

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

RSA No.4143 of 2019 (O&M)

Date of Decision: September 06, 2019

Jang Singh through his LR

...Appellant

Versus

Punjab Pollution Control Board and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. R.S. Randhawa, Advocate
for the appellant.

JAISHREE THAKUR, J. (Oral)

CM-11477-C-2019

1. This is an application that has been filed seeking to implead the legal representative of the deceased appellant-Jang Singh, who is stated to have died on 20.07.2019 leaving behind applicant-Tarandeep Singh as his legal representative.

2. For the reasons mentioned in the application, the same is allowed.

CM-11478-C-2019

1. There is delay of 11 days in filing the appeal.

2. For the reasons mentioned in the application, the same is allowed and delay of 11 days in filing the appeal is condoned.

RSA-4143-2019

1. This is a regular second appeal that has been filed by the appellant-plaintiff (henceforth called 'the appellant') seeking to challenge the judgment and decree dated 27.03.2019 passed by the first Appellate Court whereby, the appeal filed by the appellant against the judgment and decree dated 22.11.2018 passed by the lower court dismissing his suit, has been dismissed.

2. Briefly, the facts of the case are the appellant herein filed a civil suit for the relief of declaration to the effect that Letter No.2758 dated 11.06.2015 issued by the respondents-defendants (henceforth called 'the respondents') to the appellant under Section 31-A of the Air (Prevention & Control of Pollution) Act, 1981 is wrong, illegal, null and void and is liable to be withdrawn, vide which the appellant was directed to shift his workshop from the present location to some other suitable site and to close its operation within three months and further to the effect that respondents have no right to stop the working of the appellant over the suit property marked as ABCD situated in village Tajpur, Tehsil and District, Rupnagar in any manner. The appellant also sought consequential relief of permanent injunction restraining the respondents and their authorized officials to make any type of interference into the working of the appellant in his workshop and further restraining the respondents from implementing the letter No.2758 dated 11.06.2015 in any manner. It was submitted that the appellant was running a workshop for last many years in the suit property, which was earlier run by his father, for preparing small agricultural implements without interruption of any person, inside the building. It was

alleged that the respondents are trying to stop the functioning of the appellant vide letter no.2758 dated 11.06.2015 issued to the appellant. It was claimed that the said letter is wrong and illegal and there is no violation on the part of the appellant of any provision of the Air (Prevention and Control of Pollution) Act, 1981.

3. Upon notice, the respondents appeared and filed their written statement, by raising preliminary objections. It was submitted that the appellant is operating the workshop without obtaining NOC, which is mandatory under the Air (Prevention and Control of Pollution) Act, 1981. It was alleged that the activity carried out by the appellant is a source of noise and air pollution for nearby residents. The workshop of the appellant was visited by the officer of the Board on 27.08.2014 to verify the complaint which was received from the residents of the village. It was further submitted that the workshop of the appellant was again visited and thereafter, visit report was prepared, but the owner of the workshop refused to sign the report. Consequently, notice under Section 31-A of the Air (Prevention and Control of Pollution) Act, 1981 was issued to the appellant along with an opportunity of personal hearing on 30.12.2014, which was postponed to 02.01.2015. The proceedings of personal hearing were conveyed to the appellant. Thereafter, the appellant appeared before the Board and on hearing his pleas, order was passed and directions were issued to him to shift his workshop, but the appellant did not take any step to shift the workshop. It was submitted that the directions issued vide letter no.2758 dated 11.06.2015 are legal and maintainable.

4. Replication to the written statement was filed. Issues were

framed and evidence was led by both the parties. On appreciating the evidence, the lower court dismissed the suit of the appellant. Even the appeal filed by the appellant before the first Appellate Court stood dismissed. Now both the judgments and decrees of the courts below have been assailed by the appellant in this regular second appeal.

5. Learned counsel for the appellant argues that the courts below have erred in not taking into consideration that even if there was a bar under Section 46 of the Air (Prevention and Control of Pollution) Act, 1981, still the civil court can also have jurisdiction to decide as to whether the proper procedure was followed while passing an order under any statute by the authority concerned.

6. I have heard counsel for the appellant and have gone through the case file.

7. The lower court dismissed the suit of the appellant while observing that there is nothing brought on record by the appellant as to what procedural lapse has occurred, which has caused any failure of justice. It was further observed that the procedure for challenging the orders passed under the Air (Prevention and Control of Pollution) Act, 1981 has been provided under Section 31 of the said Act and the jurisdiction of the civil court is barred under this Special Law as per Section 46 of the Act. The findings recorded by the lower court were affirmed in appeal by the first Appellate Court.

8. In the instant case, the appellant is challenging the letter No.2758 dated 11.06.2015 issued by the respondents under Section 31-A of Air (Prevention and Control of Pollution) Act whereby, the appellant had

been directed to shift his workshop from the present location to some other suitable site and to close its operation within three months from the date of said notice. During his cross-examination, the appellant had made the following admissions:-

- (i) *that there is furnace in this work place and there is residential area surrounding the same and his own house is also there.*
- (ii) *that there is one chimney in the workshop, which is 3 feet high and when they work, noise is generated.*
- (iii) *that in their workshop one electric motor for using hammer is installed and with their work, smoke and noise pollution occurs and loud noise is produced.*
- (iv) *that the officials of the Board inspected the spot on 27.08.2014 and checked his workshop with their equipments to measure noise and air pollution.*
- (v) *that the officials of the Board again visited his workshop for checking purposes and checked the noise and air pollution.*
- (vi) *that the officials of the Board asked him to sign the report, but he refused to sign the same.*

The above admissions made by the appellant, during his cross-examination, clearly substantiated the fact that his workshop is situated in the residential area of the village and it caused air and noise pollution. It further established on record that after checking the workshop of the appellant by the officials of the respondents, the letter in question was issued directing the appellant to shift his workshop from the present location. Section 31 of the Air (Prevention and Control of Pollution) Act, 1981 provides the procedure for challenging the orders passed under the said Act, which has not been followed in the instant case. Further, Section

46 of the Act clearly bars the jurisdiction of the civil suit in entertaining any suit or proceedings in respect of any matter, which an Appellate Authority constituted under this Act is empowered. So far as the contention raised by counsel for the appellant that even where the jurisdiction of the civil court is barred by any special statute, then also the civil court has jurisdiction to check the proceedings under the special statute on the ground of procedural lapse and principles of natural justice, the same is not tenable, because there is nothing established on record, which supports this contention of counsel for the appellant. During the course of arguments, counsel for the appellant failed to point out anything wrong in the findings returned by the courts below.

9. In view of the above, this court finds no illegality or perversity in the concurrent findings so recorded by both the courts below. As such, no question of law requiring determination arises in this regular second appeal filed by the appellant-plaintiff, which has no merit.

10. Dismissed.

September 06, 2019
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No