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

RSA-273-2015 (O&M)

Date of decision: 03.03.2023

MUNICIPAL CORPORATION GURGAON

...Appellant

VS

TEKU (DECEASED) TH HIS LRS OM PARKASH AND ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ramesh Goyat, Advocate,
For the appellant.

Mr. Tarun Vir Singh Khehar, Advocate,
and Mr. P.S.Bindra, Advocate,
for respondents No.1, 5 to 8, 10 to 12, 14, 16 and 17.

ARUN MONGA, J. (ORAL)

For convenience, parties herein are described as per recitals
before learned trial Court.

2. Having suffered concurrent adverse findings by the two Courts
below, defendant (appellant herein) is in second appeal before this Court
assailing learned trial Court judgment and decree dated 17.01.2013, as
upheld by learned First Appellate Court vide its judgment and decree dated
17.09.2014.

3. Briefly stated, facts as noticed by Courts below are as under:-

*The case of the plaintiffs is that the predecessor in
interest of plaintiffs have been coming in cultivating possession
of the suit land bearing Khewat Khatoni No.185/310, Khasra
No.18 (0-16) situated within the revenue estate of village
Nathupur Tehsil and District Gurgaon. It is submitted that
predecessor-in-interest of the plaintiffs have been coming in
actual physical cultivating possession of agricultural land
detailed and described in Para No.3 and 4 of the plaint. It is
submitted that plaintiffs and their predecessor in interest
continue to be in possession of the above land under Shamlat
deh when Punjab Occupancy Tenant (Vesting of Proprietary)
Act 1952 came into force. It is submitted that plaintiffs and their*

predecessor in interest have become owners of the suit land much before coming into force of Punjab Village Common Land Act No.18 of 1961 which was enforced on 4.5.1966 and the Gram Panchayat Act of 1953 which come into force on 26.3.1953 and Haryana Panchayati Raj Act, 1997 was enforced in November 1994. It is submitted that during the compilation of jamabandi for the year 1956-57 the revenue officials wrongly and negligently without any basis had entered in the name of Civil Panchayat deh in the column of ownership which entry is meaningless. It is submitted that while compilation of jamabandi for the year 1961-62 the name of Mithu i.e. father of plaintiff No.1 has been left out wrongly due to negligence of revenue official. It is submitted that when the alleged mistake come to the knowledge of Teku plaintiff No.1 then, he had filed a Suit for declaration seeking correction in the revenue record in case No.1086 of 1990 titled as Teku Versus Ramesh etc. decided on 13.11.1990. It is submitted that name of Ishwar has been deleted in the jamabandi for the year 1980- 81 and in the jamabandi for the year 1990-91 and the correction is liable to be made in favour of plaintiffs No.15 to 18. It is submitted that plaintiffs have requested the defendant to admit the claim of the plaintiffs but the defendant has refused to do so. Hence, the suit.

4. Upon notice, defendant appeared and filed the written statement taking preliminary objections regarding jurisdiction and locus standi etc. On merits, it was submitted that plaintiffs are not in cultivating possession of the land in dispute since the time of their predecessors and they are unauthorizedly in possession of the suit land. It is pleaded that the entries in the jamabandi are legal and correct and are not liable to be corrected. All other averments were also denied.

5. Based on the rival pleadings, following issues were framed:

1. *“Whether plaintiffs have become occupancy tenants of the suit property, as alleged? OPP*
2. *Whether Civil Court has no jurisdiction to try and decide the present suit? OPD*
3. *Whether plaintiffs have no locus standi? OPD*
4. *Relief.”*

6. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

7. On appraisal of evidence vis-à-vis pleadings, issue Nos.1 and 2 were decided in favour of plaintiff. Issue No.3 was decided against defendant. Consequently, suit of plaintiff was decreed with costs.

8. Aggrieved, defendant-appellant preferred first appeal which was dismissed by learned First Appellate Court.

9. Learned First Appellate Court below dismissed the appeal, resulting in instant Regular Second Appeal before this Court.

