

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

**RSA No.1387 of 2018(O&M)
Date of Decision: 29.01.2019**

Municipal Council Thanesar

.....Appellant

Versus

Devender Sagar

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Sunil Dhanda, Advocate for
Mr. Deepak Manchanda, Advocate
for the appellant.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this regular second appeal against the concurrent judgments and decrees passed by the Courts below in a suit for declaration with consequential relief of permanent injunction.

[2]. Plaintiff filed a suit for declaration to the effect that the site plan submitted by the plaintiff in respect of construction of plot with the office of defendants through registered post is deemed to be sanctioned site plan. Defendants were sought to be restrained from interfering in the construction of the plaintiff

on the plot in question. Plaintiff had purchased a plot measuring 635 sq. yards equal to 21 marlas comprising in khewat No.187/2 situated at Didar Nagar, Mirjapur, Thanesar, District Kurukshetra vide registered sale deed dated 05.03.2010 from one Rashala. The plot was situated in build up area within the territorial jurisdiction of Municipal Council, Thanesar. No building scheme/town planning scheme had ever framed by the defendants. Plaintiff intended to raise construction on the said plot and served notice under Section 201 of Haryana Municipal Act along with site plan of the proposed construction with necessary documentation and requisite fee of Rs.60,000/-. Defendants refused to accept the same on 23.08.2012 and returned the same by claiming that the site plan could not be sanctioned by the defendants in view of instructions of Director Local Bodies, Haryana as the plot did not fall within the definition of colony as per Section 2(C) (V) of the Haryana Development & Regulation of Urban Area Act, 1975. As per Section 2(10) of Punjab Schedule Roads and Controlled Areas, Restriction of Unregulated Development Act, 1963, the act has no application within the local limits of local authority. Defendants were bound to receive the application and sanctioned the site plan in respect of area which fell within the municipal limits. Defendants were required to take decision on

the site plan under Section 205 of Haryana Municipal Act. The site plan was fully in consonance with by-laws and did not contravene any of the provision under the Municipal laws. The plaintiff also issued notice under Section 52 of the Haryana Municipal Act, but of no avail.

[3]. The suit was contested by the defendants on the ground that the site plan was returned as per instructions issued by Director, Urban Local Bodies, Haryana dated 26.08.2012 on the premise that the site plan for the building situated within the controlled area cannot be deposited with Municipal Council, Thanesar.

[4]. Both the Courts below took cognizance of the fact that Act No.43 of 1963 i.e. Punjab Schedule Roads and Controlled Areas, Restriction of Unregulated Development Act, 1963, has no application in the area falling within municipal limits. Reference was made to **Kartar Singh and others Vs. State of Haryana and others, 1986 PLJ 587 (P&H), Pritam Singh and others Vs. State of Haryana and others, 1995(3) PLR 762 (P&H)** and other precedents on the point. It was admitted by the defendants that the plot in question was situated within the extended municipal limits.

[5]. In view of above, it was legally incumbent upon the defendants to accept the site plan and take decision in

accordance with law. In view of in-action on the part of the defendants, only remedy available with the plaintiff was to invoke jurisdiction of the Civil Court and the jurisdiction of the Civil Court was not barred as the executive instructions have no statutory force and the same cannot override the law. Any instruction issued by the Department cannot negate the mandate of law as held in **Kartar Singh and others case (supra)** and **Pritam Singh and others case (supra)**. The provisions of Punjab Schedule Roads and Controlled Areas, Restriction of Unregulated Development Act, 1963 do not apply within the local limits and the town planning scheme prepared by the Municipal Committee is not fettered by the provisions of Act No.43 of 1963 i.e. Punjab Schedule Roads and Controlled Areas, Restriction of Unregulated Development Act, 1963.

[6]. By taking note of aforesaid facts, both the Courts below have decreed the suit. No question of law worth consideration is involved in the present appeal. Learned counsel for the appellant could not point out any misreading of evidence by the Courts below, nor the findings recorded by the Courts below are proved to be perverse. The present appeal is found to be totally devoid of merits and is accordingly dismissed.

[7]. Since the appeal has been dismissed on merits, therefore, there is no necessity to pass any order in the

application for condonation of delay of 552 days in re-filing the appeal. All other applications are accordingly disposed of.

29.01.2019

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**(RAJ MOHAN SINGH)
JUDGE**

**Whether reasoned/speaking
Whether reportable**

**Yes/No
Yes/No**