiff received a letter dated 28.06.2012 whereby, he was called upon to appear in the office of defendant at Panchkula in person.

6. Plaintiff also alleged that the defendant was not entitled to resume the property and demolish the existing construction as the property was within Municipal Corporation, Gurgaon. The impugned

action aimed towards demolition of the construction was claimed to be absolutely illegal and against the provisions of Haryana Municipal Corporation Act. The threat perception given by the defendant was constant and despite efforts of the plaintiff to convince the defendant, the threat perception in respect of demolishing construction raised by the plaintiff subsisted. The defendant was not justified in undertaking demolition activities in respect of construction which had already been raised by the plaintiff for which no inquiry was ever made on the spot and the plaintiff was never associated in any spot inspection. With this background the suit in question came to be filed.

7. The suit was contested by the defendant on all counts. It was contended that suit property was allotted in favour of Smt. Vanita Jain vide RLA No.19.06.1990. An agreement dated 29.10.1990 was executed between allottee and corporation and the terms and conditions were settled. Physical possession of the suit property was given to the allottee on 15.02.1991. The provisional transfer letter dated 17.05.1993 was issued as per request of the allottee for fulfillment of certain terms and conditions. Thereafter, final transfer letter dated 08.04.1994 was issued in favour of M/s Garg Exim Pvt.

Ltd. Fresh agreement was executed by the re-allottee i.e. M/s Garg Pvt. Ltd. with the corporation for setting up the project of readymade garments. On 22.12.2000, re-allottee submitted a letter for transfer of the suit property in favour of M/s Ellora Arts and Crafts (plaintiff). Final transfer letter was issued to the plaintiff on 08.04.2004. The building plans were approved by the defendant on 22.04.2003 only for 125% FAR for Readymade Garments Unit. The plaintiff deposited compounding charges to the tune of Rs.02,07,496.

8. Defendant alleged that vide show cause notices dated 18.01.2012, 11.11.2011 and 07.06.2011, it was conveyed to the plaintiff that plaintiff had constructed building beyond permissible and approved building plan i.e. beyond 125% FAR, but the plaintiff did not remove the same despite reminders being issued on 06.03.2012 and show cause notice was pasted on the spot on 20.04.2012. Defendant denied that the impugned action was arbitrary nor any opportunity of hearing was afforded to the plaintiff.

9. Defendant further claimed that as per site report of STP dated 20.05.2011, the construction over the suit property was found to be non-compoundable in nature and was found to be approved

FAR i.e. 125%. The defendant further alleged that the lease in favour of M/s Spice Jet Limited was approved on 27.01.2011 for a period of 9 years. At that time, allottee had submitted architect certificate dated 30.12.2010 from the approved architect of the corporation which showed that there existed no zoning violation and building was constructed as per approved site plan. Defendant also pointed out that the plaintiff was directed to appear before the authority within 7 days but plaintiff had failed to appear. The corporation issued letter dated 28.06.2012 for personal hearing of the plaintiff on 16.07.2012 before the Estate Management Committee but there also plaintiff did not appear. Since the plaintiff had constructed unauthorized construction over the suit property, therefore it was claimed that plaintiff was not entitled to any relief. The spot inspection was done by STP division and there also it was found that plaintiff had committed non-compoundable violation at second and third floor by constructing excessive coverage.

10. After framing of issues, both the parties led evidence. The trial Court decreed the suit vide judgment and decree dated 30.05.2015. The defendant-appellant remained unsuccessful in

appeal before lower appellate Court which was dismissed vide judgment and decree dated 03.12.2015 that is how the present appeal came to be filed.

