



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No.2589 of 1995

Date of Decision : 20.05.2024

Kul Bhushan (Died) through his LRs

....Appellants

VERSUS

State of Haryana and Another

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Surinder Mohan Sharma, Advocate for the appellant.

Mr. Saurabh Girdhar, AAG Haryana.

ALKA SARIN, J. (Oral)

1. The present appeal has been preferred by the plaintiff-appellant challenging the judgments and decrees dated 28.02.1995 passed by the Trial Court and 13.10.1995 passed by the First Appellate Court.

2. The brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for permanent injunction for restraining the defendant-respondents from implementing the notice No.26 dated 03.01.1992 issued under Section 12(2) of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (hereinafter referred to as the 'Act of 1963'). It was the case set up by the plaintiff-appellant that he was owner in possession of the house bearing Municipal No.907-A, Ward No.9, Dhand Road, Kurukshetra, Tehsil Thanesar, District Kurukshetra. It was averred in the plaint that the plot was purchased by the plaintiff-appellant from Baldev Raj son of Maya Dass for a sum of Rs.20,760/- vide



sale deed dated 16.01.1990 registered on 17.01.1990. The house was constructed after seeking permission for sanction of the site plan and paying development charges. It was further the case set up that the Municipal Committee neither accepted nor rejected the site plan within the stipulated period and hence it was deemed to have been sanctioned. Thereafter, the plaintiff-appellant raised construction after the statutory period as provided under Section 205 of the Haryana Municipal Act, 1973. Subsequently, Municipal Tax was also imposed. It was further the stand taken that the area fell within the Municipal Committee and earlier also a notice had been issued under Section 12(2) of the Act of 1963. It was further the ground taken that there are other similar houses which have been constructed in the vicinity. It was further the case set up that the provisions of the Haryana Municipal Act, 1973 would be applicable and not the provisions of the Punjab Scheduled Roads and Controlled Areas Restrictions of Unregulated Development Act, 1963. The suit was contested by the defendant-respondents who also raised the objection regarding the jurisdiction. On merits, they admitted the ownership and possession of the plaintiff-appellant, however, the stand taken was that the site in question was declared as a controlled area under Section 4 of the Act of 1963 and hence the construction was unauthorized.

3. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the proposed site plan for raising construction over the plot in dispute should be deemed to have been passed by the Municipal Committee, Thanesar as the same was neither accepted nor rejected



by the Municipal Committee, Thanesar within 60 days from its submission and the construction raised over the plot in dispute was validly raised ? OPP

2. Whether the impugned notice issued by defendant No.2 dated 27.07.1991 is illegal, null and void and not binding on the rights of the plaintiff as the land in dispute does not fall in the controlled area ? OPP

3. Whether Civil Court has no jurisdiction to decide this case ? OPD

4. Whether suit is bad for non-joinder of necessary parties ? OPD

5. Whether the suit is not maintainable in the present form ? OPD

6. Relief.

4. The Trial Court dismissed the suit vide judgment and decree dated 28.02.1995. Aggrieved by the same an appeal was preferred by the plaintiff-appellant which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 13.10.1995. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff-appellant would contend that the Full Bench of this Court vide order dated 12.12.2007 passed in **CWP No.8011 of 1999 [M/s Shiva Ice Factory vs. State of Haryana & Ors.]** held that once the property in question falls within the municipal limits the provisions of the Punjab Scheduled Roads and Controlled Areas Restrictions of Unregulated Development Act, 1963 would not be applicable.



6. On the previous date, learned State counsel had pointed out that Civil Appeal No.4117 of 2013 titled 'State of Haryana vs. Shiva Ice Factory through its Proprietor (dead) through LRs' was pending before the Hon'ble Supreme Court and hence the matter was adjourned to await the decision of the Hon'ble Supreme Court. It has now been informed that vide order dated 18.01.2024 the said appeal stands dismissed.

7. In view of the above, the point in question being settled by the Full Bench of this Court in CWP-8011-1999, it cannot be held that the provisions of the Punjab Scheduled Roads and Controlled Areas Restrictions of Unregulated Development Act, 1963 would be applicable as admittedly the property falls within the municipal limits. Consequently, the judgments and decrees passed by both the Courts are set aside and the suit of the plaintiff-appellant stands decreed.

8. As per the law laid down by a Constitution Bench of the Hon'ble Supreme Court in the case of **Pankajakshi (dead) through LR's & Ors. vs. Chandrika & Ors. [2016 (6) SCC 157]** there is no requirement for framing of substantial questions of law.

9. Disposed off in the above terms. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

20.05.2024
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO