

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

RSA No.644 of 2018 (O&M)
Date of decision : 28.03.2019

M/s Uttam Seeds, Dayanand Rishi Vihar Colony, Hisar

...Appellant

Versus

M.C. Hisar through its Secretary

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vaibhav Jain, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM No.1596-C of 2018

For the reasons stated in the application, which is duly supported by an affidavit, delay of 105 days in refiling the present appeal is condoned.

Application is allowed.

CM No.1597-C of 2018

For the reasons stated in the application, which is duly supported by an affidavit, delay of 108 days in filing the present appeal is condoned.

Application is allowed.

Main case

Defendant-appellant is in the Regular Second Appeal against the findings of fact arrived at by the learned First Appellate Court.

On reading of the judgments passed by the Courts below, it is apparent that the Municipal Committee, Hisar now Municipal Corporation is colluding with the appellant. Way back in a writ petition, directions were issued to the Municipal Committee to decide the representation of a resident who had complained about the Seeds Processing Unit, owned by the appellant, working in a residential area which is an approved Town Planning Scheme, predominantly used and exclusively reserved only for residence purposes. The Municipal Committee passed a speaking order and issued notice to the defendant-appellant on 31.07.2009 for removal of the processing unit. However, thereafter rather than taking action, the Municipal Committee choose to file the present suit for relief of mandatory injunction.

Learned trial Court has minced no words to express its anguish as to why the suit was filed particularly when there are ample powers with the Municipal Committee now Municipal Corporation to remove any unauthorized building. The trial Judge also noticed that the Municipal Committee has not even cancelled the licence which has been granted to the defendant-appellant. Anyhow, the First Appellate Court has accepted the appeal filed by the Municipal Committee and ordered removal.

Learned counsel appearing on behalf of the appellant has

been heard at length. He has submitted that the licence which has been issued to the appellant by the Municipal Corporation has never been cancelled. He has further submitted that the building which has been constructed could not be ordered to be demolished after a period of six months in accordance with Section 261 of the Haryana Municipal Corporation Act, 1994.

This Court has considered the submissions. In fact, Office Bearers of the Municipal Corporation and its officials appears to be hand in glove with appellant. On the one hand, Municipal Corporation prays for issuance of decree for mandatory injunction whereas on the other hand, it does not cancel the licence, which has granted in favour of appellant.

It is well settled that in a planned residential colony, industrial activity cannot be permitted. This was the stand of the Municipal Committee in the year 2009 when the order was passed pursuant to the direction of the High Court. However, still the Municipal Corporation remained contended, only with the passing an order and thereafter, issuing notice.

As regards argument of learned counsel based upon Section 261 of the Haryana Municipal Corporation Act, 1994, the aforesaid provision operates in entirely different field. That provision only provide that once the erection of any building has been completed without or contrary to the sanctioned building plan, then such construction shall not be demolished. In the present case, question is not of demolition of

building, question is whether the industrial activity can be permitted in a residential area. The answer to the question has to be in negative.

Accordingly, there is no merit in the present Regular Second Appeal, consequently, dismissed. However, keeping in view the facts which have come to the notice of this Court, Chief Secretary, Haryana is directed to hold an enquiry against the concerned Office Bearers as well as officials and submit a report to this Court within a period of three months, as who was at fault and what action the Estate Government proposes to take.

A copy of this order be sent to the Chief Secretary, Haryana for compliance.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

28.03.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No