11. I have heard, learned counsel for the appellant and have also appraised materials on record.

12. The appellant in grounds of appeal has formulated the following substantial question of law :-

- (a) Whether in the facts and circumstances of the case the impugned judgments and decrees are illegal and perverse and unsustainable the same having been based on misreading and non-reading of the pleadings and evidence on record?
- (b) Whether the plaintiff-respondent has constructed the building beyond permissible area/building plan that is beyond 125% FAR?
- (c) Whether Haryana State Industrial and Infrastructure Department Corporation Ltd. has jurisdiction to issue the notice, as the concerned deed and other documents and building plan were also sanctioned by the appellant/Corporation only?
- (d) Whether the courts below have

erroneously held that since the area in question comes within the limits of MC, Gurgaon, the defendant/appellant has no authority to issue the impugned notices ignoring the fact that the competent authority to sanction the building plan in question is the defendant/appellant and not the MC, Gurgaon.?”

13. Plaintiff had sought declaration that the notice dated 18.01.2012 was illegal, null & void and defendant was not entitled to undertake demolition activities of the construction raised by the plaintiff. Letter was issued by the defendant directing the plaintiff to comply with the provisions of the defendant-department in respect of construction at the site and to remove the zoning violations in the form of excess coverage within stipulated period of 90 days from the date of issuance of letter. A perusal of the letter showed that letter did not contain or describe the unauthorized construction/zoning violation/excess coverage allegedly done by the plaintiff at the site. The language of the letter was suggestive of the fact that defendant was not clear in respect of existing any zoning violation or excess coverage. The language was vague enough to communicate any

alleged violation at the site. The recital and the language of the letter if read in conjunction with the statement of Charan Singh DW-1, then everything would come to fore. DW-1 Charan Singh admitted that he had never visited the spot and did not know whether any construction existed as per sanction plan or not. The witness also admitted that the defendant-department did not have any map or construction to compare the existing construction at the site as on date. The construction existing at the spot was never compared with the site plan of the department. The witness also pleaded ignorance to the extent of unauthorized construction with reference to any date when the same was allegedly raised and floor of which was allegedly constructed.

14. The second witness-Dilbag, while appearing as DW-2 also failed to disclose the existing unauthorized construction at the spot. The letter dated 18.01.2012 Ex.P8 did not specify the unauthorized construction at the spot. Factually the defendant department was totally unaware of the alleged construction with reference to its details and dimensions. Only a self serving statement of the defendant-department was made as per site report Ex.PW-1/10. It was evident

from the record that the existence of excess coverage on front set back, rear set back, ground floor, first floor, third floor and basement were without any explanation and dimensions. The aforesaid allegations did not specify the nomenclature of alleged violation. Mere mentioning of the construction done against sanctioned plan was not sufficient to presume the alleged violation. The deviation from the sanctioned plan was necessary to be indicated in specific terms to show that the allottee had deviated from sanctioned plan in terms of construction and it was required to rectify such deviation by means of notice. Since the notice was subsequently issued without describing any dimensions and particular of violation, therefore, the same was to be treated as vague enough to cover a requirement of law.

15. Since the notice was vague enough to cover the subject issue, therefore, question of law as formulated by the appellant did not arise at all. The findings recorded by the courts below was based on proper appreciation of evidence. In the absence of lawful notice, the finding cannot be mentioned to be perverse and therefore question No.A did not arise. Similarly, the plaintiff having constructed

building beyond permissible FAR could not be presumed for want of proper notice defining the extent of encroachment with reference to details. Therefore, question No.B as framed by the appellant also did not arise. Question No. C and D are questions of fact only and the same can not be treated to be questions of law much less substantial question of law. No question of law worth consideration is involved in the appeal, even before the Courts below as the factum of notice being so vague, nothing could have been considered for want of necessary particulars of alleged construction at the spot. Having considered the submissions made at bar, this Court did not find any substance worth consideration in the appeal. The appeal is accordingly dismissed.

16. Since the appeal is dismissed on merits, therefore CM No.8097-C of 2016 for condoning the delay of 66 days in filing the present appeal has become inconsequential and no order is required to be passed in the application.

(RAJ MOHAN SINGH)
JUDGE

24.10.2016

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No