10. Reasons recorded by the learned First Appellate Court for dismissal of the appeal *inter alia* are as under:-

“xx xx xx The Municipal Corporation is a body of Councillors and not an individual and any action taken on behalf of Municipal Corporation must have a backing of a resolution passed by body of Councillors e.g. a Managing Director of Co-operative Bank a body corporate who has power to institute, conduct, defend any legal proceedings by or against the bank. In that eventuality, a decision to institute or defend the proceedings of an appeal has to be taken by Body Corporate and if not taken, any appeal filed without authority, is not maintainable. Reliance to this effect, is placed on the law laid down in Punjab State Coop.. Bank Ltd. Vs. Milkha Singh, 1996(3) PLR 190 (P&H). Since, in the instant case, there is no decision/resolution of the Body of Councillors authorizing the Joint Commissioner to file the present appeal, this appeal is held not maintainable and it being presented contrary to the provisions of law, this Court has no justification to decide the appeal on merit and it is liable to be dismissed as incompetent. To hold so, this Court has taken support from Garib Chand Vs. Municipal Committee, Budhlada, (1979) 81 PLR 527 (P&H).”

11. There are two significant aspects of the matter requiring adjudication on following substantial questions of law arising for consideration:

- (1) Whether any Resolution was required to be passed by the Municipal Corporation lack of which seems to be the basis of dismissing the appeal by learned First Appellate Court; and
- (2) Whether there was any valid delegation by the Commissioner of Municipal Corporation in favour of Joint Commissioner to file the appeal?

12. Having heard the competing contentions of learned counsels, I am of the view that learned First Appellate Court fell in grave manifest error on both counts.

13. Taking the second point first i.e. Delegation. Reference may be had to Section 385 and Section 401 of the Haryana Municipal Corporation Act, 1994, which are reproduced as under:

“385. Power to Institute etc. legal proceedings and obtain legal advice:-

The commissioner may

(a) take or withdraw from proceedings against any person who is charged with

(i) an offence against this Act or any rule, regulation or by law made thereunder or

(ii) any offence which affects or is likely to affect any property or interest of the Corporation or the due administration of this Act, or

(ii) committing any nuisance whatsoever

(b) contest or compromise any appeal against retable value or assessment of any tax or rate.

(c) take or withdraw from or compromise proceedings under section 373 for the recovery of expenses or compensation claimed to be due to the corporation

(d) withdraw or compromise any claim for a sum not exceeding one thousand rupees against any person.

(e) defend any suit or other legal proceedings brought against the corporation or against the Commissioner or a Corporation officer or other corporation employee in respect of anything done or omitted to be done by any one of them in his official capacity.

(f) with the approval of the corporation, admit or compromise any claim, suit or other legal proceeding brought against the corporation or against the commissioner or any corporation officer or other corporation employee in respect of anything done or admitted to be done as aforesaid.

(g) withdraw or compromise any claim against any person in respect of penalty payable under contract entered into with such person by the Commissioner on behalf of the corporation.

(h) obtain such legal advice and assistance as he from time to time thinks necessary or expedient to obtain or as he may be required by the corporation to obtain from any of the purposes mentioned in the foregoing clauses or for securing lawful exercise or discharge of any power or duty vesting in or imposed upon any municipal authority or any corporation officer or other corporation employee.

401 Delegation (1) *The Government may by notification, delegate all or any of its powers under this Act except the power to make rules, to any officer not below the rank of an Extra-Assistant Commissioner subject to such restrictions and conditions as may be specified in the notification.*

(2) *The Commissioner may by order direct that any power conferred or any duty imposed on him by or under this Act, shall in such circumstances and under such conditions, if any as may be specified in the order, be exercised and performed by a corporation officer or other corporation employee."*

(emphasis supplied by learned counsel for appellant)

14. Perusal of the above Section clearly reflects that there are two-fold statutory powers conferred on different level of officers of the Corporation i.e. Commissioner and the Joint Commissioner, subject, of course to the compliance as per the provisions, *ibid*.

15. There is no dispute with regard to the fact that Commissioner of the Corporation is fully competent to institute legal proceedings as is amply clear from self-speaking language of Section 385. Section 401 is what governs the delegation of powers by the Commissioner vide which he is the repository of conferring the same on any officer not below the rank of Extra Assistant Commissioner.

16. In the case in hand, the Commissioner vide an order dated 10.02.2011 authorized Joint Commissioner with the necessary powers vide which the appeal was filed. Being apposite, the said order is taken on record and marked as Annexure 'A' and is reproduced hereinbelow in entirety:

**OFFICE OF THE MUNICIPAL CORPORATION, GURGAON
ORDER**

In continuation of the orders issued vide order No. STENO/MCG/200/2916 dated 27.10.2008, 1, Sudhir Rajpal, IAS, Commissioner, Municipal Corporation, Gurgaon do hereby authorize and delegate powers conferred in me under section 401 (2) of the Haryana Municipal Corporation Act, 1994 to Joint Commissioners to sign verify and file writs, suits, claim, written statements, replications and other similar documents in various Courts pertaining to their respective zones on behalf of Municipal Corporation, Gurgaon.

