

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

Date of decision: 17.12.2019

1. **RSA No.3086 of 2015(O&M)**

Sudershan DograAppellant

VERSUS

DAV College Trust and Management Society and another
.....Respondent

2. **RSA No.3524 of 2015(O&M)**

Joginder KumarAppellant

VERSUS

DAV College Trust and Management Society and another
.....Respondent

3. **RSA No.3525 of 2015(O&M)**

Ved ParkashAppellant

VERSUS

DAV College Trust and Management Society and another
.....Respondent

4. **RSA No.3526 of 2015(O&M)**

BhagmalAppellant

VERSUS

DAV College Trust and Management Society and another

.....Respondent

5.

RSA No.3527 of 2015(O&M)

Ravi Kumar

.....Appellant

VERSUS

DAV College Trust and Management Society and another

.....Respondent

6.

RSA No.3528 of 2015(O&M)

Hardyal Singh

.....Appellant

VERSUS

DAV College Trust and Management Society and another

.....Respondent

7.

RSA No.3529 of 2015(O&M)

Balwant Singh

.....Appellant

VERSUS

DAV College Trust and Management Society and another

.....Respondent

8.

RSA No.3531 of 2015(O&M)

Madan Singh

.....Appellant

VERSUS

DAV College Trust and Management Society and another

.....Respondent

9.

RSA No.3533 of 2015(O&M)

Hira Singh

.....Appellant

VERSUS

DAV College Trust and Management Society and another

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Alok Jagga, Advocate for the appellant(s).

Mr. Akshay Bhan, Senior Advocate with
Mr. R.S. Cheema, Advocate for the respondent.

REKHA MITTAL, J.

This order will dispose of RSA Nos. 3086, 3524, to 3529, 3531 and 3533 of 2015 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from RSA No.3086 of 2015.

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for mandatory injunction directing the appellant/defendant to quit and vacate temporary structures (two sheds rooms, kitchen and one room shed) illegally encroached, situated in D.A.V. Senior Secondary School (Lahore), Co-Educational, Sector 8-C, Chandigarh and hand over possession of same to respondents/plaintiffs and recovery of damages was partly decreed by the

Civil Judge (Junior Division), Chandigarh (hereinafter referred to as 'the trial Court') vide judgment and decree dated 10.09.2014, to the following effect:-

“In view of my findings and discussion in the aforementioned issues, the suit of the plaintiff is partly decreed. Decree passed in favour of plaintiff for mandatory injunction directing the defendant to vacate the property and hand over the same to the plaintiff. This suit for recovery and damages as prayed for is ordered to be dismissed. There shall be no order as to cost...”

The appeal preferred by unsuccessful appellant/defendant was dismissed by the Additional District Judge, Chandigarh whereby findings recorded by the trial Court were affirmed without variance.

The respondents/plaintiffs filed suit with the averments that appellant was appointed as Peon in Hari Ram Hostel, D.A.V. Senior Secondary School, Sector 8-C, Chandigarh, as per appointment letter dated 27.04.1979. He was not to be provided any accommodation in the hostel. Some temporary construction was raised on site of Hari Ram Hostel to be used as stores for keeping cement, building materials, sports equipments, broken furniture, old electrical appliances etc. The appellant and some other employees were allowed to live in the temporary structure on temporary basis till they could arrange for an alternative accommodation. The temporary structure was illegal as it was not sanctioned by the Estate Office, Chandigarh. The status of the appellant with respect to the disputed portion was only that of licensee. The D.P.I. (Schools), U.T. Chandigarh and Chandigarh Administration had been stressing that all the

schools should obtain completion certificate and Non Violation Certificate. A letter dated 19.03.2009 was received from the District Education Officer, U.T. Chandigarh. Sh. Ashwani Kumar, the then Assistant Estate Officer, U.T. Chandigarh personally visited school premises on 02.04.2009 and instructed the school authorities to remove the illegal structures failing which the school land and building was liable to be resumed. A show cause notice was also received on 23.06.2009 directing the school to remove the illegal use of structure. A legal notice was issued to the appellant and such other employees to vacate the illegal structure by 24.11.2009. The appellant and another filed suit for injunction wherein injunction application was dismissed. The appellant has no right to retain the above-said premises and the respondents have no option but to demolish illegal structure to prevent resumption.

The appellant/defendant filed the written statement and raised preliminary objections inter alia locus standi of respondents to file the suit and plaint being not properly verified. He denied that the defendant was not provided with any accommodation. It is submitted that Principal of School is also occupying accommodation in the school premises. The structure was already built and answering defendant was paying House Rent-cum- licence fee to the school authorities from time to time. All material averments of the plaint were denied with a prayer for dismissal of suit. Notice dated 16.08.2010 is stated to be false and baseless which was duly replied vide reply dated 20.08.2010.

In the replication, the averments raised in the plaint were reiterated and preliminary objections set out in the written statement were denied.

The trial Court framed following issues for determination:-

1. Whether the plaintiff is entitled for relief of mandatory injunction as prayed for? OPP
2. Whether the plaintiff is entitled for decree for recovery as prayed for? OPP
3. Whether the suit is not maintainable? OPD
4. Whether the plaintiffs have no locus standi to file the present suit? OPD
5. Whether the present suit has not been properly verified as per law? OPD
6. Relief.

The parties adduced evidence, reference whereof has been made in para 6 of the judgment of trial Court. Having heard counsel for the parties in the light of materials on record, the trial Court partly decreed the suit and judgment of the trial Court was affirmed in appeal.

