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

RSA-1382-2010

Date of decision : 15.01.2018

Nagar Parishad, Narnaul and another

... Appellant

Versus

Vijay Parkash

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.K. Yadav, Advocate
for the appellant.

Mr. Sanjay Mittal, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

The appellant-defendant is aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby the suit of the respondent-plaintiff seeking injunction against the appellant-defendant obstructing from raising construction, had been decreed, though dismissed by the trial Court.

Mr. S.K. Yadav, learned counsel appearing on behalf of the appellant-defendant submits that the respondent-plaintiff instituted the suit in the year 1999 i.e. 06.12.1999 seeking relief on account of site plan sanctioned on 02.12.1999. The site plan was never sanctioned as proposed, but the same had been sanctioned excluding the land belonging to defendant No.1 and there was an attempt on behalf of the plaintiff to occupy the land belonging to defendant No.1. To substantiate its case, the plaintiff

examined as many as nine witnesses and on the other hand, the defendant(s) examined Maha Dev Parsad Building Expert and tendered the documents (Ex.D-3 to Ex.D-5) in evidence. The trial Court on the basis of the evidence brought on record found that as per the provisions of Section 201 of the Haryana Municipal Act, no person shall be permitted to erect or re-erect or commence to erect or re-erect any building without the sanction of the Committee. The Deputy Commissioner vide order dated 25.07.2000 modified the site plan, aforementioned. The same was assailed before the Authorities, which necessitated the respondent-plaintiff to institute the suit against the orders of the Commissioner and Deputy Commissioner, dated 23.04.2004 and 25.07.2000. The matter was assailed before this Court vide CWP No.12068 of 2004 and this Court vide order dated 30.05.2006 allowed the petition and the matter was remitted to the Financial Commissioner. The Financial Commissioner, vide order dated 01.04.2009, remanded the matter to the Committee to decide the controversy afresh, thus, urges this Court that the judgment and decree of the lower Appellate Court is not sustainable in the eyes of law as no injunction can be granted to a person, who is in unauthorized possession of the land not belonging to him.

Mr. Sanjay Mittal, learned counsel appearing on behalf of the respondent-plaintiff submits that the Municipal Committee has yet not taken a decision with regard to the sanctioning of the site plan and the matter is *sub judice*. The construction was raised as per the sanctioned plan dated 12.12.1999, but the Deputy Commissioner at the back of the respondent-plaintiff modified the site plan, thus, urges this Court that injunction order was innocuous and in case, the Committee takes a decision with regard to the other site plan, demarcation would be done and in case, the construction

is found to be not according to the site plan, both the parties would have appropriate remedy in accordance with law.

In rebuttal, Mr. Yadav, learned counsel submits that even construction as per the sanctioned site plan was if not done within a period of one year, its validity as per the provisions of Section 201 of the Act automatically lapsed.

I have heard the learned counsel for the parties and appraised the paper book.

It would be apt to reproduce the order dated 30.05.2006 passed in CWP No.12068 of 2004 and the relevant portion of the order dated 01.04.2009 passed by the Financial Commissioner, which read thus:-

"Order dated 30.05.2006

The petitioners have approached this Court for quashing of the order dated April 23, 2004, Annexure P-11, passed by the Commissioner and Secretary, Urban Development-respondent No.1, whereby the revision petition filed by the petitioners was dismissed, upholding the order passed by the Deputy Commissioner, Mahendergarh on July 25, 2000, Annexure P-8 and also for quashing the order dated 02.12.1999, Annexure P-7, passed by the Executive Officer, Municipal Council, Mahendergarh.

Without adverting to the various pleas raised by the petitioners at this stage, we are satisfied that the order, Annexure P-11, passed by respondent No.1 cannot be legally sustained on account of fact that the said order is totally non-speaking and cryptic. No reasons whatsoever have been given by the Commissioner in rejecting the revision petition and upholding the order passed by the Deputy Commissioner.

In view of the aforesaid fact, we are satisfied that the order dated April 23, 2004, Annexure P-11, passed by respondent

No.1 is liable to be set aside.

Consequently, we allow the present writ petition and set aside the order, Annexure P-11, dated April 23, 2004 passed by respondent No.1. The matter shall stand remanded back to respondent No.1 for fresh decision of the revision petition filed by the petitioners.

The parties through their counsel are directed to appear before respondent No.1 on July 24, 2006 at 10.00 A.M.

Copy of the order be given dasti on the payment of usual charges.

Order dated 01.04.2009

I have heard the counsel and have gone through the record. The main contention raised by the petitioner in his petition before me is that an appeal lies to the Deputy Commissioner under the provisions, section 240 of the Haryana Municipal Act, 1973 only on refusal of the Committee to sanction the erection or re-erection of a building and since the building plan had not been rejected at any stage, no appeal could be filed. Further, the neighbors had no locus standi to file an appeal before the Deputy Commissioner. But interesting the petitioner himself had filed an appeal before the Deputy Commissioner, Narnaul though his entire building plan was not rejected. It is apparent that the alterations in the building plan already sanctioned by the Municipal Council in the year 1995 and 1999 was modified without any notice to the petitioners which is a material illegality and, therefore, the action of the Municipal Council to the extent of modifying his building plan was not in accordance with law. It is also correct that no appeal lies before the Deputy Commissioner against the approval of the building plan and, therefore, the proceedings before the Deputy Commissioner in appeal were also not in accordance with law. However, the Deputy Commissioner in his order has observed that the disputed land was not measured before the building plan was approved and

consequently, he suspended the sanctioned building plan.

Section 240 of Haryana Municipal Act, 1973 empowers the Deputy Commissioner to suspend the execution of any resolution or an order of a Committee. Though no specific reference to the section has been made in Deputy Commissioner's order but that itself does not render illegal the operation of the order by which the order of the Municipal Council to sanction the building plan has been suspended.

Since a doubt has been raised because of the disputed site plan being not measured before approval of building plan, it will be appropriate to have it done now and after verifying the ownership of the petitioner the Committee will take fresh view on sanction of the building plan. This order is passed in exercise of powers of the State Government to give directions, with regard to the observance of rules and bye-laws provided under Section 250 of the Haryana Municipal Act.

The order which was reserved on 19.2.2009 is thus being released today.

To be communicated to both the parties."

The matter with regard to the sanctioning of the site plan is still pending before the Municipal Committee, Narnaul, erstwhile Nagar Panchayat. The injunction granted by the lower Appellate Court is on the basis of the ownership which the respondent-plaintiff alleged to have acquired by virtue of a decree dated 28.03.1992 in a Civil Suit No.23 of 1992. If at all, the sanctioned site plan dated 02.12.1999 and also the construction raised in consonance with the same, is found to be correct by the Authorities, in my view, no further order would be required, if otherwise, the parties would have independent rights to seek the vindication of their grievance in accordance with law, but viz-a-viz the relief of injunction, it was based upon cause of action available to the plaintiff at the

relevant point of time.

Keeping in view the aforementioned facts, I do not intend to differ with the findings rendered by the Lower Appellate Court and accordingly, the judgment and decree, under challenge, is hereby upheld with the aforementioned observations.

Resultantly, the appeal stands disposed of.

15.01.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No