

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.5082 of 2017 (O&M)

Date of decision:06.03.2018

Krishna Devi (since deceased through LR's) and others ... Petitioners

Vs.

Municipal Committee, Sangrur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Karan Gupta, Advocate
for the petitioners.

AMIT RAWAL J. (Oral)

The present revision petition is directed against the order dated 22.02.2017 (Annexure P-1) rendered by the Additional Civil Judge (Sr. Division), Sangrur, vide which execution application filed under Order 21 Rule 32(1)(3)(5) of Code of Civil Procedure, for alleged violation of the judgment and decree dated 11.08.1995, was dismissed.

Mr. Karan Gupta, learned counsel for the petitioners submitted that petitioner-plaintiffs instituted a suit for permanent injunction against the Municipal Committee Sangrur on demolition of the shop in dispute, in pursuance to the notice dated 09.07.1993 situated at street no.20 Prem Basti Sangrur. The aforementioned suit after contest was decreed by the trial Court, vide judgment and decree dated 11.08.1995 and following relief was granted:-

“For the reasons recorded above, the suit of the plaintiff

succeed. I hereby, decree the suit of the plaintiff for permanent injunction restraining the defendant from demolishing the property in dispute as fully detailed in the head note of the plaint except in due course of law only with costs. Decree sheet be prepared accordingly and file be consigned to the record room.”

The aforementioned decree was violated in the year 2012 necessitating the petitioners to institute the petition aforementioned on 11.12.2013. The trial Court dismissed the application, though the parties led the evidence in extenso on the premise that the petitioners had a fresh cause of action owing to the fact that Municipal Committee, in compliance of the judgment and decree had taken the steps in accordance with law by passing the order dated 27.09.2012. He submitted that said order as per the endorsement was never communicated to the petitioners, therefore, they did not have the knowledge which itself was a clincher for the Court below to have allowed the application as the Municipal Committee did not resort to the provisions of law which required to be adhered to in letter and spirit of the judgment and decree of 1995. The Punjab Regional & Town Planning and Development Act, 1995 (in short “1995 Act”) came into force by notification dated 26.05.1995, whereas, judgment and decree is of 11.08.1995, therefore, the same would have applied retrospectively. The petitioners are owners of the property by virtue of sale deed dated 09.05.1951 All these factors, if read in cumulative would not have resulted into dismissal of the petition and thus, there is illegality and perversity in

the order under challenge.

I have heard the learned counsel for the petitioners, appraised the paper book and also the order dated 22.09.2017 (Annexure P-7) which had been passed by the Municipal Committee in compliance of judgment and decree dated 11.08.1995.

On perusal of the aforementioned order, it is evident that the said order was never communicated to the petitioners but the same was disclosed in reply to the petition filed under Order 21 Rule 32(1)(3)(5) of Code of Civil Procedure.

In view of that situation, a fresh cause of action had accrued to the petitioners to challenge the aforementioned order on the grounds available therein but not to proceed with the petition. The Municipal Committee had resorted to the provision aforementioned which was seriously objected to.

Be that as it may, in my view, the petitioners had a fresh cause of action, in view of the acquisition of the knowledge of order dated 22.09.2017 but having failed to challenge the same, I am of the view that question of applicability of 1995 Act, i.e., w.e.f. 26.05.1995 could not have decided in the proceedings under Order 21 Rule 32(1)(3)(5) of Code of Civil Procedure.

In view of what has been observed above, I am of view that there is no illegality and perversity in the order under challenge, much less the same cannot be said to have been passed without jurisdiction.

Accordingly, the revision petition stands dismissed.

March 06, 2018

savita

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No