

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

RSA No. 1609 of 2009

Date of decision: 03.11.2017

**Municipal Corporation (successor-in-interest of Municipal
Council), Bathinda.**

... Appellant

Versus

Shimla Devi

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Deepak Sabharwal, Advocate,
for the appellant.

Mr. Binderjit Singh, Advocate,
for the respondent.

AMOL RATTAN SINGH, J.

This is the second appeal of the Municipal Corporation, Bathinda, which was the defendant in a suit filed by the respondent herein, Shimla Devi, seeking a decree of permanent injunction, restraining the appellant from demolishing any part of shop no.3, situated at the Gandhi Market, Bathinda.

The suit was filed on account of notices having been issued to the defendant by the appellant, under Sections 195 and 195-A of the Punjab Municipal Act, 1911, the said notices being dated 24.01.2003, with another notice issued under Section 220 of the said Act on 25.02.2003. (It may be noticed here that the appellant is the successor-in-interest of the Municipal Council, to which the aforesaid Act

applied).

2. As per the case set up by the respondent-plaintiff (hereinafter to be referred to as the plaintiff), she is the owner in possession of Shop No.3 (Municipal No.4753/3) situated at Gandhi Market, Bathinda, which she had purchased from one Gopal Dass vide sale deed no.7276, dated 04.01.1990. As per the plaintiff, she continued to be in possession of the said shop since the date of purchase and in the year 2000, she further constructed on the first and second floor of the suit property, after depositing the requisite fee for sanction of the site plan, on 09.02.2000. The construction is stated to have been completed as per the site plan submitted to the appellant-defendant to the Municipal Council.

The whole property is stated to have been assessed to house tax, despite which the aforesaid notices were issued to her.

As per the plaintiff, firstly, her construction being as per the site plan, which was deemed to have been sanctioned, it not having been rejected, and further, the construction being more than six months old, the defendant had no authority to issue the aforesaid notices and that, in fact, it was so done only to harass her.

Therefore, despite her having 'requested' the defendant to withdraw the notices and they not having been done so, she filed the suit on 26.02.2003.

3. Upon issuance of notice, the defendant filed its reply taking an objection that no notice had been served upon it (Municipal Council) under Section 49 of the Act, which stipulates that no suit shall be

instituted against the local body, in respect of any act done by it, until the expiration of one month after a notice in writing has been delivered to it (except if it is a suit instituted under Section 54 of the Specific Relief Act, 1877).

Other usual preliminary objections with regard to locus standi etc. were also taken.

On merits, the defendant admitted the ownership of the plaintiff to the suit property in question. It was further stated that these shops/booths were sold by the Government to different persons, each booth being 8' x 12' in size. The foundation of the booths were laid only for a single floor and, as a matter of fact, the plaintiff had never got any plan sanctioned from the defendant for construction thereupon.

It was also denied that any fee had ever been deposited by the plaintiff for such sanction and further, that the construction was actually raised by the plaintiff in the 3rd week of January 2003 and as such, the notices issued in respect of that illegal construction, were proper notices, legal and valid.

It was next contended that the plaintiff had actually applied for sanction of a site plan vide file No.497 on 09.08.2000, which was rejected by the Council on 10.10.2000 and 'notice' of the rejection of the site plan was actually received by Shri Madan Lal Bansal, husband of the plaintiff, on 12.10.2000.

It was also the case of the appellant that the booth constructed on the floor in question was only upon a foundation able to take the load of the booth and that therefore no plan was sanctioned for

constructing the first and second floor thereon.

4. The plaintiff filed a replication to the aforesaid written statement controverting the averments made therein, upon which the following issues were framed by the Civil Judge:-

- “1. Whether the plaintiff is entitled to the injunction as prayed for? OPP
2. Whether no notice under Section 49 of the Punjab Municipal Act has been served upon the defendant by the plaintiff? OPD
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the plaintiff has no locus standi and cause of action to file the present suit?OPD
5. Relief.”

