

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

RSA-1385-2013(O&M)

Date of decision:-8.5.2019

Anil Kumar and another

...Appellants

Versus

Municipal Committee, Mohindergarh

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.N.S. Shekhawat, Advocate
for the appellants.

Mr.S.K. Yadav, Advocate
for the respondent.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiffs Anil Kumar son of Shri Radhay Shayam and another Anil Kumar son of Shri Kishori Lal, both residents of Mohindergarh had filed a suit against defendant Municipal Committee, Mohindergarh craving for grant of permanent injunction restraining the defendant from interfering in the peaceful possession of plaintiff No.1 over shop No.45 and of plaintiff No.2 over shop No.46 as allottee and for re-allotting those shops.

As per the version of the plaintiffs, they had been running their business in kiosk under the tenancy of the defendant; that later

on the defendant – Municipal Committee decided to construct new shopping complex and it was decided that the old tenants would be given pucca shops in the shopping complex, subject to their making payment of Rs.40,000/-; that the plaintiffs had made such payment, resultantly shops No.45 and 46 were allotted to them and actual possession was delivered to them long back in the year 1997; that the plaintiffs have been in possession of such shops continuously and all the formalities regarding allotment were duly fulfilled by the concerned officials; that later on the defendant threatened to oust the plaintiffs from the shops and re-allot those to some other persons, giving rise to a cause of action to the plaintiffs to bring the suit.

On notice the defendant appeared through counsel and filed written statement contesting the suit *inter alia* raising preliminary objections challenging the maintainability of the suit; locus standi of the plaintiffs to file the suit alleging that the same was time barred and no cause of action had arisen to the plaintiffs to bring the same etc. On merits, the defendant denied that the plaintiffs ever remained its tenants in shops No.45 and 46. The defendant further denied that at the time of construction of shopping complex, it was resolved to allot shops to the old tenants. According to the answering defendant, it neither allotted any shops No.45 and 46 in favour of the plaintiffs nor received any alleged amount According to it the then President, Secretary, Junior engineer and Rent Clerk connived with

the plaintiffs and got allotted shops No.45 and 46 to them in the year 1997 regarding which no resolution was passed; that when complaint was filed by the public and inquiry was conducted and subsequently vide letter No.429/LFA dated 13.7.1998, the then Deputy Commissioner, Narnaul cancelled the allotment and directed holding of inquiry in the matter. The defendant claimed to be in possession of Shops No.45 and 46. In the end, the defendant prayed for dismissal of the suit.

Replication was not filed. On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is in lawful possession over the suit property and is entitled to injunction as prayed for? OPP.
2. Whether suit of the plaintiff is not maintainable in the present form? OPD.
3. Whether the suit is time barred? OPD.
4. Whether the plaintiff has no locus standi to file the present suit? OPD.
5. Whether the plaintiff is estopped from filing the suit by his own act and conduct? OPD.
6. Relief.

Both the parties led evidence in support of their respective claims.

After hearing learned counsel for the parties, the trial

Court decided issues Nos.1 and 2 in favour of the plaintiffs and against the defendant, issues No.3 to 5 against the defendant being not pressed. Resultantly, the suit of the plaintiffs was decreed and the defendant was restrained from dispossessing the plaintiffs as well as from re-allotting the shops No.45 and 46 in favour of the third party except following the due course of law. This was so done vide judgment and decree dated 12.4.2010.

Feeling aggrieved by the said judgment and decree, the defendant – Municipal Committee, Mohindergarh had filed an appeal in the Court of District Judge, Narnaul, which vide judgment and decree dated 23.10.2012 accepted the appeal partly inasmuch as the plaintiffs were not found to be occupying the shops No.45 and 46 in pursuance of any legal allotment letter. However, it was observed that plaintiff No.1 shall not be dispossessed from shop No.45 and plaintiff No.2 from shop No.46 except in due course of law. The judgment and decree of the trial Court was modified to that extent.

Now it was the turn of the plaintiffs to feel dissatisfied with the judgment and decree passed by District Judge, Narnaul and they have knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted, the impugned judgment and decree passed by District Judge, Narnaul be set aside.

On getting notice of regular second appeal, the respondent/defendant has appeared before this Court through

counsel.

I have heard learned counsel for the parties besides going through the record and I find that there is absolutely no merit in the appeal.

