IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.5492 of 2017 (O&M)
Date of Decision: January 14, 2019

Municipal Corporation, Rohtak

...Appellant

Versus

Shakuntla Devi

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Rishabh Gupta, Advocate,
for the appellant.

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AMIT RAWAL, J. (Oral)

The present Regular Second Appeal at the instance of the appellant-defendant is directed against the judgment and decree of the Lower Appellate Court, whereby the suit of the respondent-plaintiff which was dismissed by the trial Court, has been decreed.

Respondent-plaintiff sought the declaration with a consequential relief of permanent injunction challenging the demand allegedly raised by the Municipal Corporation regarding the development charges on the premise that a plot No.11 measuring 525 sq.yards situated in Mauja Para, Northern Bye Pass, Sheela Chowk, Rohtak, vide sale deed dated 21.08.1989, was purchased. In order to raise the construction of a commercial complex in the year 2007, an amount of ₹ 3,03,715/-, which included ₹ 2,89,000/- odd amount as part of the development charges was deposited vide receipt No.44 dated 31.12.2007. A plan was sanctioned by the defendant for three floors, i.e., basement, ground floor and first floor. In the year 2011, Municipal Committee, Rohtak was upgraded to Municipal

Corporation and thereafter, defendant issued notices dated 11.05.2012 and 28.05.2012 under Section 261 of the Haryana Municipal Corporation Act, 1994 demanding conversion fee/development charges and had illegally demolished the staircase of the plaintiff causing loss of ₹ 1,00,000/-. Under compelling circumstances, the plaintiff deposited ₹ 4,38,950/- as conversion fee. In addition to the said amount, also deposited ₹ 16,580/- as building fee and ₹ 1,80,000/- as composition fee and ₹ 1,16,300/- as cess fee, on 31.05.2012.

The aforementioned suit was contested by the Municipal Corporation by apprising that by virtue of a notification dated 03.04.2012, the Municipal Corporation was established and sanction was valid for a period of one year and no construction thereafter. The sanction holder was required to pay prevalent development charges.

The trial Court, on the preponderance of the evidence, dismissed the suit, but the Lower Appellate Court reversed the findings.

Mr. Rishabh Gupta, learned counsel appearing on behalf of the appellant-defendant submitted that it was not development charges as notice dated 26.05.2012 indicates that the commercial charges @ ₹ 1000/- per square yard came to be ₹ 4,38,950/-. Even the building fee was also required to be paid, but the Lower Appellate Court erroneously relied upon the previous sanction without noticing its validity, therefore, there is abdication. Owing to the promulgation of the Municipal Corporation, the Bye laws and the provisions of 1994 Act were applicable and the charges were governed by them.

I am afraid that the aforementioned arguments are not sustainable, for, no provision of the Act or Bye laws established that on account of the establishment of the Municipal Corporation, in case a person who has already got the plan sanctioned, raised construction after lapse of one year, was required to pay the conversion charges with prevailing rate applicable to the area falling under the Municipal Corporation. In the absence of the same, there was no occasion for the Lower Appellate Court but to set-aside the demand. I also cannot remain oblivious of the fact that the notices also do not prove that the payment was made except @ ₹1000/- per sq.yard.

For the reasons mentioned above, I do not find any illegality or perversity in the judgment and decree of the Lower Appellate Court, which is based on appreciation of oral and documentary evidence. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

January 14, 2019 **(AMIT RAWAL)**
ramesh **JUDGE**

Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No