5. The learned Civil Judge having apprised the evidence led, came to the conclusion that the notices issued under Sections 195 and 195-A of the Punjab Municipal Act, had been issued in the name of plaintiffs' husband and not to the plaintiff herself, and as regards the notice issued under Section 220 of that Act, though it had been issued in the name of the plaintiff, yet, as per the scheme of the Act, prior to a notice being issued under Section 220, notices under Sections 195 and 195-A are required to be served (upon the owner of the property).

Hence, it was held that the notices issued to the plaintiff under Sections 195 and 195-A, not being valid notices, therefore the first (main) issue framed, on the plaintiff being entitled to the injunction prayed for, had to be decided in her favour.

The remaining issues were also decided against the

defendant and the suit of the plaintiff therefore decreed.

6. On the first appeal filed by the Municipal Corporation, the learned Additional District Judge also, after having considered the evidence, came to the same conclusion and therefore dismissed the appeal.

7. When this appeal had first been reserved after hearing learned counsel on both sides, while dictating the judgment certain facts were noticed by this Court, which had not been specifically argued and consequently, the matter was ordered to be put up for re-hearing, vide an order dated 14.04.2016, which is reproduced as follows:-

“After hearing both sides, judgment had been reserved in this appeal on 19.01.2016.

The issue is as to whether the notices issued under Sections 195, 195-A and 220 of the Punjab Municipal Act, 1911, were validly and legally issued and served upon the respondent herein (plaintiff before the learned Civil Judge (Junior Division), Bathinda), and as to whether the non-sanctioning of the site plan, within 60 days of the application made, for additional construction on the first and second floors on the suit property, which is a booth measuring 8' x 12', would nevertheless be deemed to be sanction granted in terms of Section 193 (1-a) of the said Act.

While dictating the judgment, it was also noticed that of the evidence led by the appellant Municipal Corporation, Ex.D2 is a letter dated 26.09.2000 issued to the respondent-plaintiff, by the appellant, informing her that the site plan had not been sanctioned, upon her application made on 09.08.2000, for the reason that she had not removed a certain objection, as given in Serial No.1 in that letter. The

exact objection is not fully legible as the vernacular version thereof is unclear with regard to the first word.

Therefore, the Courts below having held that there was no refusal by the appellant, to sanction the site plan within 60 days of its application, seems to be a perverse finding.

On the other hand, in favour of the respondent-plaintiff, it is also seen that two of the defence witnesses, i.e. the Junior Engineer (DW1) and the Senior Planner Draftsman (DW3), had not denied that other buildings in the immediate vicinity of the suit property had actually been allowed to construct above the ground floor on identically situated booths of the same size. Obviously, if that is so, then the contention of the appellant that the scheme under which plots were allotted by the Government, did not allow for further construction above the ground floor, would stand virtually negated, unless similar notices had been issued to other allottees, and acted upon by the appellant Corporation or its predecessor, i.e. the Municipal Council.

In this regard, it is further seen that though DW1 had been directed by the learned Civil Judge to produce the complete file regarding sanctioning of the site plan of the adjacent shop, no further cross-examination of this witness is available on the file after 24.08.2007, i.e. the date on which it was so directed.

Hence, it is considered necessary to put up the matter for re-hearing, to either get assistance from the learned counsel for the appellant on the above aspects, or if necessary, to summon by way of additional evidence, the case file pertaining to the scheme under which the booth in question was allotted.

For the above said purpose, the appeal be put up for re-hearing on 22.04.2016.

Counsel for the parties be accordingly informed.”

8. Upon the appeal having been put up for re-hearing, the records of the Courts below were summoned and the matter adjourned to various dates with its turn not having come up and eventually, when it came up for hearing today, learned counsel for the respondent-plaintiff reiterated that construction had been raised on all booths abutting that of the respondent-plaintiff, and that the photographs sought to be placed on record by the respondent-plaintiff are not denied by the appellant-Municipal Corporation, such photographs showing up to three storeys construction on top of the ground floor, i.e. on the booths originally constructed.

