

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2586-2016 (O&M)
Date of Decision :06.01.2023

HARYANA URBAN DEVELOPMENT
AUTHORITY AND ANR

...Appellants

Versus

RAKESH BUDHIRAJA ETC

....Respondent(s)

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Pardeep Rajput, Advocate for the appellants.

Mr. R.K. Handa, Advocate, Mr. Dharambir Bhargav, Advocate, Ms. Gauri Handa, Advocate, Mr. Ajay Partap Singh, Advocate and Mr. Kulwinder Bhargav, Advocate for respondent No.1.

Mr. Munish Behl, Advocate for LR's of respondent No.2.

B.S. Walia, J. (Oral)

[1] Challenge in the regular second appeal is to judgment and decree dated 05.05.2015 passed by the learned District Judge, Panchkula in case titled as Rakesh Budhiraja and others vs. Haryana Urban Development Authority and another, reversing the judgment and decree dated 24.09.2013 passed by the learned Civil Judge (Junior Division), Panchkula whereby Civil Suit No.303 of 2007 filed by the plaintiffs / respondents was dismissed.

[2] Learned Counsel contends that the learned appellate court failed to appreciate that it was for HUDA to decide whether action was to be taken for violation on account of building bye laws / zoning plan u/s

referred to as “HUDA Act 1977”) besides the civil court had no jurisdiction to interfere in the matter moreover, pursuant to fresh inspection, non compoundable violations were found.

[3] Per contra, learned counsel for the respondents by referring to the decision of this Court in **Haryana Urban Development Authority and another vs. Vipin Sharma and another, 2009 (3) RCR (CrI.) 695** contends that in case of violation of building plan / site plan, remedy available to HUDA is to proceed under Section 55 HUDA Act, 1977 and not under Section 17 and that since the action was without jurisdiction being in violation of the provisions of the HUDA Act, 1977 itself, the Civil Court had the jurisdiction to hear and decide the matter. Learned counsel further contends that even if the allottee fails to show cause or refuses to remove the violations as per notice under Section 55 HUDA Act, 1977, HUDA had the authority to resume the building but only as a last resort in view of the Full Bench decision of this Court in **Dhera Singh vs. UT, Chandigarh Administration and others, 2012 (4) RCR (Civil) 970**. Learned counsel contends that once there is a specific provision to deal with violations on account of building by-laws / zoning plans, action firstly had to be taken under Section 55 HUDA Act 1977 and only if the allottee did not show cause or did not do the needful as required to be done under Section 55 HUDA Act, 1977 then to initiate action for resumption but that no action for resumption was justified in the first instance.

[4] I have considered the submissions of learned counsel and with their able assistance gone over the record as produced. A perusal of the judgment and decree passed by the learned Civil Judge (Junior Division), Panchkula reveals that a suit had been filed for declaration that action initiated by the defendants /appellants under Section 17,HUDA

Act 1977 in respect of showroom No.29, Sector 11, Panchkula was without jurisdiction, nonest and of no legal consequence on account of being in violation of the provisions under the HUDA Act 1977 and the Rules and Regulations framed thereunder. Prayer was for permanent injunction for restraining the defendants from resuming the aforesaid showroom by invoking the provisions of Section 17, HUDA Act, 1977 *ibid*.

[5] The aforementioned civil suit was dismissed vide judgment dated 24.09.2013. However, appeal filed by the plaintiffs / respondents was allowed by the learned District Judge vide judgment and decree dated 05.05.2015. The learned Appellate Court deliberated whether there were violations of sanctioned site plan and zoning plan by the allottee while raising construction / raising illegal or unauthorized construction prohibited under the HUDA Act, 1977 and Regulations of 1979 and as to what action could be initiated against the allottee and under which provision of law and by referring to the decision of this Court in **Haryana Urban Development Authority and another vs. Vipin Sharma and another, 2009 (3) RCR (CrI), 695** which was a case pertaining to notices served upon other allottees for similar violations, held that in case there were violations of the building or site plan on account of raising constructions by the allottee, the only remedy available to HUDA was to proceed under Section 55 HUDA Act, 1977 and not under Section 17 HUDA Act, 1977 and if such order was challenged before the Civil Court, jurisdiction of the Civil Court was not barred as the impugned notice was without jurisdiction and action initiated in violation of the provisions of the HUDA Act. Learned District Judge

