

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

Date of Decision : 01.09.2022

CRM-A No.478-MA of 2018 (O&M)

The Thanesar Improvement TrustAppellant

vs.

State of Haryana and anotherRespondents

CRM-A No.522-MA of 2018 (O&M)

The Thanesar Improvement TrustAppellant

vs.

State of Haryana and anotherRespondents

CRM-A No.560-MA of 2018 (O&M)

The Thanesar Improvement TrustAppellant

vs.

State of Haryana and anotherRespondents

CRM-A No.516-MA of 2018 (O&M)

The Thanesar Improvement TrustAppellant

vs.

State of Haryana and anotherRespondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Bikram Chaudhary, Advocate
for the petitioner(s).

Mr. R.K. Ambvata, Asstt. Advocate General, Haryana
for respondent No.1/State.

PANKAJ JAIN, J. (ORAL)

These four appeals arise out of the complaints filed under

Section 181 of the Haryana Municipal Act, 1973 (for short, 'the Municipal Act') read with Section 54 of the Haryana Town Improvement Act, 2008.

2. All the four appeals involve common set of facts and, thus, are being taken up together for adjudication.

3. For convenience, the facts are being taken from CRM-A No.478-MA of 2018.

4. As per the complaint, respondent No.2 (in all the appeals) was accused of raising unauthorized construction over the trust land. As per the complaint, a notice of seven days, dated 20th of January, 2015 was served upon the accused by SDO(C)-cum-Authority Improvement Trust, Thanesar, Kurukshetra for removal of the encroachment within 7 days. It has been alleged that the encroachment upon the property by respondent No.2 tantamounts to cause of action to maintain the complaint under Section 181 of the Municipal Act. Trial Court after analyzing the evidence, framed the following three questions for determination :-

- “i) Whether the accused has made encroachment over the land belonging to the complainant?*
- ii) Whether the notice dated 20.1.2015 was duly served upon the accused or not?*
- iii) Whether the complaint is maintainable after merging The Thanesar Improvement Trust in the M.C. Thanesar and without filing fresh Authority letter on behalf of M.C. Thanesar?”*

5. In CRM-A No.516-MA of 2018, an additional question was

framed :-

*“iv) Whether the period of more than five years has elapsed
from the completion of encroachment?”*

6. All the questions have been answered against the appellant/ complainant and, consequently, the complaint(s) has been ordered to be dismissed.

7. In order to prove the case of the complainant, Narender Sharma (in CRM-A Nos.478 & 560 of 2018) and Hans Raj (in CRM-A Nos.522 & 516 of 2018) appeared as CW1. In all the four complaints, the complainant failed to prove the demarcation regarding the disputed land and the alleged encroachment. Consequently, the Trial Court found that there was no encroachment proved in any of the complaints which could entail conviction of the accused under Section 181(1) of the Municipal Act.

8. Ld. Counsel for the appellant argues that Ld. Trial Court erred in returning the findings that statutory notice was not served under Section 181 of the Municipal Act. He asserts that report w.r.t. service of the statutory notice has been proved on record and, thus, judgment passed by the Trial Court needs to be set aside.

9. I have heard Ld. Counsel for the appellant and have gone through the records of the case.

10. In the considered opinion of this Court, service or non-service of statutory notice as contemplated under Section 181(1) will have no bearing on the present complaints. It will be apposite to peruse Section 181

of the Haryana Municipal Act, 1973 which reads as under :-

“[181. Punishment for immovable encroachment or overhanging structure over street. -- (1) Whoever without the written permission of the committee, makes any immovable encroachment on or under any street, on, over or under any sewer, or watercourse, or erects or re-erects any immovable overhanging structure projecting into a street at any point above the said ground level, shall be punishable with imprisonment for a term upto six months or with a fine which shall not be less than {two thousand rupees} and more than {ten thousand rupees} or both.

