

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

**RSA No.1484 of 2011 (O&M)
Date of decision: 03.07.2018**

Smt. Pushpa Rani

.....Appellant

Versus

Municipal Corporation, Gurgaon

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sharad Aggarwal, Advocate,
for the appellant.

Mr. Ramesh Goyat, Advocate,
for the respondent.

Ritu Bahri, J.

This appeal has been filed against the judgment dated 10.12.2010 passed by the Additional District Judge, Gurgaon, dismissing an appeal filed by plaintiff-appellant (hereinafter referred to as 'the plaintiff') against the judgment and decree dated 29.07.2010 passed by the Additional Civil Judge (Senior Division), Gurgaon, whereby suit filed by her seeking relief of permanent injunction has been dismissed.

Smt. Pushpa Rani-plaintiff (appellant herein) filed a suit for permanent injunction alleging herself to be owner in possession of the suit property, detailed in para No.1 of the plaint, as per sale deeds dated 23.03.1994 and 07.07.1994 as well as civil court decree dated 10.08.1996 and 17.10.1996. It was submitted that site plan of the plaintiff was sanctioned by the defendant. She raised construction in the year 1996-97 and thereafter, in 1999, she made some changes therein. She submitted

second site plan for some changes in construction. Vide letter dated

05.05.1999, defendant had allowed the plaintiff to raise construction as per said site plan. Thereafter, she obtained telephone, electricity, water line connection etc. She was regularly paying electricity, water, telephone charges and the house tax. However, she received a notice dated 18.10.2002 from the defendant under Section 208 of the Haryana Municipal Act, 1973 asking her to remove/demolish the unauthorized construction. As per the plaintiff, the said notice was illegal as the construction over the suit property was more than three years. No notice could be issued by the defendant after expiry of period of more than three years. Hence, the suit.

Upon notice, defendant (respondent) filed written statement taking preliminary objections with regard to cause of action, concealment of material facts, estoppel, locus standi, suit being barred under Section 41 (h) of the Specific Relief Act, 1963, non-joinder/mis-joinder of necessary parties, jurisdiction etc. On merits, it was stated that the plaintiff had raised illegal, unauthorized construction against the permissible limits. It was denied that plaintiff had completed the construction in the year 1996-97. It was also denied that the plaintiff was owner in possession of the building. It was submitted that the plaintiff was found raising un-authorized construction in deviations of sanctioned plan and was covering excess area more than the permissible area. She had covered rear and open space. After getting a report dated 17.03.1999 from the Building Inspector, a notice dated 18.03.1999 under Section 208 of the Act was served upon the plaintiff and she was required to demolish the un-authorized construction. However, she failed to comply with the notice. Thereafter, notice under Section 235 of the Act was issued on 09.04.1999. Thereafter, plaintiff submitted revised site plan on 05.09.1999 under Section 208 of the Act along with application

for compounding the un-authorized construction. The un-authorized construction was compounded by plaintiff vide resolution No.9 dated 15.09.1999. The said resolution was suspended by the Deputy Commissioner, Gurgaon and the Commissioner, Gurgaon. As per orders passed by this Court, Commissioner, Gurgaon issued a notice dated 22.12.2000 to plaintiff requesting her to demolish un-authorized construction, but she failed to do so. Thereafter, a committee was constituted under the chairmanship of Deputy Commissioner, Gurgaon regarding building plan compounding cases of Municipal Council, Gurgaon. Vide report dated 13.03.2002, it was decided that excess coverage raised in commercial building would also be compounded upto 10% of the permissible area and upto 50% of the permissible limit in case of commercial building. However, the Government annulled the decision of the Deputy Commissioner, which was taken in a meeting held on 13.03.2002 and the resolution No.3 dated 26.03.2002. Therefore, the defendant issued a notice dated 18.10.2002 to the plaintiff. It was further stated that the plaintiff raised construction of basement and ground floor area of 1163 Sq. feet. She had not applied for completion certificate, so, the building of the plaintiff was not presumed to be complete under the Building Bye-laws, 1982. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

From the pleadings of the parties, following preliminary issues were framed by the trial Court:-

1. Whether the plaintiff is entitled to injunction as prayed for?
OPP
2. Whether the plaintiff has no cause of action to file the present
suit? OPD

3. Whether the plaintiff is estopped by her own act and conduct to file the present suit? OPD
4. Whether the plaintiff has no locus-standi to file the present suit? OPD
5. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD
6. Whether the suit is bad for want of notice under Section 52 of the Haryana Municipal Act, 1973? OPD
7. Relief.