Development Authority and Another vs. Escon Builders Limited, 2014 (1) PLR 732 in which the plea raised by HUDA was that the suit was premature. However, the said plea was not accepted while observing that since the very basis of the action initiated being against the HUDA Act and without jurisdiction, the Civil Court had the jurisdiction to set aside the notice and consequent proceedings and that no law to the contrary having been shown rather it also having been alleged that a Special Leave Petition filed before Hon'ble the Supreme Court against the judgment of the Hon'ble High Court in **Haryana Urban Development Authority and another vs. Vipin Sharma and another (Supra)** had also been dismissed by Hon'ble Supreme Court. Learned District Judge also took into account the submissions on behalf of HUDA that even if the allottee failed to show cause or refused to remove the violation as per notice under Section 55, HUDA Act, 1977, it had the authority to resume the building but observed that the same should be the last resort even if permissible in view of the law laid down by the Full Bench of this Court in **Dheera Singh vs. UT Chandigarh Admn. and others, 2012 (4) RCR (Civil) 970** in which the Hon'ble Full Bench held that in case of violations of building bye-laws, the competent authority including the Estate Officer had to follow the procedure as per the directions contained in paragraph Nos.81, 82 and 87 of the judgment and that in paragraph No. 81, Hon'ble the Full Bench had observed that first of all the competent authority had to decide who was responsible for the misuse of the premises and if such violations were made by the tenant, then the owner and allottee could not be held guilty for the violations of building bye-laws and if such was the situation, the Estate Officer was required to keep the resumption proceedings in abeyance till proceedings

for eviction of the tenant initiated by the landlord on account of violations but where such premises were being used by the tenant with a tacit understanding or in connivance with the landlord, the Estate Officer could initiate action after giving such finding while in paragraph No. 87 of the judgment, the Hon'ble Full Bench observed that resumption should be the last resort and should not be ordered unless the wrongdoer had been penalized to the maximum firstly.

Learned District Judge further held that provisions of the HUDA Act, 1977 being similar to the provisions of the Capital of Punjab (Development and Regulation) Act, 1952 in view of the decision of this Court in Vipin Sharma's case (Supra), once there were specific provisions to deal with violations on account of building bye-laws as provided under HUDA Act, 1977 and regulations 1979, action firstly had to be initiated under Section 55 HUDA Act, 1977 and if the allottee did not show cause or did not do the needful as required to be done under Section 55 HUDA Act, 1977 including payment of penalty or compensation, then to initiate further action for resumption but no such action was justified in the first instance and that in the circumstances, HUDA was required to initiate proceedings under Section 55 HUDA Act, 1977, if there were some violations on account of building bye-laws or zoning plans and only thereafter proceedings could be initiated under Section 17 HUDA Act, 1977.

[6] In paragraph No.24 of the judgment, the learned District Judge observed that as per the report of the Enforcement Staff, the illegal constructions i.e. tin sheds in the rear courtyard had been removed and that in the circumstances, HUDA had no basis to initiate further proceedings. Accordingly, taking into account that the pre-requisite for

taking action under Section 17 HUDA Act, 1977, namely of taking out proceedings under Section 55 HUDA Act, 1977 not having been initiated and the said aspect not having been considered by the learned trial Court, the appeal was accepted and the action initiated by the respondent-HUDA as per impugned notice and subsequent proceedings under the provisions of Section 17 HUDA Act, 1977 were held to be without jurisdiction and liable to be set aside. Accordingly, impugned judgment and decree of the learned trial court was set aside while observing that if the respondent-HUDA still found any violation of the building bye-laws and regulations 1979, it had every right to initiate proceedings under Section 55 HUDA Act, 1977 as per the procedure provided thereunder.

