

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 357 of 1989

Date of decision : 19.5.2017

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Municipal Corporation, Gurgaon

.....Appellant

vs.

Pitamber Lal

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Deepak Balyan, Advocate for the appellant

Mr. Arjun Veer Sharma, Advocate for
Mr. Amit Jain, Advocate for the respondent.

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H. S. Madaan, J.

This appeal is directed against judgment and decree dated 27.10.1988 passed by Additional District Judge, Gurgaon, vide which he had dismissed the appeal against judgment and decree dated 21.1.1988, passed by Additional Senior Sub-Judge, Gurgaon, decreeing the suit for grant of permanent injunction by plaintiff – Pitamber Lal against defendant – Municipal Committee, Gurgaon.

Feeling aggrieved Municipal Committee, Gurgaon has knocked at the door of this Court praying that the appeal be accepted, the judgments and decrees passed by the Courts below be set aside and suit filed by plaintiff Pitamber Lal against it, be dismissed.

Briefly stated, the facts of the case are that plaintiff -

Pitamber Lal, has been in possession of part of building bearing No. 910/3, shown in red colour and marked by letters ABCD, in the site plan attached, situated within limits of Municipal Committee, as a tenant; that earlier his landlord had filed an ejectment petition against him on the ground of the building being unfit for human habitation. However, the landlord could not succeed in getting the ejectment order against tenant - Pitamber Lal, though the litigation had reached this Court even. According to plaintiff - Pitamber Lal, his landlord being an influential person got a notice under Section 120 of the Haryana Municipal Act, issued from Municipal Committee calling upon the plaintiff to show cause as to why the portion in question be not demolished within 15 days from receipt of the notice; that he had sent reply to the notice in question; thereafter another notice dated 13.3.1985, was received by him requiring him to demolish the portion within 6 hours from receipt of notice. Feeling threatened, the plaintiff had approached the Civil Court seeking grant of permanent injunction restraining the defendant - Municipal Committee, Gurgaon, from taking any action on the notice dated 13.3.1985, under Haryana Municipal Act or to demolish the portion marked with letters ABCD on the ground floor and EFGH on the first floor.

On being put to notice, defendant – Municipal Committee appeared in the Court and filed written statement contesting the suit taking legal pleas, challenging maintainability of the suit, the suit being bad for non-joinder of parties, on merits contending that building is unfit and in dangerous condition and it could fall at any moment endangering neighbours and other persons living nearby. For

that reason, the notice had been issued to the plaintiff. The same is legal and valid and no fault could be found with it. The defendant prayed for dismissal of the suit.

The plaintiff had filed replication to the written statement controverting the allegations and reiterating the stand taken in the plaint.

On pleading of the parties following issues were framed:-

1. Whether the notice dated 13.3.1985, issued by defendant is illegal, null, mala fide and not binding upon the plaintiff, if so to what effect, as alleged? OPP
2. Whether suit of the plaintiff is not maintainable in the present form? OPD
3. Whether the suit is bad for non-joinder of necessary parties, as alleged? OPD
4. Relief.

The parties lead evidence in support of their respective claims.

After hearing arguments, the trial Court decided issue No.1 in favour of the plaintiff. No finding on issues No. 2 and 3 was recorded for the reason of the same not being pressed during arguments. Consequently, the suit of the plaintiff was decreed and a decree for permanent injunction restraining Municipal Committee from taking any action upon notice issued on 13.3.1985 with regard to suit property was passed in favour of the plaintiff, against the defendant vide judgment and decree dated 21.1.1988.

The defendant – Municipal Committee, had preferred an appeal which was registered as Civil Appeal No. 14 of 18.2.1988, but the same was dismissed by the Additional District Judge, Gurgaon, vide judgment dated 27.10.1988. As such the defendant-Municipal Committee, has filed the present appeal and it was fixed for arguments.

Learned counsel appearing on behalf of the appellant had informed the Court on the last date of hearing i.e. 5.5.2017 that as per information received from appellant – Municipal Committee, Gurgaon, building in question could not be located and whereabouts of Pitamber Lal – respondent, could not be found. The counsel had sought a short adjournment to get necessary instructions from the appellant. However, learned counsel for the appellant has submitted that he had contacted his client, but a similar report has been received. Copy of that report has been placed on the file.

After hearing the counsel and going through the record, I find that the plaintiff – Pitamber Lal was aggrieved by notice under Section 120 of the Haryana Municipal Act, got served by Municipal Committee, Gurgaon, upon him, requiring him to demolish the portion of building No. 910/3, in his possession within 6 hours from receipt of the notice dated 13.3.1985. According to appellant – defendant - Committee, the notice was sent since the building was in dangerous condition, as such unfit to be allowed to continue, since that would fall at any moment, which could endanger neighbours. This stand of the appellant – defendant - Municipal Committee was not found to be correct by the Courts below and the impugned notice

was found to be illegal, void, not binding upon the plaintiff. Though the judgments and decrees passed by the Courts below have been challenged in this Court. The notice in question is dated 13.3.1985. More than 32 years have elapsed since issuance of notice. The appellant – defendant - Committee was expected to inform the Court regarding the present status, as to whether the building is still in existence or it has been demolished or for that matter some repairs have been carried out or some new building has been constructed in its place. However, the appellant – defendant is unable to locate the building. It being so, no cause of action could possibly survive to it with regard to the impugned notice and to continue pursuing the matter under such circumstances. Therefore, the appeal has become infructuous and is dismissed accordingly.

However, this is not to debar the appellant-defendant-Municipal Committee, Gurgaon, to issue fresh notice to plaintiff as per rules as and when the building is found to be unsafe, unfit and dangerous for the inhabitants, if that could be located.

(H.S. Madaan)
Judge

19.5.2017

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Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No