

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 205 of 2017

- Nagar Palika Parishad Manendragarh Through Chief Municipal Officer, Municipal Council Manendragarh Tehsil Manendragarh, District Koriya, Chhattisgarh(Defendant)

---- Petitioner

Versus

- Dharmendra Sejpai S/o Shri Mani Bhai Sejpai, Aged About 36 Years, Occupation Contractor, R/o Ward No.20, Manendragarh, Distt. Koria, Chhattisgarh(Plaintiff)

---- Respondent

And

FA No. 196 Of 2017

- Nagar Palika Parishad Manendragarh Through Chief Municipal Officer, Municipal Council Manendragarh Tehsil Manendragarh, District Koriya, Chhattisgarh

---- Petitioner

Vs

- M/s Pandey Construction Company Through Shri Om Prakash Pandey- Partner, Ramnagar, Tehsil Kotma, District Anuppur, Madhya Pradesh

---- Respondent

And

FA No. 193 Of 2017

- Nagar Palika Parishad Manendragarh Through Chief Municipal Officer, Municipal Council Manendragarh Tehsil Manendragarh, District Koriya, Chhattisgarh(Defendant)

---- Petitioner

Vs

- Harinath Sahu S/o Shri Dhawat Lal Sahu, Aged About 60 Years Proprietor Sahu Traders, R/o Ward No.21, Manendragarh Distt.

Koria, Chhattisgarh(Plaintiff)

---- Respondent

And

FA No. 194 Of 2017

- Nagar Palika Parishad Manendragarh Through Chief Municipal Officer, Municipal Council Manendragarh Tehsil Manendragarh, District Koriya, Chhattisgarh(Defendant)

---- Petitioner

Vs

- Deepak Sejpal S/o Shri Mani Bhai Sejpal, Aged About 32 Years Occupation Contractor, R/o Ward No.20, Manendragarh, Distt. Koria, Chhattisgarh(Plaintiff)

---- Respondent

For Appellants
For Respective
Respondents

Mr. Shashank Thakur, Advocate

Mr. Sunit Otwani and Mr. F.S. Khare,
Advocates

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Arvind Singh Chandel

Order On Board By

Prashant Kumar Mishra, J.

20/7/2017

1. Heard.
2. The present batch of appeals have been preferred by the Municipal Council, Manendragarh, challenging the judgment and decree passed by the Second Additional District Judge, Manendragarh, allowing the plaintiffs' suits for recovery of the

amount which the respective plaintiffs have invested/spent in raising construction of Town Hall and supply of materials connected therewith, as the Contractors engaged by the Council.

3. First Appeal No.205/2017 is barred by 339 days, whereas, First Appeal No. 193/2017 is barred by 347 days and similarly First Appeal No.194/2017 is barred by 329 days and First Appeal No.196/2017 is barred by 252 days. In all the above appeals, respective applications for condonation of delay in filing the appeals, have been filed.
4. In support of the applications, learned counsel for the appellants, would argue that the then President & CMO and other officers of the Municipal Corporation proceeded to construct the Town Hall on Government Nazul land, on which, a dispute arose and the construction was stopped under the orders by the Tehsildar, Manendragarh, and yet the Contractors continued with the construction. He would submit that the Contractors were responsible for continuous illegal construction, therefore, they were not entitled to the amount prayed for in the plaint. It is put-forth that after the judgment was rendered, the then President and CMO of the Municipal Council sought guidance from the Directorate, Department of Urban Department and Administration, Government of Chhattisgarh and waited for sometime, however, when no guidelines were sent by the Directorate, the Municipal Council started managing funds for payment of Court fee. Since the

funds were not available for payment of Court fee, the funds available on some other heads were diverted and the appeals were submitted with the required Court fee.