Trial Court, after going through the evidence led by the parties, dismissed the suit. Appeal against the said judgment also met the same fate.

Heard.

Both the Courts have dismissed the suit of plaintiff-appellant on the ground that the initial plan of the plaintiff was sanctioned on 03.06.1998 Ex.P3. However, plaintiff carried out the construction beyond sanctioned site plan. Thereafter, notices dated 18.03.1999 and 09.04.1999, Ex.D2 to Ex.D5, were issued. Vide resolution No.9 dated 15.09.1999, revised site plan of plaintiff was approved, subject to deposit of compounding fee, but plaintiff did not deposit the said fee. Thereafter, notices/letters Ex.D8 and Ex.D9 were issued informing her that the construction was in violation of the bye laws.

Learned counsel for plaintiff-appellant vehemently argued that resolution No.9 dated 15.09.1999 was subject matter of challenge in writ petition Ex.D11. This resolution was suspended by the Deputy Commissioner, Gurgaon vide order dated 21.10.1999 Ex.D8 and this order was further confirmed by the Commissioner, Gurgaon vide order dated 16.08.2000 Ex.D9. The above said orders were challenged by some of the affected persons before this Court, whereupon, both the orders were set

aside by giving direction that the Commission would pass a speaking order after considering the statement of reasons sent by the Deputy Commissioner and the resolution dated 02.11.1999 passed by the respondent. The orders passed by the Deputy Commissioner, Gurgaon in the meeting dated 13.03.2002, was annulled by the Government vide order dated 11.10.2002 Ex.D15. Learned counsel further argued that after passing of the revised sanctioned plan, the plaintiff had been paying the house tax and once, the revised sanction plan was passed, the construction carried out by the plaintiff within six months could not be taken to be unauthorized. He has referred to the judgment dated 20.02.2009 passed by the District Judge, Gurgaon in case titled as 'Municipal Council Gurgaon vs. Satish Kumar' (AnnexureA-1), whereby suit filed by Satish Kumar son of Balbir Singh had been decreed restraining the officials of the Municipal Council, Gurgaon from demolishing the second floor of the suit property and the appeal filed by Municipal Council, Gurgaon, before the District Judge, had been dismissed on 20.02.2009. This judgment had attained finality. In that case (Annexure A-1), construction was raised after approval of the site plan by Municipal Council and consequently, Satish Kumar (plaintiff therein) had deposited the composition fee of Rs.37,436/- besides an amount of Rs.10,000/- on account of development charges and application fee etc. After depositing the said amount, even the house tax was imposed, which was paid by him. While dismissing the appeal, it was observed that notices of demolition were issued after construction had already been raised after sanction of the site plan and deposit of composition fee. In this backdrop, suit for permanent injunction had been decreed the trial Court. Appeal against the said judgment was dismissed vide judgment dated 20.02.2009

(Annexure A-1).

Learned counsel for the respondent (defendant), at the outset, does not dispute the judgment dated 20.02.2009 (Annexure A-1, whereby appeal filed by the Municipal Council, Gurgaon, has been dismissed. Learned counsel for the respondent has not been able to inform as to whether any appeal against this judgment (AnnexureA-1), has been filed or not.

In the facts of the present case, it is not in dispute that a revised plan had been sanctioned by the defendant-committee in the year 1999 vide resolution No.9 dated 15.02.1999. After passing of the revised site plan, the defendant did not seek deposit of the compounding fee, but subsequently, it had proceeded to issue notices/orders Ex.D8 and Ex.D9 stating that the construction was in violation of the bye laws.

After hearing learned counsel for the parties, this appeal deserves to be allowed. The first important point for consideration in the present appeal would be, “after sanction of the revised plan on 15.02.1999, it was duty of the Municipal Corporation, Gurgaon, to impose the compounding fee, which they did not do. Hence, the plaintiff had no occasion to deposit the compounding fee. Subsequently, resolution No.9 dated 15.02.1999 was suspended by the Deputy Commissioner, Gurgaon on 21.10.1999 Ex.D8, which was confirmed by the Commissioner, Gurgaon vide order dated 16.08.2000 Ex.D9. Both these orders were challenged before this Court by way of a writ petition, whereupon a direction was given to the Commissioner to reconsider the cases of the affected parties. Interestingly, in the case of aforesaid Satish Kumar, after resolution of approved site plan was passed, compounding fee was assessed, which was paid by him.

