

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.3272 of 2013 (O&M)

Date of Decision: April 06, 2018

The District Town Planner (E.N.F.), Faridabad

...Appellant

Versus

Shahid Ahmed

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Rajbir Singh, AAG, Haryana,
for the appellant.

Mr.Pankaj, Advocate for
for Rajesh Lamba, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

Appellant-The District Town Planner is in Regular Second Appeal against the concurrent findings, whereby the suit of the respondent-plaintiff for permanent injunction restraining the appellant-defendant from interfering into the peaceful possession of the respondent-plaintiff over the suit property and also from issuing any notice regarding demolition of the construction, has been decreed by the trial Court vide judgment and decree dated 5.9.2012 and affirmed by the Lower Appellate Court vide judgment and decree dated 17.4.2013.

The respondent-plaintiff instituted the aforementioned suit on the ground that he was in physical possession of the agricultural land described in the suit, i.e., Rect.No.32, Killa No.17 (4-0), 25/1 min (4-0), total measuring 8 kanals by virtue of registered lease deed No.3482 dated

20.6.2007. The aforementioned property had been purportedly purchased by the respondent-plaintiff from Sehdev son of Aidal and was bounded on North and East by 20 feet wide road, on South by 30 feet wide road, while on West, it was bounded by another property of the plaintiff, situated in Village Sarurpur, Ballabgarh within the urban area of Faridabad Complex Administration now known as Municipal Corporation, Faridabad. It was averred that the provisions of Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963 (for short “1963 Act”) would not be applicable and any proceedings would be void and illegal.

The aforementioned suit was contested by the appellant-defendant for want of notice under Section 80 CPC and contravention of alleged construction under Section 7 of the Haryana Urban Development (Regulation of Unauthorized Development) Act, 1975 (for short “1975 Act”). The suit property had already been declared controlled area vide Gazette notification dated 3.3.1982 and, therefore, the provisions of Section 1963 Act would be applicable.

The trial Court, on the basis of the aforementioned pleadings of the parties to the lis, framed the following issues:-

- 1) Whether the plaintiff is entitled to decree of permanent injunction as prayed for? OPD
- 2) Whether the civil court has no jurisdiction to entertain and try the present suit? OPD
- 3) Whether the suit of the plaintiff is not maintainable in the present form? OPD
- 4) Whether the plaintiff has concealed the true and material facts from the court? OPD
- 5) Relief.

Respondent-plaintiff examined as many as four witnesses, namely, PW-1 Satya Parkash Draftsman, PW-2 Mani Ram Ex-Sarpanch of the village, PW-3 Sehdev, i.e., vendor of the plaintiff and himself appeared as PW-4. On the other hand, defendant examined DW-1 Basant Kumar and also brought on record the documents Ex.DW1/A (affidavit) and Ex.DW1/B (site plan).

The trial Court, on the basis of the evidence brought on record, particularly on analyzing the testimony of the witnesses, found that the constructed portion was tin sheds and fodder pits and no commercial activity was carrying on and, therefore, there was no violation of the controlled area. In essence, the agricultural work in the notified declared controller area was not prohibited and decreed the suit. Appeal preferred against thereto also met with the same fate.

Mr.Rajbir Singh, learned Assistant Advocate General, Haryana appearing on behalf of the appellant-defendant submitted that the judgments and decrees of the Courts below are not sustainable in the eyes of law as the suit was not maintainable. The remedy lied elsewhere. Even if the disputed area had fallen within the limits of Municipal Corporation, the unregulated construction cannot be permitted and the controlled area is continued to be in existence. Many people in the area had raised construction without seeking any permission or getting the site plan sanctioned. Even FIRs were registered against certain persons. No permission of the change of land use had been sought and the notices under Section 12(2) of 1963 Act were issued. In 2008 and 2010, the constructions was already demolished, therefore, no cause of action subsists in favour of the respondent-plaintiff to maintain and continue with the suit and, thus, urged this Court for setting-

aside the concurrent findings.

Mr.Pankaj, learned counsel representing the respondent-plaintiff submitted that the action of the appellant-defendant in issuing the notice under 1963 Act was on account of the property having fallen within the limits of Municipal Corporation, Faridabad as the District Town Planner does not have any jurisdiction to continue with the proceedings under 1963 Act. In support of his contention, relied upon the judgment rendered by the Division Bench of this Court in **Rajat Kuchhal and Ors. Versus State of Haryana and Ors., 2012 (11) R.C.R. (Civil) 297** to contend that it is only the Municipal Corporation, which can initiate the action.

He further submitted that no construction or commercial activity had been proved except for tin sheds and fodder pits, which is an agricultural activity and, therefore, there was no need of seeking any permission of change of land use and, thus, urged this Court for maintaining and upholding the concurrent findings.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel for the appellant-defendant, for, the defendants have not been able to establish that their action was supported by any evidence of commercial activity, which required the change of land use, whereas on the contrary it has been proved on record that the respondent-plaintiff had only raised the tin sheds and fodder pits, which fall within the agricultural activity, which is not prohibited under the notification emphatically relied upon. The District Town Planner loses jurisdiction of alleged violation of the controlled area in view of the law laid down in **Rajat Kuchhal** (supra) immediately when the alleged area falls within the

limits of Municipal Corporation, but that does not mean that the Municipal Corporation does not have the power to initiate the action against the defaulters. In other words, it is the Municipal Authorities, which are vested with the power to initiate action in case of violation of any provisions of the Act as applicable. However, from the facts as culled out, none of the ingredients were made out in favour of the defendant to seek dismissal of the suit. The findings arrived at, particularly the injunction, were most innocuous and, therefore, the same are upheld.

Before parting with the judgment, I put a caveat that under the garb of injunction order, the respondent-plaintiff cannot be permitted to carry on any commercial activity without seeking permission of change of land use and as well as sanctioning of the site plan.

For the reasons stated above, no ground for interference is made out, much less any substantial question of law arises for determination. Resultantly, the appeal stands dismissed.

April 06, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No