9. Learned counsel for the appellant-Corporation did not deny the aforesaid, and in fact, brought to the notice of this Court, that the Municipal Corporation itself has now passed a resolution, on 15.01.2013, recommending to the Government that the respondent-plaintiff and her neighbours, (96 in number), be allowed to retain the construction on their booths, but the Government has raised an objection thereto.

Pursuant to the aforesaid resolution having been passed, a communication had also been sent to the Chief Town Planner by the appellant Corporation, conveying the aforesaid, and further, another communication had been sent to the Director Town Planning, Department of Local Government Punjab, dated 17.07.2013, stating that upon this Court having put a query as to what action had been taken against the neighbours of the respondent-plaintiff, notices had been sent

to all such neighbours (owners of the other booths), upon which they had all represented to the Corporation that they may be allowed to retain the construction, in favour of which the aforesaid resolution had been passed.

However, learned counsel for the appellant further submits that vide a communication dated 20.12.2013, the Town Planning Wing of the Department of Local Government had put a query to the Corporation as to what circumstances had changed after 1977 and 1984, so as to now allow the booth owners to construct on top of the booths. He further submits that in 1977 and 1984 the Municipal Corporation had recommended that permission cannot be given for construction on higher floors.

10. Mr. Sabharwal however submits that as a matter of fact, vide the aforesaid communication of the year 2013, to the Government, it had been submitted by the learned counsel for the appellant that the Government had also been informed that there is sufficient parking space available even to cater to the demands of all persons living on the first floor of the booths constructed in the area.

11. The aforesaid documents, dated 15.01.2013 and 17.07.2013 (in Gurmukhi, with translated copies in English), produced by learned counsel for the appellant in Court, being public documents, not in any case not refuted by learned counsel for the respondent-plaintiff, and accepted by him to be true copies of the original documents, are taken on record by this Court as additional evidence, invoking jurisdiction under Order 41 Rule 27 CPC. Such evidence being considered necessary

to be taken by this Court, is accepted as such in terms of Sections 74 and 76 of the Indian Evidence Act, even though they are not certified copies of the original documents, but being admitted on both sides to be true copies thereof. They be marked as Exhibits AC1 and AC2, respectively, with the translated versions thereof to be marked as Exhibits AC1/b and AC2/b respectively. Similarly, the photographs produced in Court earlier by Mr. Binderjit Singh, learned counsel for the respondent-plaintiff, not being denied by counsel for the appellant as true photographs of the place where the plaintiffs' structure is situate, are also taken on record as Exs.AC3/1, AC3/2 and AC3/3 respectively.

12. In the aforesaid circumstances, with the appellant-Municipal Corporation itself not denying that the plaintiff and identically placed persons as the plaintiff, living in the same locality, with adjacent booths, have been recommended, by a resolution passed, to construct on the 1st and 2nd floor of such booths, there would be no reason to deny the petitioner the relief as has already been granted to her by the learned Courts below, with her suit for permanent injunction having been decreed by those Courts, though for a wholly different reason, i.e. in this appeal the appellant-Corporation itself having conceded the case in favour of the respondent-plaintiff, by passing a resolution in her favour. Hence, this appeal cannot stand.

Consequently, the appeal is dismissed, but with no orders as to costs.

13. However, it is made clear even while dismissing this appeal, that it would not bar Government or the competent authority to

make a re-assessment of the ground situation in the vicinity, to determine, firstly, as to whether the structures as have been allowed to be further constructed upon, and actually can take the burden of the additional construction or not, and whether such additional construction is feasible with regard to available parking space etc.

If the structures are themselves are found to be not strong enough to carry the burden of the additional construction, appropriate orders would be passed by the competent authority in that regard, with proper notices issued to the respondent herein and other similarly situated persons; but as regards lack of parking space, before issuing any show cause notice for demolition of the additional construction, the competent authority would fully consider availability of adequate alternate parking space in the immediate vicinity.

Decree sheet be prepared as above.

A copy of this judgment be sent to the Additional Chief Secretary to the Government of Punjab, Department of Local Government.

November 03, 2017

dharamvir/dinesh

(AMOL RATTAN SINGH)
JUDGE