-Sd/-

*Sudhir Rajpal, IAS
Commissioner,
Municipal Corporation.
Gurgaon*

Date: 10.02.2011

Endst. No. J.C(HQ)/MCG/2011/695-705

Dated:10.02.2011

A copy is forwarded to the following for information & necessary action please.

- 1. Joint Commissioner-I, II, III, IV & HQ M.C. Gurgaon*
- 2. Chief Engineer, M.C. Gurgaon*
- 3. Chief Town Planner, M.C Gurgaon*
- 4. Chief Accounts Officer M.C. Gurgaon*
- 5. Chief Medical Officer (H), M.C. Gurgaon*
- 6. District Attorney, M.C. Gurgaon*
- 7. Accounts Officer (Estt.), M.C. Gurgaon*
- 8. ADFO, Sector-29, M.C. Gurgaon*

*-Sd/
Joint Commissioner (HQ)
For Commissioner,
Municipal Corporation,
Gurgaon”*

17. Perusal of the above order leaves no manner of doubt that Joint Commissioner under delegation of powers was/is fully empowered to “sign, verify and file writs, suits, claim, written statement, replication, other similar documents”. Being so, the word claim read with other similar documents are necessarily to be read in conjunction with the claims from the consequences of the suit which stood decreed by learned trial Court *qua* which the necessary remedy is the first appeal. The claim, if any, of the Corporation would only have been adjudicated only by preferring an appeal against the judgment and decree of learned trial Court and, therefore, to indulge in hairsplitting, as is canvassed by learned counsel for respondent(s) that the word appeal is since amiss under the delegated powers, the same has rightly been dismissed by learned First Appellate Court would result in travesty of justice in negating the right of the Corporation to assert its claim by way of filing the first appeal. Trite law it is, in any case, to say that

appeal is continuation of the suit proceedings and any claim arising out of the suit necessarily is to be adjudicated by filing an appeal, as already observed hereinabove.

18. The judgment “*Punjab State Coop. Bank Ltd. Vs. Milkha Singh and another*” reported in *1996(3) The Punjab Law Reporter 190* relied upon by learned counsel for respondent(s), does not really advance their cause. Perusal of the same reflects that the Bank therein was authorized to file suit/appeal only upon being authorized by the Body Corporate of Bank i.e. Board of Directors who could have authorized the Managing Director to do the needful. Present is a case where it is nobody’s case that the Commissioner/Joint Commissioner was not competent to do the needful as admittedly he is vested with the said power under the statutory provisions already noted hereinabove.

19. Coming now to the second aspect, the fallacy of approach of learned first Appellate Court is already obvious in view of the discussion noted hereinabove which shows that the Corporation was not required to have any authorization from the Body Corporate constituted by all the counsellors in view of the statutory provisions. Therefore, the learned First Appellate Court took a completely erroneous view of the law while dismissing the appeal by observing that in the absence of authorization by the Counsellor, appellant was not competent to file the appeal.

20. That apart, it has been pointed out by learned counsel for appellant that learned First Appellate Court remained completely oblivious to the fact that reliance on the judgment in case of “*Garib Chand Vs. Municipal Committee, Budhlada*”, reported in *(1979) 81 PLR 527* was completely misplaced as the same stood overruled by a subsequent

judgment in case “*Municipal Committee, Bhatinda Vs. Sadhu Singh*”, reported in *1986 AIR (Punjab and Haryana) 294* rendered by a Division Bench of this Court.

21. Being so, I am of the view that learned First appellate Court ought to have been careful while relying on the aforesaid overruled judgment.

22. In the premise, the substantial questions of law are answered in favour of appellant.

23. As an upshot of discussion hereinabove, impugned order of learned First Appellate Court is hereby set aside. Appeal is remanded back for adjudication afresh on merits. Parties to appear before learned First Appellate Court on 11.04.2023.

24. Trial Court Records be also remitted.

(ARUN MONGA)
JUDGE

03.03.2023
vandana/mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No