{(2) Without prejudice to the provisions of sub-section (1), the committee, the executive officer or the secretary, as the case may be, may, by notice call upon any person who has committed a breach of the provisions contained in the said sub-section, to stop the unauthorised construction forthwith and to remove or alter such immovable encroachment or overhanging structure as aforesaid within a period of seven days and if such person fails to show cause to the satisfaction of the committee, the executive officer or the secretary, as the case may be, within the said period of seven days, the committee, the executive officer or the secretary, as the case may be, shall proceed to remove the unauthorised construction and the cost of the such removal shall be recovered from the defaulter. If the defaulter fails to pay the cost of removal of unauthorised construction on demand within fifteen days, the cost shall be recoverable from such person as arrears of land revenue and the committee shall dis-connect the water supply and the sewerage connections ;

Provided that if a period of more than five years has elapsed from the completion of encroachment or overhanging

structure, no prosecution shall lie under sub-section (1).}]”

11. Provisions contained in Section 181(2) is 'without prejudice' to the provisions of sub-section (1). Meaning thereby that both the provisions are independent to each other. The expression 'without prejudice' came up for interpretation before Apex Court in '**Andhra Pradesh State Finance Corp. vs. M/s Gar Re-Rolling Mills**', 1994(2) SCC, wherein Apex Court held that -

“The expression “without prejudice to the provisions of Section 29 of this Act” as appearing in Section 31 of the Act clearly demonstrates that the Legislature did not intend to confine the Corporation to take recourse to only a particular remedy against the defaulting industrial concern for recovery of the amount due to it. It left the choice to the Corporation to act in the first instance under Section 31 of the Act and save its rights and remedies under Section 29 of the Act to be availed at later stage, with the sole object to enabling the Corporation to recover its dues.”

(emphasis supplied)

12. Same is the case here. The remedies provided under Section 181(1) and Section 181(2) with an intent to get rid of encroachment, are independent to each other. Thus, non-service of notice under Section 181(2) will have no bearing on the complaint filed under Section 181(1) of the Municipal Act. However, the material question that needs to be answered to decide the present complaint(s) is: 'whether any encroachment

has been proved on record to maintain the complaint under Section 181(1) of the Municipal Act ?'

13. Trial Court in all the complaints found that the Draftsman, who prepared the Site Plan did not appear to depose and to prove the said Site Plan. The only witness who appeared as CW1 himself never visited the spot. Thus, in the absence of any cogent evidence to prove encroachment, the Trial Court found that the complainant has failed to prove the case beyond the reasonable doubt and recorded that :-

“Even otherwise, the complainant did examine the person who prepared the site plan Ex.CW2/B. CW1 Narinder Sharma specifically deposed in his cross examination that it is correct that site plan of disputed land was prepared by Draftsman. He further deposed that it is correct that he had not gone to the spot and the Draftsman had gone to the spot who is presently posted in Ambala Division. It was the duty of the complainant to prove each and every fact relating to this case as in the criminal proceedings the complainant is required to prove the case beyond reasonable doubt. As such, mere placing of site plan on record does not prove the encroachment in any manner, in absence of examining the draftsman who prepared the site plan. Further, the complainant did not prove the demarcation report regarding the disputed land. Without demarcating the disputed land, it is not possible to ascertain the fact regarding alleged encroachment of the accused. Further, from the perusal of the site plan Ex.C2/B it can be gathered that the draftsman who prepared the site plan, failed to depict the surrounding boundaries and directions in the site plan, which further makes the site plan appear doubtful and dubious. Moreover,

even the complainant did not place on record any photographs which could depict the encroachment as alleged by the complainant. Thus, the case of the complainant is based on the sole testimony of CW1 Narinder Sharma, who did not visit the spot and see the alleged encroachment. In absence of examination of the person who had actually visited the spot cast a serious dent upon the case of the complainant . Moreover, the complainant did not prepare the site plan in presence of any independent person of the locality who could have supported the case of the complainant.”

14. There is no evidence on record that proves encroachment. The authorities have failed to prove encroachment at the hands of the accused, which is *sine qua non* to prove guilt under Section 181(1) of the Municipal Act. The evidence being discrepant and the essential ingredients constituting offence having not been made out, no fault can be found with the judgments passed by the Trial Court.

15. Consequently, the appeals are dismissed.

16. Since the main appeal(s) is dismissed, pending application, if any, also stands disposed off.

17. A copy of this order be kept on the files of other connected cases.

September 01, 2022
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No