

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

(201)

**RSA No.1722 of 1992
Date of Decision: 02.09.2023**

M. C. Hisar

.....Appellant
Versus

Saroop Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Pritam Singh Saini, Advocate, for the appellant.

None for the respondent.

HARKESH MANUJA, J.(ORAL)

1. By way of present appeal, challenge has been laid to the judgment and decree dated 09.05.1992 passed by the Court of Additional District Judge, Hisar, whereby, the judgment and decree dated 12.08.1988 passed by the trial Court, dismissing the suit for permanent injunction filed at the instance of respondent/plaintiff was reversed.

2. Briefly stating, respondent/plaintiff by way of filing a suit for permanent injunction assailed the notice dated 12.06.1982 & 19.08.1982 issued by the appellant-defendant in exercise of its power under Section 235/237 of Haryana Municipal Act, 1973 (hereinafter referred to as “1973 Act”). In the present case, the case set up by the respondent/plaintiff was that notices issued to him alleging illegal construction were vague as the same did not provide any description of the shop or the construction and in that light it was contended by him that the shop in question was existing over the property owned and possessed by him since the year 1976 and the same was not a new construction.

3. On the contrary, the stand taken by the appellant municipal committee was that the shop was newly constructed, without obtaining

permission under the provisions of the 1973 Act and thus, the notice dated 19.08.1982 for its removal was rightly served upon the respondent/plaintiff.

4. The trial Court vide its judgment and decree dated 12.08.1988 dismissed the suit for permanent injunction filed at the instance of respondent/plaintiff. Aggrieved thereof, an appeal was filed which came up for adjudication before the First Appellate Court on 09.05.1992 and the same was allowed wherein, though the notice dated 19.08.1982 issued by the appellant/defendant was struck down being vague, however, the liberty was granted to issue fresh notice upon the respondent/plaintiff.

5. Instead of issuing fresh notice to the respondent-plaintiff, the appellant-defendant chose to file the present appeal by assailing the judgment and decree dated 09.05.1992, passed by the First Appellate Court. At the time of hearing when the matter was taken up, no one appeared on behalf of the appellant and Mr. Pritam Singh Saini, Advocate, who was present in Court was requested to assist in the matter on having supplied a copy of paper book pertaining to the present appeal.

6. Impugning the aforesaid judgment and decree passed by the First Appellate Court, learned counsel for the appellant submits that the construction raised at the instance of respondent/plaintiff was without obtaining permission under the provisions of 1973 Act and thus, the notices were rightly issued in exercise of powers under Sections 208/235/237 thereof and the same thus could not have been declared illegal being vague only on account of immaterial details as respondent duly replied to the notices and denied any illegal construction.

7. I have heard learned counsel for the appellant and have gone through the paper book. I am unable to find substance in the submissions made on behalf of appellant.

8. This is an admitted fact by the appellant that notice issued under Section 208 of M.C. Act, only mentions with regard to the construction but neither it mentions the date or the authority under which it was issued nor it mentions even about the description of the property where exactly it was located, which apparently made the same vague as rightly held by the appellate Court. Stand taken by the appellant that this notice could not be considered vague as this was subsequently replied by the respondent-plaintiff and he denied the illegal construction does not hold any substance. Mere denial by the respondent cannot bind him with any liability as it could be with respect to any general construction as well as the appellant was bound to provide specific details with respect to the illegal construction so as to enable the respondent to make a specific averment in this regard. This also gains significance in view of the fact that substantial rights of the respondent were involved in this case and it was obligatory on the part of the appellant that respondent be put at notice with respect to specific property for which action was supposed to be taken.

9. Additionally, a perusal of the judgment and decree dated 09.05.1992 passed by the First Appellate Court shows that though the notices dated 12.06.1982 and 19.08.1982 issued by the appellant/defendants were quashed being vague, however, liberty was granted to proceed afresh against respondent-plaintiff. Instead of proceeding anew and take the matter to its logical end in a swift manner, appellant/defendant thought it appropriate to assail the said judgment and decree passed by the First Appellate Court before this Court and the appeal remained pending consideration for about 30 years. The act of appellant/defendant having failed to proceed denovo trial against the respondent-plaintiff for a period of 30 years has in fact created a substantial right in his favour and the appellant/defendant is now bound by the

delay caused on account of the course adopted by itself. Even during pendency of the present appeal there was no restraint order prohibiting the appellant-defendant to proceed against the respondent-plaintiff and after having sensed that the course adopted by them was taking undue long time, no course correction was made and no fresh proceeding were initiated in accordance with the impugned judgment, therefore appellant cannot be permitted to proceed against the respondent/plaintiff at this belated stage. At this stage, after about 40 years of cause of action, granting liberty to appellant/defendant to proceed against the respondent/plaintiff would cause serious prejudice to his rights especially in view of the fact that both the parties have already reconciled the situation on the ground and particularly when the ownership and possession over the suit property in question admittedly belongs to respondent/plaintiff who has been running a petrol pump on the spot.

10. In the facts and circumstances of the present case, it is further clarified that the liberty granted to the appellant vide judgment and decree dated 09.05.1992 to issue fresh notice to the respondent cannot be exercised by the appellant at this belated stage after such a long lapse of time and the same is therefore revoked and appellant is further directed that in case any illegal construction as alleged by the appellant stand on this date, respondent shall be granted an opportunity to get the same compounded in accordance with law. This direction is being passed by the Court by invoking powers under Order 41 Rule 33 of CPC in view of the fact that appellate Court recorded a positive finding that in the notices issued to the respondent neither any date was mentioned nor any description of the illegally constructed property was given and under the aforesaid provision, this Court has the

jurisdiction to pass an order which ought to have been passed or made in the proceedings before it in order to do complete justice between the parties.

11. In view of the aforesaid discussion, finding no merits in the present appeal, the same is hereby dismissed with the aforesaid observation.

12. Pending applications, if any, stand disposed of.

(HARKESH MANUJA)
JUDGE

02.09.2023
anil

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No