

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 866 of 2013 (O&M)

Date of Decision: 26.08.2022

Rakesh Kumar Malhotra and Others

... Appellant(s)

Versus

The Haryana Urban Development Authority and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. D.K.Singal, Advocate
for the appellant(s).

Mr. Abhilaksh Grover, Advocate
for the respondents.

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.

2. Through this regular second appeal, the appellants assail the correctness of the judgments and decrees, passed by both the Courts below. While filing the suit, the plaintiffs assail the correctness of the action initiated under Section 17 of the Haryana Urban Development Authority Act, 1977. Such proceedings are initiated against the owner of the building if there are unauthorized building violations.

3. There is no final order of resumption passed against the

appellants. On 09.08.2022, after noticing the facts of the case, the following

order was passed:-

“The appellants assail the correctness of judgments and decree passed by the trial Court which has been affirmed in first appeal. Haryana Urban Development Authority threatened resumption of the property which led to the filing of the suit.

An affidavit has been filed by the appellants stating that out of four violations pointed out by Haryana Urban Development Authority, three have been removed, whereas, the violation under Clause B i.e. division of two parts by constructing a gallery is on account of steps taken by the tenants against whom an order of eviction has already been passed.

Sh. Abhilaksh Grover, Advocate, is requested to depute an official from the Haryana Urban Development Authority to carry out site inspection and submit a fresh report within a period of 1 week, from today. The report shall be submitted along with an affidavit of the Estate Officer disclosing the position of the violation of the remaining Showroom-cum-Flat (SCF) in the same row.

Adjourned to 18.08.2022”.

4. In compliance thereof, an affidavit of Mr. Gagandeep Singh, Estate Officer, Haryana Shehri Vikas Pradhikaran, Panchkula, has been filed. It has been brought to the notice of the Court that most of the building violations have been removed, whereas, certain violations still exist, which have been, allegedly, carried out by the tenant who continues to be in possession. The owners have already filed a suit for possession seeking

eviction of the tenant. The appellants undertake to remove those violations as and when they get the possession of the property from the tenant.

5. From a perusal of the affidavit and the site inspection report, it is evident that there are violations in various other shop-cum-offices in the market.

6. The resumption of the building and ownership should be the last resort. At the first instance, the allotting authority is required to grant sufficient opportunities to the owners to remove the same.

7. Keeping in view the aforesaid development, which has taken place, this appeal is disposed of while modifying the judgments and decrees of both the Courts below. If the appellants fail to abide by the undertaking given in this Court or carry out fresh violations or refuse to remove the existing violations, as per the undertaking, then, the respondents shall be at liberty to initiate an action against them, in accordance with law.

8. The miscellaneous application(s) pending, if any, shall also stand disposed of.

(Anil Kshetarpal)
Judge

August 26, 2022
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No