Counsel for the appellant has assailed concurrent findings primarily on two counts. The first submission made by counsel is that in the year 2005, employees of D.A.V. Senior Secondary School, Sector 8-C, Chandigarh became entitle to house rent. As the appellant was allowed accommodation in the school premises, he was not being paid any house rent. On the contrary, he was making payment towards house rent – cum-licence fee and as such providing of accommodation became one of the conditions of service of the appellant. It is vehemently argued that if the respondents wanted to change one of the conditions of service of appellant, it is an industrial dispute, therefore, the same lies within domain of Industrial Tribunal/Labour Court to decide and as such the Civil Court has

no jurisdiction to entertain and try the present suit. It is further argued that appellant raised a plea that the suit is not maintainable and trial Court framed issue No.3 in this regard, wrongly decided by the Courts and findings on the issue are liable to be reversed. In support of his contention, he has relied upon judgments of this Court **Punjab State Cooperative Supply & Marketing Federation Ltd. Vs. State of Punjab and others, 1996(1) PLR 657** and **The Hind Samachar Ltd. Vs. Rajinder Kumar Gupta, 2001 (4) SCT, 310.** Reference has also been made to judgment of Hon'ble the Supreme Court **Jitendra Nath Biswas Vs. Empire of India and Ceylone Tea Company and another, 1989 (4) SLR 214.**

Another submission made by counsel is that in report prepared by the Estate Office, Chandigarh, there is no reference to structure in occupation of the appellant and other employees. It is argued that accommodation provided to Principal of the School was also not sanctioned by administration of U.T. Chandigarh. The School has submitted building plan wherein accommodation provided to the Principal has been included for getting necessary sanction of Estate Officer, U.T. Chandigarh. It is argued that the appellant and similarly situated employees have been treated differently by not including accommodation in their possession for obtaining necessary sanction, therefore, action of the respondents/plaintiffs cannot stand the test of judicial scrutiny when examined on the touchstone of fundamental right of equality.

Counsel representing the respondents/plaintiffs, on the contrary, has supported consistent findings recorded by the Courts with the submissions that the same do not suffer from an error much less perversity warranting intervention in second appeal. It is argued that no such issue

was raised by the appellant that providing of accommodation is one of the conditions of service or alternation thereof raises an industrial dispute that lies within domain of Industrial Tribunal to decide. It is further argued that even otherwise, making a provision for payment of house rent long after the appellant was appointed as a Peon in the year 1979 would not entitle the appellant to contend that allowing him to reside in the temporary structure in question amounts to one of the conditions of his service and getting it vacated would tantamount to change in condition of service or raising industrial dispute. He has also refuted contention of the appellant that since the respondents have not included temporary structures allowed to be used by class IV employees of school, it either amounts to discrimination or the appellant otherwise can challenge action of the authorities in this regard.

I have heard counsel for the parties, perused the paperbook and records.

Perusal of the written statement filed would reveal that the appellant raised as many as four preliminary objections. The appellant did not raise an issue even with regard to non-maintainability of the suit what to talk of raising an objection with regard to jurisdiction of the Civil Court to entertain and decide the suit. On the contrary, in para 3 of the preliminary objections, he has raised the contention that respondents/plaintiffs have no locus standi to file the suit. Counsel for the appellant has failed to point out if any such plea with regard to Civil Court lacking jurisdiction to entertain and try the present suit was raised in the grounds of appeal before the first Appellate Court or such a contention was pressed into service during the course of hearing of the appeal. The

question with regard to conditions of service of the appellant is a disputed factual controversy and the same cannot be allowed to be raised for the first time in second appeal. In this view of the matter, contention raised by counsel for the appellant with regard to jurisdiction of the Civil Court is misconceived and liable to be rejected.

This apart, indisputably, the appellant was appointed as a Peon in Hari Ram Hostel of D.A.V. Senior Secondary School, Sector 8-C, Chandigarh vide appointment letter dated 27.04.1979. Counsel for the appellant has failed to point out any materials on record that at the time of his appointment, it was one of the conditions of his service that he would be provided any accommodation in the hostel or within campus of the school. In the year 2005, a provision was made for payment of house rent to benefit of employees of the school. There is no decision taken by the respondents/plaintiffs to withdraw house rent. In the given circumstances, it is difficult to accept contention of the appellant that asking for vacation of accommodation amounts to change in conditions of service that needs to be determined by the Industrial Tribunal.

The appellant has not produced any letter of allotment of accommodation in his favour. Even otherwise, if an employee has been allotted accommodation, he would merely be a licensee of the employer. The appellant has failed to refer to any rules or precedent under which he can stake his claim as a matter of right that even if the accommodation provided to him is unauthorized structure, the same should be got legalized when revised plan was submitted by the respondents. That being so, the appellant cannot derive any advantage to his contention from the fact that accommodation provided to Principal of the school has been included in

the site plan submitted to Chandigarh Administration while structures allowed to be used by the appellant and similarly situated employees have not been so included. That being so, contention raised by the appellant by invoking Article 14 of the Constitution of India is patently misconceived and accordingly rejected. In this view of the matter, the appellant cannot seek any aid to his contentions from the referred authorities rendered in view of peculiar facts and circumstances involved therein.

In view of what has been discussed hereinbefore, finding no merit, the appeals fail and are accordingly dismissed leaving the parties to bear their own costs.

DECEMBER 17, 2019		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no