The trial Court in its judgment has observed that construction of shopping complex at Mohindergarh was completed in the year 1997 and as per the case of the plaintiffs, the defendant had allotted shops No.45 and 46 to them regarding which resolution No.83 dated 12.8.1998, resolution No.7 dated 4.11.1999 and resolution No.19 dated 17.5.1999 were passed, photocopies of which being Ex.P3, Ex.P2 and Ex.P1, respectively mentioning therein that Rs.40,000/ had been deposited by each of the plaintiff with a request to Deputy Commissioner, Narnaul to reconsider the cancellation order passed by him regarding allotment of shops No.45 and 46 in favour of the plaintiffs.

The trial Court has observed that though the Deputy Commissioner has a right to suspend any resolution or order of the Committee but the same is conditional and requirement of Section 246 of Haryana Municipal Act, 1973 was not complied with since the Deputy Commissioner had not given any reason or recorded his opinion/satisfaction for cancellation of the allotment, therefore, order of Deputy Commissioner, Narnaul was not sustainable. The trial Court has further observed that the ingredients of natural justice were

not observed inasmuch as no opportunity of being heard was afforded to the plaintiffs before cancelling the allotment made in their favour. Furthermore, the Deputy Commissioner is not shown to have sent copy of order cancelling the allotment to Commissioner for its confirmation. Therefore, any move by the defendant to eject the plaintiffs from the shop would amount to illegal and forcible interference in their lawful possession of the shops in question. The trial Court has disbelieved the plea of defendant that in fact the defendant is in possession of the shops in question. The trial Court observed that if defendant has any objection against the allotment of shops No.45 and 46 in favour of the plaintiffs, they should seek legal remedy and only thereafter dispossess them from the shops.

Whereas learned District Judge, Narnaul taking overall view of the facts of the case and the legal position has observed that though DW1 Sh.Kailash Chand, Rent Clerk had admitted that shops were allotted vide order of Secretary and President, Municipal Committee, Mohindergarh after holding an inquiry and after passing an order for deposit of the amount and Rs.40,000/- were deposited by plaintiff No.1 on 12.11.1997, whereas plaintiff No.2 had deposited a sum of Rs.10,000/- on 10.6.1997 and Rs.30,000/ on 18.11.1997 but then no order of allotment was passed by Secretary or President of Municipal Committee, Mohindergarh in favour of the plaintiffs either before deposit of the amount or thereafter. Rather plaintiff No.1 Anil

Kumar had served notice Ex.P5 dated 3.11.1997 upon President, Municipal Committee, Mohindergarh for allotting shop in lieu of kiosk. Similarly plaintiff No.2 had also served notice dated 17.11.1997 upon the Municipal Committee, Mohindergarh in that regard. However, no shop is shown to have been allotted in favour of the plaintiffs. Learned District Judge, Narnaul was of the view that no legal allotment had been made in favour of the plaintiffs and the resolutions passed do not carry any weightage. Since no order had been passed by Deputy Commissioner on the resolutions, therefore, in terms of Section 246 of the Haryana Municipal Act, 1973, the order passed by Deputy Commissioner was not required to be forwarded to Commissioner for confirmation and order in question had been passed by Deputy Commissioner on 13.8.1997 before passing of resolutions. Learned District Judge, Narnaul found that the plaintiffs were in possession of the shops in question and were entitled to protect the same and they could be ejected in due course of law. The judgment and decree of the trial Court were modified to that extent.

The plaintiffs have approached this Court by way of filing the instant appeal since they are aggrieved with the observations made by learned District Judge that the shops were not duly allotted in pursuance of any legal allotment order. Such grouse of the appellants do not hold any aground. Both the Courts below

have found the plaintiffs to be in possession. Of course no injunction can be issued against defendant from taking possession in accordance with law. The Authority/Court/Forum before whom the proceedings may be initiated by the Municipal Committee to take possession has to determine as to whether the possession of the shops is to be delivered to plaintiffs or not. Therefore, there is no reason to expunge the observations made by learned District Judge, Narnaul, which were necessary to find out the nature and possession of the plaintiffs.

No substantial question of law arises in this appeal.

Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgment passed by the District Judge, Narnaul.

The appeal stands dismissed accordingly.

8.5.2019

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No