

RSA No. 6695 of 2016 (O&M)

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

RSA No. 6695 of 2016 (O&M)

Date of Decision: 10.1.2017

Municipal Corporation, Gurgaon

.....Appellant

Vs.

Raj Kumar and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Pardeep Rajput, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Defendant is in second appeal against the concurrent finding of facts recorded by learned courts below.

Brief facts of the case, as recorded by learned trial court at page 13 of the paper book, are that plaintiffs were residents of village Chakkarpur and reside near DPS School, Sector 28, Power House etc. The defendant was maintaining a Power House on the southern and western side of the house of the plaintiffs for the last several years without any obstruction. In the month of June, 2013, the MCG Employees and safai karamchari started dumping garbage and rubbish on the open space of the defendant, which was earmarked by it, i.e. Municipal Corporation, Gurgaon, for putting and dumping garbage etc. in between the houses of the plaintiffs

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and other residents. The space was shown by letters ABC with red colour in the site plan. It was averred that all the residents of the village as well as the plaintiffs objected for earmarking the said space for dumping of garbage and rubbish. Several times verbal and physical dispute took place between the residents of the area as well as safai karamchari of the defendant's department but the defendant employees continued dumping the garbage in spite of stiff resistance shown by the plaintiffs and other residents.

It further stated that the said act of the defendant was causing continuous public nuisance to the residents, as a very bad and unbearable smell occurred from the dumping of garbage and the life of the plaintiffs as well as other residents of the village had become hell. It was further stated that some time the defendant workers burn the garbage which caused smoke in the entire locality and it became very difficult for the residents of the locality to breath fresh air. The plaintiffs had approached the defendant several times. On 2.8.2013, the plaintiff No.3 wrote a letter to defendant but the defendant did not entertain any such request. A legal notice was also sent on 5.9.2013 through Advocate Sh. R.S. Bhardwaj but all in vain. It was further stated that the defendant was a statutory authority constituted under Statutory Act was bound to provide a healthy atmosphere to all the citizens. However, the said act of dumping garbage of the defendant was against the public policy and against human rights and against all principles of natural justice. Also on 27.4.2014, the defendant department brought 40 to 50 musclemen and safai karamchari to teach the lesson to the residents protesting against the said dumping of garbage in that area. The said act of the defendant was against the law, equality and liberty. Hence, the suit was filed.

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Having been put to notice, defendant-appellant appeared and filed its written statement. After completion of pleadings of the parties, learned trial court framed the following issues:-

1. Whether the plaintiff is entitled to the declaration to the effect that earmarking the space shown by letters ABC for dumping garbage be declared as null and void and hazardous to the health of residents? OPP.
2. Whether the defendant its officers and safai karamchhari be restrained from using the said space for the purpose of dumping of garbage?OPP
3. Whether defendant is directed to remove the already dumping garbage from the space as mentioned above?())
4. Whether the suit of the plaintiff is not maintainable in the present form?OPD
5. Whether the plaintiffs have no locus-standi to file the present suit?OPD
6. Whether the plaintiffs are estopped from filing the present suit by their own acts, conducts, commissions, acquiescence? OPD
7. Relief.

With a view to prove their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that plaintiffs-respondents had duly proved their case by leading their cogent evidence. Accordingly, suit of the plaintiffs was decreed by the learned trial court, vide impugned judgment

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and decree dated 28.10.2015.

Feeling aggrieved against the abovesaid judgment and decree passed by the learned trial court, defendant-appellant filed its appeal, which also came to be dismissed by the learned first appellate court, vide its impugned judgment dated 23.8.2016. Hence this appeal.

Heard learned counsel for the appellant.

A bare combined reading of both the impugned judgments and decrees would show that learned trial court as well as learned first appellate court have recorded their concurrent findings of facts. The conclusion arrived at by the learned courts below has been found to be factually correct and legally justified. Both the learned courts below have recorded their respective cogent findings, before arriving at a just conclusion, while passing their respective impugned judgments and decrees and the same deserve to be upheld.

During the course of hearing, when confronted as to why and on what basis the defendant-appellant was claiming the ownership of the land over which the plaintiff-respondents have raised construction, learned counsel for the appellant had no answer and rightly so, it being a matter of record. It is neither pleaded nor argued case on behalf of the appellant that it was not granted due opportunity to defend its case, by bringing on record its best case leading oral as well as documentary evidence. Having said that, this Court feels no hesitation to conclude that plaintiffs have duly proved their case and the impugned judgments and decrees deserve to be upheld, for this reason as well.

