

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

RSA No. 839 of 2017 (O&M)

Date of decision: 14.02.2017

Municipal Corp. Gurgaon

... Appellant

versus

Kamaljit Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

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

HARI PAL VERMA, J. (ORAL)

The appellant-defendant has filed the present appeal against the judgment and decree dated 17.10.2016 passed by learned Additional District Judge, Gurgaon whereby the appeal filed against the judgment and decree dated 25.02.2014 passed by the learned Civil Judge (JD) Gurgaon was dismissed.

Briefly stated, the respondent-plaintiff has filed a suit for permanent injunction with an averment that the plaintiff is doing his occupation in shop situated opposite DDR Hotel at Jharsa Road, Gurgaon and the said shop belongs to the appellant-Corporation. He is running the business of building material in the said shop since the year 1993 on monthly rent of ₹ 440/-. The shop in question was transferred in the name of respondent-plaintiff by Municipal Corporation, Gurgaon on 27.12.1993 after accepting the required transfer fee of ₹ 20,000/-.

The monthly rent of the said shop was enhanced from time to time and

at the time of filing of suit the rent was ₹ 1, 241/- per month. It has been further averred that on 06.05.2011 employees of the appellant-Municipal Corporation came to the shop of the respondent-plaintiff and threatened to dispossess him by demolishing the shop. However, with the intervention of the nearby shopkeepers, the plaintiff succeeded to avoid the forcible demolition of the shop, but, before leaving the site the employees of the appellant-Municipal Corporation threatened the respondent-plaintiff that they would demolish the shop.

The appellant-Municipal Corporation has filed the written statement taking various preliminary objections including the cause of action and the absence of *locus standi*. On merit, it was pleaded that the respondent-plaintiff has raised a permanent shop illegally on the land which came under the jurisdiction of the appellant-Municipal Corporation, Gurgaon and as per Clause 3 of the agreement, respondent-plaintiff was not allowed to make any permanent construction on the suit property. Vide memo dated 24.03.2011 it was decided by the Engineering Department of the appellant-Municipal Corporation to widen the Jharsa road, so that traffic could run smoothly. Accordingly, it was decided that shop of the respondent-plaintiff should be removed and for that purpose a Committee was constituted for rehabilitation of shops. After a decision was taken by the Committee, notice under Section 408(A) of Haryana Municipal Corporation Act 1999 was served upon the respondent-plaintiff wherein it was clearly mentioned that plaintiffs have violated the provisions of the Act, bye

laws and they are required to vacate the illegal construction. Since the shop in question was not vacated by the plaintiff on 16.08.2011, the shop in question was demolished in the presence of Duty Magistrate. From pleadings of the parties, following issues were framed by the trial Court:-

- 1. Whether the plaintiff is entitled to a decree for permanent injunction as prayed for ?OPP.*
- 2. Whether the plaintiff has no locus standi to file the present suit ?OPD.*
- 3. Whether the plaintiff has not come before the Hon'ble Court with clean hands and suppressed the material facts from the Hon'ble Court ? OPD.*
- 4. Relief.*

The trial court decreed the suit for mandatory injunction and directed the appellant-defendant to allot an alternative plot in the premises of the area falling within the limits of Municipal Corporation, Gurgaon on licence on the same terms and conditions as existed in April 2011 at the time when the shop was dismantled.

Aggrieved against the aforesaid judgment and decree dated 25.02.2014 passed by the trial Court, the appellant-defendant filed an appeal before the lower Appellate Court, but the same was also dismissed by learned Additional District Judge, Gurgaon vide judgment and decree dated 17.10.2016.

Still aggrieved, the appellant-defendant has filed the present

regular second appeal.

The appellant-defendant has formulated the following substantial questions of law in the present appeal:

- 1. Whether the findings of Courts below are in contradiction to documentary evidence on record?*
- 2. Whether Appellate Court has erred in upholding the judgment and decree passed by trial Court?*
- 3. Whether the respondent is entitled for relief prayed for?*

Learned counsel for the appellant has fairly submitted that infact in the case of demolition, notice was required to be served upon the respondent-plaintiff Kamaljit Singh S/o Risal Singh, however, by mistake it was served by the plaintiff under the name of Kawal Kumar S/o Hukum Chand. Though, the other details of the notice leaves no manner of doubt that same was aimed at to be served upon Kamaljit Singh S/o Risal Singh. Merely because there was an error in the name whereas the other details are in consonance to the act, the Courts below were required to consider this fact with a broader view.

I have heard learned counsel for the appellant.

The order of demolition passed by the appellant-defendant Ex. DW4 shows that respondent-plaintiff had violated the terms and conditions of licence and as a consequence thereto the licence was revoked and demolition proceedings were initiated. But, at the same time, it is also a matter of record that there is a agreement between the respondent-plaintiff i.e. Kamaljeet Singh S/o Risal Singh and the

appellant as Ex. DW7. The transfer fee has been taken from plaintiff on 27.12.1993 and it is thereafter the plaintiff has come in possession and has occupied the suit property. Act provides that the corporation is required to serve a notice upon the party, but, in the case in hand, the notice was served and issued against the name of Kawal Kumar S/o Hukum Chand and not upon the respondent-plaintiff Kamaljeet Singh S/o Risal Singh. In this manner, there was complete ambiguity in notice and it cannot be termed that the same has been served to the respondent-plaintiff Kamaljeet Singh S/o Risal Singh, as name is altogether different.

With these concurrent findings of fact, this Court does not find any illegality in the judgment and decree passed by the Courts below. Thus no substantial questions of law are involved in the instant appeal.

In view of the observations made above, the present appeal is dismissed.

(HARI PAL VERMA)
JUDGE

14.02.2017

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Whether speaking/non-speaking: Yes/No

Whether reportable : Yes/No