5. Placing reliance on the judgments rendered by the Supreme Court in the matters of **State of Nagaland Vs. Lipok AO and others, (2005) 3 SCC 752, G. Ramegowda, Major and others Vs. Special Land Acquisition Officer, Bangalore, (1988) 2 SCC 142, and STATE (NCT of Delhi) Vs. Ahmed Jaan, (2008) 14 SCC 582**, it is further argued by learned counsel for the appellants that since the plaintiffs/respondents have succeeded in obtaining a decree because of the fault and extra official activities of the officers and employees of the Municipal Council, if the decree is allowed to remain intact, the Exchequer would be put to loss, therefore, the delay deserves to be condoned in the interest of justice.
6. Per contra, learned counsel for the respondents/plaintiffs would submit that the appellants have not explained each day's delay in filing the appeals. According to them, the applications for condonation of delay are as vague as it could be. No dates are given for any of the steps taken as mentioned in the applications.
7. We have heard learned counsel for the parties at length and perused the material available on record in support of the applications. The appeals have been filed after enormous delay of 339, 347, 329 & 252 days respectively.

8. The documents filed in support of the applications would reveal that after about one month of the decree, the counsel informed about it to the Municipal Council. Even though the then President and CMO, Municipal Council, immediately wrote letters to the Directorate seeking its guidance over the matter, but those letters do not contain a single word about lack of funds for arranging court fee. Instead, other documents filed along with the applications for taking documents on record would reveal that some files were not available with the Municipal Council. Therefore, there is contradiction in the grounds mentioned in the applications and the difficulties mentioned in the documents.

9. In matter of **Postmaster General and others Versus Living Media India Limited and another, (2012) 3 SCC 563**, the Supreme Court has held that the law of limitation applies equally to the all the litigants whether it be Government or its agencies or an ordinary litigant. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

10. Even if we consider the submissions of learned counsel for the appellants in light of the decision made by the Supreme Court in the matter of **Lipok AO (supra)** that for the slackness committed by the Government officers, an individual may not be benefited, it is to be noted that the decision to construct the Town Hall on Nazul land was taken by the Municipal Council on the land belonging to one Bhupendra Club with whom the

Council had entered into an agreement. It, therefore, appears that the Bhupendra Club was allotted the land and since the then President, Municipal Council was the ex-officio President of Bhupendra Club, it was always treated that the land belonging to Bhupendra Club is the land belonging to the Municipal Council.

11. Under Section 101 of the CG Municipalities Act, 1961, the nazul lands transferred to the Council by the State Government are to be managed by the Council in accordance with its bye-laws. Therefore, ordinarily, nazul lands situated within the territorial jurisdiction of the Municipal Council are treated to be the property of Municipal Council, although a formal order of transfer or allotment is required to be issued in favour of the Municipal Council.

12. A perusal of the memo dated 19.7.2004 issued from the office of the Collector, Korea addressed to the CMO, Municipal Council, Manendragarh, would reveal that the Municipal Council had entered into an agreement with Bhupendra club on 26.4.2004.

13. In the course of argument before this Court, it is revealed that the then President and CMO of the Municipal Council are the office bearers of the Bhupendra Club. There is no material on record to show that the Bhupendra Club was a private entity and that the nazul lands were allotted to any private individual or a private club or Society managed by the citizens and not by the Municipal Council. Moreover, indisputably, the Contractors

proceeded to raise construction after they were declared successful tenderers in response to the tenders floated by the Municipal Council for construction of Town Hall and supply of materials in connection therewith.

14. Therefore, it is not a case where the Contractors proceeded to raise construction without any authority or permission by the Municipal Council. If there was any irregularity in choosing the land for construction of Town Hall, the blame squarely lies on the officers of the Municipal Corporation but not on the Contractors, who were awarded contract and issued work order by the Council.

15. In our considered view, it is not a case where the contractors would be unjustly enriched or would suck the Exchequer without authority of law. The delay being enormous and not having been properly, sufficiently and satisfactorily explained, the applications for condonation of delay deserve to be and are hereby dismissed.

16. Consequently, all the appeals are also dismissed.

Sd/-

Judge

(Prashant Kumar Mishra)

Sd/-

Judge

(Arvind Singh Chandel)