Learned first appellate court, before passing the impugned judgment, re-appreciated the evidence brought on record referring to each

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and every relevant aspect of the matter. Learned first appellate court recorded its own findings on each issue and arguments raised before it. It is also not the case of the appellant that any of the arguments raised was not properly dealt with by the learned trial court or first appellate court, while passing their respective impugned judgments and decrees.

The relevant observations made by learned Additional District Judge, in para 12 to 15 of the impugned judgment, which deserve to be noticed here, read as under:-

“It is a conceded fact that an open plot marked by letters ABC shown in the site plan attached with the plaint is being used as dumping ground by MCG since June 2013. It is also not disputed that the said plot is located within the residential area of the village. The only assertion of the appellant-Municipal Corporation is that the plot has been earmarked by Municipal Commissioner exercising his powers under Section 270 of the Haryana Municipal Corporation Act 1994, as dumping ground and as such the authorities are within their power to earmark any place for the use as dumping garbage and the question of shifting the place docs not arise at all. He drew attention of the court towards Section 270(I) or 270A of the Haryana Municipal Corporation Act 1994 and urged that the order of the Municipal Commissioner is legal and passed while exercising the jurisdiction vesting in him. No doubt, the Municipal Commissioner has been empowered under Section 270(I) of the Haryana Municipal Corporation Act to provide a place for removal of filth and other polluted and obnoxious matter and no doubt it is also an admitted fact that open plot ABC has been earmarked by the Municipal Corporation for the said purpose, but at the same time, sub Section 2 of the same Section provides

that the "Commissioner shall make adequate provisions for preventing receptacles, depots, dustbins, vehicles and vessels from becoming the sources of nuisance." Meaning thereby that if the Commissioner feels that any particular place which was earmarked by him has become source of nuisance to the residents of the locality and posing a health threat to the inhabitants of the surrounding area. he is duty bound to shift the place. The fact that open plot ABC is a constant source of nuisance has been admitted by the witness of the defendant-Municipal Corporation Sanitary Inspector Sh. Sudhir Kumar(DW I) in most unambiguous terms in his cross-examination that the collection of garbage at the particular place is causing health hazards to the residents of the locality. On the other hand, there is no evidence to prove that removal of the dumping ground from this particular place would cause any prejudice to the municipal corporation.

It is urged on behalf of the defendant-Municipal Corporation that the plot ABC is collection point only from where garbage is taken to waste management plant at Bandhwari, but at the same time, the witness of the defendant (DW I) has admitted that garbage is not dispatched from collection point on regular basis. Meaning thereby, the garbage is dumped in the plot for many days before it is taken to waste management plant. He has admitted that at times the garbage is burnt in the said plot only. No doubt, the Municipal Corporation can earmark any place for dumping of garbage, but it was the duty of defendant- Municipal Corporation to bring before the court the copy of order of the Commissioner, under which the particular plot ABC has been earmarked for the said purpose. It is important to note the year in which the said order was passed, but no such order is

forthcoming on record. It is possible that the order might have been passed years ago when the locality was not inhabited. Now, with the passage of time the locality is thickly populated and plot ABC may not be suitable place for dumping of garbage. Perusal of the site plan clearly reveals that the dumping ground earmarked is situated near the residential colony. Waste and filth collected from the houses of the residents is being dumped near their houses and is not lifted for days together. There is evidence on record to prove that there exists a school and many residential houses adjoining the garbage collection point ABC. Thus, the act of the defendant besides causing health hazards to the local residents has stigmatized the real estate value of their property.

Thus, the trial court has rightly concluded that the defendant-Municipal Corporation has taken a shortcut by dumping the garbage taken from the houses of the respondents by choosing the place near the residential locality. Such practice on the part of the municipal corporation of a modern District like Gurgaon is most uncalled for. The trial court has also rightly observed that the act of the defendant is a source of continuous nuisance not only for the plaintiffs but also for the other residents of the locality and causing continuous health hazards to them. The Municipal Corporation, Gurgaon is thus under the orders of the court to shift the dumping space far 'away from the inhabited area and the school to any other suitable place.

Learned counsel for the appellants failed to point out any jurisdictional error or patent illegality apparent on the record of the case in either of the impugned judgments and decrees passed by the learned courts below. He also failed to put into service any substantive argument, so as to

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convince this Court to take a different view than the one taken by the learned courts below. Further, no question of law much less substantial question of law has been found involved in the present case, which is sine qua non for interference at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure, in view of the law laid down by the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

10.1.2017
Ak Sharma

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No