[7] Learned counsel for the appellants has not been able to controvert the requirement to take action under Section 55, HUDA Act, 1977 *ibid* as a pre-requisite to the taking of action under Section 17 HUDA Act, 1977 *ibid*. He, however, contends that the Civil Court had no jurisdiction to entertain the civil suit in view of Section 50 of the HUDA Act, 1977. Sections 17, 50 and 55 of the HUDA Act, 1977 are reproduced as under:-

17. Resumption and forfeiture for breach of conditions of transfer - (1) *Where any transferee makes default in the payment of any consideration money, or any installment, on account of the sale of any land or building, or both, under Section 15, the Estate Officer may, by notice in writing, call upon the transferee to show cause within a period of thirty days, why a penalty which shall (be equal) ten percent of the amount due from the transferee, be not imposed upon him.*

(2) *After considering the cause, if any, shown by the transferee and after giving him a reasonable opportunity of being heard in the matter, the Estate Officer may, for reasons to be recorded in writing, make an order imposing*

the penalty and direct that the amount of money due along with the penalty shall be paid by the transferee within such period as may be specified in the order.

(3) If the transferee fails to pay the amount due together with the penalty in accordance with the order made under sub-Section (2), or commits a breach of any other condition of sale, the Estate Officer may, by notice in writing, call upon the transferee to show cause within a period of thirty days, why an order of resumption of the land or building or both, as the case may be, and forfeiture of the whole or any part of the money, if any, paid in respect thereof which in no case shall exceed ten per cent of the total amount of the consideration money, interest and other dues payable in respect of the sale of the land or building, or both, should not be made.

(4) After the considering the cause, if any shown by the transferee in pursuance of a notice under sub-Section (3) and any evidence that he may produce in support of the same and after giving him a reasonable opportunity of being heard in the matter, the Estate Officer, may for reasons to be recorded in writing, make an order resuming the land or building or both, as the case may be, and directing the forfeiture as provided in sub-Section (3) of the whole or any part of the money paid in respect of such sale.

(5) Any person aggrieved by an order of the Estate Officer under Section 16 or under this Section may, within a period of thirty days of the date of the communication to him of such order, prefer an appeal to the Chief Administrator in such form and manner, as may be prescribed:

Provided that the Chief Administrator may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(6) The Chief Administrator may, after hearing the appeal, confirm, vary or reverse the order appealed from and may pass such order as he deems fit.

(7) *The Chief Administrator may, either on his own motion or on an application received in this behalf, at any time within a period of six months from the date of the order, call for the record for any proceedings in which the Estate Officer has passed an order for the purpose of satisfying himself as to the legality or propriety of such order and may pass such order in relation thereto as he thinks fit:*

Provided that the Chief Administrator shall not pass an order under this Section prejudicial to any person without giving him a reasonable opportunity of being heard.

(8) *Any person aggrieved by an order of Chief Administrator under sub-Section (6) may within a period of ninety days of the date of the communication to him of such order, prefer a revision petition to the Secretary to Government, Haryana, Town and Country Planning Department, in such form and manner as may be prescribed:*

Provided that the Secretary to Government, Haryana, Town and Country Planning Department, may entertain the revision petition after the expiry of the said period of ninety days, if he is satisfied that the petitioner was prevented by sufficient cause from filing the revision petition in time.

(9) *The Secretary to Government, Haryana, Town and Country Palnning Department, may after hearing the revision, confirm, vary or reverse the order appealed from and may pass such order as he deems fit:*

Provided that the Secretary to Government, Haryana, Town and Country Planning Department, shall not pass an order under this Section without hearing the parties.

50. Finality of orders and bar of jurisdiction of civil courts. (1) *Save as otherwise expressly provided in the Act, every order passed or direction issued by the State Government or order passed or notice issued by the Pradhikaran (substituted vide Haryana Act No.28 of 2019) or its officer under this Act shall be final and shall not be*

questioned in any suit or other legal proceedings.

(2) No civil court shall have jurisdiction to entertain any suit or proceedings in respect of any matter the cognizance of which can be taken and disposed of by any Pradhikaran (substituted vide Haryana Act No.28 of 2019) empowered by this Act or the rules or regulation made thereunder.

55. Penalty for breach of rules and regulations – *Except as otherwise provided for in this Act, and any contravention of any of the rules or regulations made thereunder shall be punishable with fine which may extend to five hundred rupees, and in the case of a continuing contravention, with an additional fine, which may extend to fifty rupees, for each day during which such contravention continues after the first conviction; and the court, while passing any sentence on conviction of any person for the contravention of any rule or regulation, may direct that any property or part thereof, in respect of which the rule or regulation has been contravened, shall be forfeited to the Pradhikaran.*

[Provided that if a building is begun, erected or re-erected in contravention of any of the building regulations, the Chief Administrator shall be competent to require the building to be altered or demolished, by a written notice delivered to the owner thereof, within six months of its having begun, or having been completed, as the case may be. Such notice shall also specify the period during which such alteration or demolition has to be completed and if the notice is not complied with, the Chief Administrator shall be competent to demolish the said building at the expense of the owner.