Thereafter, he continued to pay the house tax and electricity charges of first floor. However, in the present case, on account of lapse of Municipal Corporation, Gurgaon (defendant), neither the compounding fee was assessed nor sought to be deposited by the defendant. Only on account of the fact that no composition fee was got deposited by the M.C., suit of the plaintiff has been dismissed by both the Courts below, whereas, suit filed by Satish Kumar son of Balbir Singh for permanent injunction has been decreed vide judgment (Annexure A-1).

Reference, at this stage, can be made to a judgment passed by this Court in **Radhey Krishan Jalan vs. State of Haryana and others**, 2005 (2) RCR (Civil) 673, wherein it has been held that since the Committee had power under the provisions of Haryana Municipal Act, 1973 to compound lapses in construction, being not strictly in conformity with plan and once same has been compounded, the order of revocation could not have been passed.

For reference, Section 246 of Haryana Municipal Act, 1973 is reproduced as under:-

“246. Powers to suspend any resolution or order of committee.

The Deputy Commissioner may, by order in writing, suspend the execution of any resolution or order of a committee, or joint committee or prohibit the doing of any act which is about to be done, or is being done in pursuance of or under cover of this Act, or in pursuance of any sanction or permission granted by the committee in the exercise of its powers under this Act, if, in his opinion the resolution, order or act is in excess of the powers conferred by law or contrary to the interest of the public or likely to cause waste or damage of municipal funds or property, or the execution of the resolution or order, or the doing of the act, is likely to lead to a breach of the peace, to encourage lawlessness, or it cause injury or annoyance to the public or to any class or body of persons.”

The above said provision makes it abundantly clear that the

process, in which the construction/act is being done in pursuance of a resolution passed by the Municipal Committee, can be set aside by the Deputy Commissioner.

In the facts of the present case, after the revised sanction plan was given and construction was done, the Deputy Commissioner annulled the orders, which were subsequently approved by the Commissioner. Interestingly, in the case of aforesaid Satish Kumar son of Balbir Singh, at the time of approval of revised sanction plan, the Municipal Corporation, Gurgaon, had imposed composition fee of Rs.37,436/- besides an amount of Rs.10,000/- on account of development charges and application fee etc., which in the case of present plaintiff, has not been done by the defendant. Hence, the defendant-corporation had acted arbitrarily in approving the site plan and allowing the plaintiff to make construction without assessing the composition fee. On account of this lapse, case of the present plaintiff cannot be kept at a separate pedestal compared to that of Satish Kumar son of Balbir Singh (Annexure A-1). Moreover, the orders, Ex.D8 and Ex.D9, passed by the Deputy Commissioner, Gurgaon and Commissioner, Gurgaon were set aside by this Court while giving direction to the respondent to pass fresh orders after hearing the affected parties. A perusal of the impugned judgments shows that this Court had given direction to the Commissioner, Gurgaon to consider the reasoning given by the Deputy Commissioner and the resolution dated 02.11.1999 passed by the Municipal Council, Gurgaon. A committee was constituted under the Chairmanship of Mr. A.K. Singh, IAS, Deputy Commissioner, Gurgaon to consider the matter of compounding of cases. The decision taken by the Deputy Commissioner, Gurgaon in the meeting held on 13.03.2002, was annulled by the

Government vide order dated 11.10.2002 Ex.D15. Once, the orders passed by the Deputy Commissioner were annulled by the Government and the suit filed by Satish Kumar son of Balbir Singh was decreed and upheld by the lower appellate Court vide judgment dated 20.02.2009 (Annexure A-1), suit of the present plaintiff deserves to be allowed and defendant has to be restrained from demolishing the construction of the plaintiff over the suit property, as the defendant, after having passed the revised site plan, chose not to impose the composition fee. For this lapse, the plaintiff cannot be made to suffer for all times to come.

In view of the above discussion, impugned judgments passed by both the Courts below are set aside and the defendant-respondent is restrained from demolishing the construction of the plaintiff over the suit property and from interfering or dispossessing the plaintiff from the suit property illegally and forcibly.

Allowed in the above terms.

(RITU BAHRI)
JUDGE

03.07.2018
ajp

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