

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

**RSA-5032-2018 (O&M)
Date of Decision:05.09.2018**

M/s K.R. Enterprises

... Appellant

Versus

Municipal Corporation, Faridabad & others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. M.R. Sharma, Advocate for the appellant.

...

TEJINDER SINGH DHINDSA, J. (ORAL)

Appellant/K.R. Enterprises was served with a notice bearing memo dated 27.06.2013 by Municipal Corporation, Faridabad to shut down the workshop/commercial activities being undertaken in premises described as 2-K/67 NIT, Faridabad and to shift operations thereof. M/s K.R. Enterprises instituted a suit for declaration assailing the notice dated 27.06.2013 and praying for the consequential relief of permanent injunction for restraining the defendant/Municipal Corporation, Faridabad from removing the workshop of the plaintiff and from interfering in his peaceful working of the same. Further a decree of mandatory injunction was also sought to direct the defendants to withdraw the impugned notice dated 27.06.2013.

2. Suit filed by the plaintiff was dismissed by the trial Court on 30.11.2015. Civil appeal preferred has also met the same fate vide judgment dated 15.05.2018 passed by learned Additional District Judge, Faridabad.

3. Resultantly, the plaintiff/appellant is in second appeal before this Court.

4. Learned counsel representing the appellant would contend that the premises in which the appellant was running a small scale workshop was essentially a 'mixed area' and as such, could not be construed as a residential area so as to attract any coercive steps at the hands of the defendant/respondents and to be called upon to shut down his business/commercial operations and to shift the same from the premises in question. Counsel has placed heavy reliance upon documents that had been adduced in evidence i.e. Ex.P1, Ex.P2, Ex.P4 and Ex.P7 which as per him were the receipts towards deposit of license fee by the plaintiff/appellant for the years 2010-11 and upto 2015-16. Counsel further contends that the Courts below have overlooked the vital aspect that many other units were also indulging in commercial activities in the same very area but it is only the plaintiff/ appellant which has been singled out by the respondent/Municipal Corporation, Faridabad in terms of issuance of the notice dated 27.06.2013.

5. Having heard counsel for the appellant at length, this Court is of the considered view that there is no merit in the instant appeal and the same deserves to be dismissed.

6. The contention with regard to premises of the plaintiff/appellant being located in a 'mixed area' is without merit.

7. Rather such contention is contrary to the pleadings of the plaintiff/appellant himself. In the plaint which was furnished by learned counsel during the course of hearing, it was specifically averred that the premises in question measuring 143 sq. yards and is being used essentially for residential purpose and it is within such premises that a small scale unit of running thread equipment has been installed so as to earn his livelihood,

no evidence has been adduced on record to corroborate and prove the stand that the demised premises from where the appellant was operating falls in 'mixed area.'

8. The reliance placed upon the receipts reflecting deposit of license fee at the hands of the plaintiff/appellant is not well founded. Section 330 and 331 of the Haryana Municipal Corporation Act (hereinafter to be referred to as 'the Act') read as follows:

“Section 330: *Factory etc. not to be established without permission of Commissioner.*

No person shall, without the previous permission in writing of the Commissioner, establish in any premises, or materially alter, enlarge or extend, any factory, workshop or trade premises in which it is intended to employ steam, electricity, water or other mechanical power.

Section 331:

Premises not to be used for certain purposes without a license.

(1) No person shall use or permit to be used any premises for any of the following purposes without or otherwise than in conformity with the terms of a license granted by the Commissioner in this behalf, namely:-

(a) Any of the purposes specified in Part-I of the Second Schedule.

(b) Any purpose which is, in the opinion of the Commissioner; dangerous to life, health or property or likely to create a nuisance.”

9. A bare reading of the afore reproduced statutory provisions make it apparent that a premises cannot be used for any factory, workshop or trade premises with prior permission of the Commissioner as defined under the Act and without obtaining the license as per procedure envisaged

under the Act.

10. The conceded factual premise is that till date, appellant had neither sought/granted permission by the competent authority to operate the commercial operations from the demised premises and nor was a license obtained. Mere deposit of certain amount of money under the garb of license fee would not vest any substantive right in favour of the appellant. No provision under the Haryana Municipal Corporation Act has been adverted to, by the counsel and under the operation of which a license to run a commercial unit is available/granted by way of a deeming fiction.

11. At this stage, it would be relevant to even advert to Section 332(2) of the Haryana Municipal Corporation Act and which is coined in the following terms:

“Whenever the Commissioner is of the opinion that the user of any premises for any of the purposes referred to in subsection (1) of section 331 is causing a nuisance and such nuisance should be immediately stopped, the Commissioner may order the owner or the occupier of the premises to stop such nuisance within such time as may be specified in the order and in the event of the failure of the owner or occupier to comply with such order, the Commissioner may himself or by an officer subordinate to him, cause such user to be stopped.”

12. The Courts below have duly appreciated evidence led in the shape of documents/complaints Ex. D1, D3, D4, D5 and D6, which would justify the issuance of the impugned notice dated 27.06.2013 as such complaints were specifically with regard to the nuisance that was being created by the owner/occupier of the premises and by running commercial operations from within residential premises.

13. This Court does not find any patent infirmity or perversity in

the impugned judgment passed by the Courts below.

14. No basis for interference is warranted.
15. Instant appeal does not raise any question of law.
16. Appeal is dismissed.
17. Since the main appeal itself has been decided, pending applications, if any, shall also stand disposed of.

05.09.2018

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |