

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Regular Second Appeal No. 6529 of 2018(O&M)

Date of Decision: December 11 , 2018.

Manoj Kumar and another

..... APPELLANT (s)

Versus

Municipal Committee, Farrukhnagar

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Sudhir Aggarwal, Advocate
for the appellants.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

The appellants/plaintiffs are aggrieved of judgments and decrees dated 06.09.2016 and 23.10.2018 passed by the learned Civil Judge(Junior Division), Pataudi and the learned Additional District Judge, Gurgaon, respectively, whereby suit filed by the appellants for declaration to the effect that notice dated 31.01.2011 issued by the defendant- Municipal Committee, Farrukhnagar (for short, the 'Committee') is illegal, null, void and without jurisdiction with a further prayer for permanent injunction for restraining the defendants to demolish the property as detailed in the plaint, has been dismissed.

Appellants filed a suit to the abovesaid effect claiming themselves to

be owners in possession of two shops No.14 and 15 measuring 43 square yards as detailed in the plaint. It was claimed that vide sale deed dated 24.12.2010, they had purchased the said property which was initially constructed in the year 1990 by one Kailash Sharma son of Ram Bhagat. The suit property was sold to Ashok Kumar and Amarjeet Singh, who further sold it to Manoj Kumar. Said Manoj Kumar then sold these shops to Smt. Mamta Sharma, who ultimately sold both the shops to the plaintiffs on 24.12.2010. Area of the shops was claimed to be verified by the plaintiffs from the office of the defendant- Municipal Committee, Farrukhnagar. They wanted to uplift the said shops. Therefore, after getting oral permission from officials of the defendant-Committee, shops in question were demolished by the plaintiffs and new ones raised on the spot. However, notice dated 31.01.2011 under Sections 181 and 208 of the Haryana Municipal Act (for short, the 'Act') was issued to the plaintiffs for demolition of the construction within seven days. The plaintiffs sought an opportunity to be heard, but none was afforded. It is claimed that the defendant-Committee had no right to serve such a notice without demarcation of the area conducted. Notice is claimed to be illegal, null, void and without jurisdiction and thus, not binding upon the plaintiffs. The shops, in question, are stated to be in existence since the year 1990. Aggrieved from the said notice, suit was filed.

The defendant-Committee resisted the suit. Written statement was filed. Various preliminary objections were raised in the written statement, averments on merit were controverted, though it was stated that the disputed property initially belong to Ram Bhagat and Kailash. Site plan dated 22.05.1989 was submitted by Ram Bhagat, however, the plaintiffs reconstructed the disputed

shops without obtaining the required sanctions and passing of the site-plan, therefore, notice under Sections 181 and 208 of the Act was rightly served. The plaintiffs, it was stated, never verified about the property from the Committee neither was any permission ever given for raising the said constructions afresh. Dismissal of the suit was prayed for. Replication was filed by the plaintiffs.

From pleadings of the parties, the following issues were framed by the learned trial court:-

1. Whether the plaintiffs are entitled to a decree for declaration with permanent injunction as prayed for? OPP
2. Whether the suit of the plaintiffs is not maintainable? OPD
3. Whether the plaintiffs have no locus-standi and cause of action to file the present suit? OPD
4. Whether the suit of the plaintiffs is bad for non-serving the notice to answering defendant under Section 52 of the MC Act? OPD
5. Whether the plaintiffs are estopped by their own act, conduct and latches to file the present suit? OPD
6. Whether the plaintiff has suppressed the true and material facts and not come with clean hands before this Honble court? OPD
7. Relief.

Evidence was led by both the parties in support of their respective stands.

Learned trial court on appreciation of the evidence on record dismissed the suit filed by the plaintiffs. Appeal preferred by the plaintiff was also dismissed by the learned Additional District Judge, Gurgaon vide judgment and decree dated 23.10.2018. Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellants argues that the entire dispute in this case is regarding construction raised on three square yards because even as per the stand of the Municipal Committee, plaintiffs are entitled to raise

construction on 40 square yards. Learned counsel argues that even as per Ex.PW5/2 issued by the Committee in respect to the house tax due towards the Committee, the area in question has been mentioned as 40 square yards. Therefore, stand of the committee in the written statement that it is only 28 square yards to which the plaintiffs/appellants are entitled to, is patently incorrect. It is further contended that the Committee could not have issued the said notice in respect to the shops which stood constructed for more than five years. Moreover, infraction if any on the part of the plaintiffs is compoundable. It is thus prayed that this appeal be allowed, consequently suit filed by the appellant be decreed throughout.

I have heard learned counsel for the appellant and have gone through the record, furnished by him in Court today.

At the outset, it is relevant to reproduce Sections 181 and 208 of the Act, which read as under:-

“181. Punishment for immovable encroachment or overhanging structure over street.

(1) Whoever without the written permission of the Committee, makes any immovable encroachment on or under any street, on, over or under any sewer, or-water course or erects or re-erects any immovable overhanging structure projecting into a street at any point above the said over ground level shall be punishable with imprisonment for a term up to six months or with a fine which shall not be less than two thousand rupees and more than ten thousand rupees or both.

(2) Without prejudice to the provisions of sub-section (1), the committee, the executive officer or the secretary, as the case may be, may, by notice, call upon any person who has committed a breach of the provisions contained in the said sub-section, to stop the unauthorised construction forthwith and to remove or alter such immovable encroachment or overhanging structure as aforesaid within a period of seven days and if such person fails to show cause to the satisfaction of the committee, the executive officer or the secretary, as the case may be, within the said period of seven days, the committee, the executive officer or the secretary, as the case may

be, shall proceed to remove-the unauthorised construction and the cost of such removal shall be recovered from the defaulter. If the defaulter fails to pay the cost of removal of unauthorised construction on demand within fifteen days, the cost shall be recoverable from such person as arrears of land revenue and the committee shall disconnect the water supply and the sewerage connections:

Provided that if a period of more than five years has elapsed from the completion of encroachment or over hanging structure, no prosecution shall lie under sub-section (1).”

“208. Order of demolition and stoppage of building and works in certain cases. -- (1) Where the erection of any building or execution of any work has commenced or is being carried on, or has been completed without or contrary to the sanction as required by sub-section (1) of section 201; or without notice as required by sub-section (2) of section 201; or when sanction has been refused- or in contravention of any provisions of this Act or bye-laws made thereunder, the committee, the executive officer or the secretary, as the case may be, may, within six months from the completion of the building, in addition to any other action that may be taken under this Act, make an order directing that such erection work shall be demolished by the person at whose instance the erection of work has been commenced or is being carried on or has been completed, within such period (no being less than five days and more than Fifteen days from the date on which a copy of the order of demolition with a brief statement of the reasons therefor has been delivered to that person), as may be specified in the order of demolition:

Provided that no order of demolition shall be made unless the person has been given by means of a notice served in such manner as the committee, the executive officer or the secretary, as the case may be, may think fit, a reasonable opportunity of showing cause as to why such order shall not be made:

Provided further that where the erection or work has not been completed, the committee, the executive officer or the secretary, as the case may be, may at the time of the issue of the notice under the first proviso or at any other time, direct the person to stop the erection or work until the expiry of the period within which an appeal against the order of demolition, if made, may be preferred under section 209.

(2) Where no appeal has been preferred against an order of demolition made by the committee, the executive officer or the secretary, as the case may be, or the same has been confirmed on appeal, whether with or without variation by the Deputy Commissioner, the person against whom the order has been made shall comply with the order within the period specified therein, and

on the failure of the person to comply with the order within such period, the committee, the executive officer or the secretary, as the case may be, may himself cause the erection of the work to which the order relates, to be demolished and the expenses of such demolition shall be recoverable from such person as arrears of tax under this Act. .

(3) Any person failing to comply with the terms of such notice shall be punishable with imprisonment for a term up to six months or with a fine which shall not be less than five thousand rupees and more than ten thousand rupees or both and when non-compliance is a continuing one, with a further fine of one hundred rupees every day after the first offence during which the non-compliance continues, provided that the offence under this section shall not be deemed to be compounded unless the offender has paid all the charges and got the building regularised by following due procedure: Provided that the committee may, instead of requiring the alteration or demolition of any such building, accept by way of composition fee prescribed in the rules:

Provided further that the committee may, instead of requiring the alteration or demolition of any such building constructed in contravention of the provisions made under sections 203C to 203E of this Act, accept by way of composition fee as prescribed but such acceptance shall not be without the prior approval of the Director.

Provided further that if the violation of the building bye-laws is higher than the permissible limits under the rules, the building shall be demolished:

Provided further that the committee shall require & building to be demolished or altered so far as may be necessary to avoid contravention of a building scheme drawn up under section 203.”

As per notice dated 31.01.2011(Ex.P4), the appellants/plaintiffs are alleged to have raised construction without getting appropriate sanction from the authorities. It is further stated that even as per the registered sale-deed attached with the site-plan by the plaintiffs , it was found on demarcation that a part of the passage has been encroached upon by the plaintiffs. While referring to the record of the Municipal Committee, it is stated therein that the area mentioned in the site-plan by the plaintiffs was excessive. The site-plan is duly reflected in the said notice. Learned counsel for the appellants is unable to dispute that the

original sale-deed in favour of Ram Bhagat and Kailash Sharma is not proved on record. No permission from the Municipal Committee was given for raising construction by the plaintiff. Though learned counsel for the appellant states that oral permission was granted by the defendant-Committee, this argument is totally devoid of any merit for the reason that there is no provision for any oral permission and furthermore, the defendant-Committee has specifically denied having given any permission to the plaintiffs to raise the construction, in question.

Much stress has been laid on the document, Ex.PW5/2 i.e., a notice regarding the house tax of the property in question wherein area is stated to be 40 square yards, to contend that the defendant-Committee has wrongly mentioned the area in question to be 28 square yards in its written statement. It is pertinent to note at this stage that it is a notice which has been challenged by the appellants/plaintiffs with the averment that they were not even given an opportunity to present their case. Keeping in view the facts and circumstances of the case, there is no doubt that the Municipal Committee, Farrukhnagar was well within its rights to have issued the said notice to the plaintiffs. It cannot be said that a period of more than five years has elapsed since the encroachment in question as it is the admitted case of the plaintiff that the building was reconstructed after submission of the site-plan 06.01.2011. In view of the admission of the plaintiffs/appellants that the construction in question was raised without prior sanction of the authorities as required, it cannot be held that notice dated 31.01.2011 was wrongly or illegally issued by the defendant-Committee.

No other argument has been raised.

Learned counsel for the appellants is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the learned courts below have returned concurrent findings of fact after proper appreciation and consideration of the evidence on record.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and decrees dated 06.09.2016 and 23.10.2018 passed by the learned Civil Judge (Junior Division), Pataudi and the learned Additional District Judge, Gurgaon, respectively, which warrants any interference by this Court. However, keeping in view the categorical assertion of learned counsel for the appellants that the infraction, if any, is compoundable, it is observed that nothing in this judgment shall preclude the appellants from filing an appropriate application before the authorities and such an application, if preferred within fifteen days from the date of receipt of certified copy of this decision, shall be considered and decided by the appropriate authority within two months thereof, in accordance with law.

Present appeal is, consequently, dismissed with no order as to cost.

December 11 , 2018.
'om'

(LISA GILL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No