

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No. 2759 of 2013 (O&M)

Date of decision : 24.8.2017

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Municipal Corporation, Gurgaon

.....Petitioner

vs.

M/s Swami Trading Company, Gurgaon
and others

.....Respondents

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

Present: None for the petitioner

Mr. R.K. Dhiman, Advocate for the respondent.

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H. S. Madaan, J.

This revision petition is directed against order dated 5.4.2011 passed by the Sub Divisional Magistrate, Gurgaon, declining prayer of petitioner to restrain respondents from carrying out commercial activities in the residential area and judgment dated 15.9.2012 passed by Additional Sessions Judge, Gurgaon, vide which appeal preferred by Municipal Corporation, Gurgaon against the order of the Sub Divisoinal Magistrate, Gurgaon, was dismissed.

Briefly stated, the facts of the case are that a complaint was

received by SDM Gurgaon on the allegations that commercial activities are being carried out in residential area of Jacompura, Gurgaon, in as much as some residents of the said locality have constructed godowns and are carrying out business activities there resulting in increase of traffic many folds and that the godowns are being used for loading/unloading of material giving rise to mishaps, that chances of fire breaking out were there, although there was no effective fire fighting system. As such it was prayed that action under Section 133 of Cr.P.C. be taken.

Upon being put to notice, the respondents appeared before SDM Gurgaon. They came up with a plea that premises are situated in an area which has been notified as commercial area, rather they are paying taxes in that regard regularly. However, SDM, Gurgaon, restrained the respondents from storing inflammable materials and nuisance creating materials besides restraining them from plying heavy traffic, but no restriction to the commercial activities was imposed observing that it was the matter within the purview of Municipal Committee, Gurgaon. Feeling aggrieved by the said order, the Municipal Committee, Gurgaon, filed an appeal before the Additional Sessions Judge, Gurgaon. However, the appeal was dismissed vide order dated 15.9.2012. According to the petitioner, in terms of evidence available on file, area of Jacompura, Gurgaon, where the respondents are carrying out the commercial activities is basically a residential area and as per settled law no person is allowed to carry out commercial activities in a residential area, but M/s Swami Trading – respondent No.1 has been carrying out commercial

activities in the area in a house bearing No. 615/1, Jacompura, Gurgaon, which is being used as store for keeping rice, sugar, ghee, edible oil, maida etc, which are inflammable materials, without obtaining permission from the appellant, as required under law. No NOC from the fire department was taken. Occupation certificate of the building has also not been obtained. By way of transportation of the said materials through loading and unloading by auto rickshaws, mini trucks, HTV etc., are causing nuisance to the general public and the neighbours and the same is injurious to the public health and physical comforts of the community. Respondent No.2 is carrying out the business of cotton/clothes and cloth dust in residential house No. 254/14, Jacompura, Gurgaon, whereas respondent No. 3 is engaged in business of store/godown for plywood and wood etc. Respondent No.4 is using the house as store-house/godown for rice, sugar, ghee etc. Respondent No.5 is storing iron scrap, plastic bottles, PVC wires, newspapers etc. Respondent No. 6 is using the house for storing of transportable materials as godown. Respondent No.7 is running a plastic factory from its house. Respondent No.8 is using the house for storing of transportable materials as godown. Respondent No. 9 is using the house as store-house/godown for rice, sugar, ghee etc. Respondent No.10 is using the house for workshop shown room and godown. Respondent No. 11 is using its residential premises for storing tobacco cigarettes, match boxes etc. respondent No.12 to 14 are using their residential premises for storing food grains and respondent No. 15 is using the same for supply of building material. This has been so conceded by the respondents in the written

statements. The main plea of the respondents has been that they are not storing the dangerous items and their business does not cause nuisance and they are paying commercial tax to the Municipal Corporation and their premises are located under notified commercial area. According to revision petitioner, courts below have failed to consider the fact that the commercial activities in the residential area are banned and unauthorized commercial activities in the residential area are also contrary to the planned development. The respondents have no right to carry out commercial activities in the residential area and they be restrained from doing so.

Notice of the revision petition was given to the respondents. They have put in appearance through counsel.

I have heard learned counsel for the parties, besides going through the record and I find that the revision petition is doomed for failure.

Firstly, the revision petition has not been filed within time and it was instituted belatedly by 256 days. An application under Section 5 of the Limitation Act for condonation of delay in filing the revision petition has been moved, inter alia pleading that the delay in filing the revision petition took place for the reason that several objections had been raised by the Registry of this Court; that the delay is not intentional and willful, as such be condoned. The request has been opposed on behalf of the respondents.

Section 3 of the Limitation Act provides bar of limitation, it dilates that every petition filed after a period of limitation shall be dismissed, although an objection in that regard might not have been

taken.

The petitioner has not been able to render any satisfactory explanation for delay in approaching the Court. The delay is on very higher side and no plausible explanation has come forward for the same. Thus the application under reference deserves to be rejected, as no satisfactory or convincing reason has been explained to condone the delay. The petitioner has failed to cross the hurdle of limitation. Therefore, for that reason the revision petition is liable to be dismissed.

On merits also, the revision petitioner does not have any case. Though as per its version, commercial activities are being carried out in the residential area but the Additional Sessions Judge, Gurgaon in her order dated 15.9.2012, has observed as follows:-

“14. It can safely conducted from the above evidence that as far as question of running commercial activities in residential area is concerned, Municipal Committee, Gurgaon has already granted permission for this purpose and the documents produced on record by the respondeats which reveal payment of commercial tax to the Municipal Committee substantiate their version that they had been regularly paying the tax to the Municipal Committee for maintaining the commercial activities. Moreover, from resolutions Exhibit RW 2/A and Exhibit RW 2/B, it has come on record that Municipal Committee had been

authorizing use of residential area for commercial purposes.

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16. In the case in hand, it has not been established on record that running of commercial activities by the respondents in the particular residential area of Jacompura has caused a nuisance which was required to be removed

17. As discussed earlier, it has come on record that storage of inflammable materials, nuisance creating material has already been stopped by the impugned order. Plying of heavy traffic is also stopped. The only grudge of the appellant is that the Sub Divisional Magistrate has not ordered restraint of commercial activities. Commercial activities as such in the case in hand being run by the respondents including several such acts for which no nuisance is caused to be established. For example, running a printing press, holding an office for transport business etc. are not proved to be such commercial activities which would create nuisance. Since it has also come on record that Municipal Committee is already charging tax for permitting such like commercial activities in the residential area. Learned Sub Divisional Magistrate has

rightly held that the permission to run such activities is within the domain of Municipal Committee. There are no reasons for this Court to differ with the findings of learned Sub Divisional Magistrate, Gurgaon and there is no evidence on record which would establish that merely running some commercial activities in the area of Jacompura, Gurgaon, has caused public nuisance. Therefore, the impugned order is perfectly justified.”

Thus order passed by the Additional Sessions Judge, Gurgaon, does not suffer from any legal defect. This order, as well as, order passed by SDM, Gurgaon, are well reasoned ones, based upon proper appraisal of evidence and correct interpretation of law. There is no illegality or infirmity, much less apparent on the face of such orders, calling for the same to be set aside, exercising the revisional jurisdiction.

Under the circumstances, there is no merit in the revision petition and the same stands dismissed.

(H.S. Madaan)
Judge

24.8.2017

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Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No