Provided further that the Chief Administrator may, instead of requiring alteration or demolition of any such building, accept by way of composition, such sum as he may deem reasonable].

[8] No doubt there is a bar under Section 50, HUDA Act, 1977 to the institution of a civil suit in respect of matters covered under the HUDA Act, 1977. However, this argument of learned counsel for the appellants is noted to be rejected on the short ground that the matter is no longer *res integra* and stands settled by this Court vide its decision in **The Estate Officer, HUDA vs. Parveen Kumar, 2009 (3), SLJ, 1712** following the decision of Hon'ble the Full Bench of this Court in the **State of Haryana and others vs. Vinod Kumar, AIR, 1986 (P&H) 406** wherein it was held that even where the statute expressly barred the jurisdiction of the Civil Court, the Civil Court still had the jurisdiction over orders passed by the authorities under the Act if the impugned orders were violative of the principles of natural justice or the same were dehors statutory provisions or were without jurisdiction. Relevant extract of the decision in Vinod Kumar's case (Supra) is reproduced as under:-

“..... Applying these two tests it does appear that the words unsed in Section 3(4) and Section 16 are clear. Section 16 in terms provides that the order made under this Act to which the said Section applies shall not be called in question in any Court. This is an express provision excluding the Civil Courts jurisdiction. Section 3 (4) does not expressly exclude the jurisdiction of the Civil Courts but in the context, the inference that the Civil Courts jurisdiction is intended to be excluded, appears to be inescapable. Therefore, we are satisfied that Mr. Goyal is right in contending that the jurisdiction of the Civil Courts is excluded in relation to matters covered by the orders included within the provisions of Section 3(4) and Section 16.

“This conclusion, however, does not necessarily mean that the plea against the validity of the order passed by the District Magistrate, or the Commissioner, or the State Government can never be raised in a Civil Court. In our

opinion, the bar created by the relevant provisions of the Act excluding the jurisdiction of the Civil Courts cannot operate in cases where the plea raised before the Civil Court goes to the root of the matter and would, if upheld, lead to the conclusion that the impugned order is nullity.”

[9] Learned counsel for the appellants has not been able to controvert the requirement to take action under Section 55, HUDA Act, 1977 *ibid* as a pre-requisite to the taking of action under Section 17 HUDA Act, 1977 *ibid* in view of the decision in ***Haryana Urban Development Authority and another vs. Vipin Sharma and another, 2009 (3) RCR (Crl.) 695***, as per which in case of violation of building plan or site plan, remedy available to HUDA is to proceed under Section 55 HUDA Act, 1977 and not under Section 17. Since HUDA acted in violation of the provisions of the HUDA Act, 1977 itself, the Civil Court had the jurisdiction to hear and decide the matter in view of the Full Bench decision of this Court in Vinod Kumar's case (*Supra*). Further, it is only on giving notice u/s 55 HUDA Act, 1977 and the allottee failing to do the needful in terms thereof that action could be taken to resume the showroom as a last resort in view of the Full Bench decision of this Court in ***Dhera Singh vs. UT, Chandigarh Administration and others, 2012 (4) RCR (Civil) 970***. The needful not having been done, the impugned action was rightly held to be unsustainable.

[10] In the light of the position as well as judgments noted above, no circumstances exist warranting taking of a view different than that as taken by the learned District Judge. In the circumstances, no question of law much less substantial question of law arises for consideration in this Regular Second Appeal. The appeal is bereft of merit and is accordingly dismissed. However, it needs noticing that despite orders of this Court

dated 24.05.2018, no affidavit of SDE (Survey) qua violations if any has been filed. However, to clarify, it is made clear that the appellants are at liberty to take action against the respondents in accordance with law in case any violation continues to exist in the showroom in question.

[11] Appeal dismissed with the aforementioned directions. All misc. applications also stand dismissed.

06.01.2023
'Amit'

(B.S. Walia)
Judge

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