

EXOTICA CONDOMINIUM OWNERS ASSOCIATION

Versus

....Respondents

**THE DISTRICT TOWN PLANNER (ENFORCEMENT),
GURUGRAM**

Versus

....Respondents

Present: Mr. Roopnash Purohit, Advocate with
Mr. Karanvir Hooda, Advocate
for the petitioner (through Video conferencing).

Mr. Akshay Bhan, Sr. Advocate with
Mr. Santosh Sharma, Advocate
Mr. Gurmandeep S. Sullar, Advocate and
Ms. Devika Anand Sullar, Advocate
for respondent No.1.

Mr. Baldev Raj Mahajan, Sr. Advocate with
Mr. Vishal Garg, Advocate
for respondent No. 3-M.C., Gurugram and
for the petitioner in CR-1308-2021.

Mr. J.S. Pannu, AAG, Haryana.

ANIL KSHETARPAL, J (Oral):

1. Introduction & issue involved in the case:-

1.1 With the consent of the learned counsel representing the parties, two connected Civil Revision Petitions assailing a common order passed by the First Appellate Court while permitting a car showroom to be run in a group housing area (Residential) shall stand disposed of.

1.2. In these two cases, the basic issue which arises for consideration is “whether the Court by an interlocutory order should permit running of a car showroom in the well planned residential area for group housing society ?”

2. Brief facts of the case:-

2.1. The State of Haryana granted a licence to a residential group housing society to construct residential towers in the year 1996-97. In the aforesaid society, certain area was reserved for construction of convenience small shopping outlets for the day to day requirement of the residents. The respondent (plaintiff before the trial Court) purchased three commercial spaces, which were amalgamated and converted into an automobile showroom namely “Swede Auto”. The Residential Welfare Association namely Exotica Condominium Owner’s Association filed the complaint against running of such Automobile Showroom. The Officials from Director Town and Country Planning (hereinafter referred to as “DTCP”) inspected the site. It was found that a car showroom has been opened by amalgamating three shops and encroaching upon area designed as green. Furthermore, a boundary wall has also been constructed to restrict the approach of the residents. A show cause notice was issued on 08.03.2016, to the plaintiff by the DTCP. The Residential Welfare Association filed a

writ petition numbered as CWP-11507-2016, which was disposed of on 02.06.2016, directing State of Haryana and its officials to dispose of the show cause notice within the specified period. Ultimately, an order was passed by the Competent Authority on 10.12.2016, directing that the boundary wall be demolished and thoroughfare for Group Housing Society be restored. Thereafter, the plaintiff filed the first suit in the year 2017, in which it was asserted that the cause of action has accrued to the plaintiff as the officials of DTCP have started hindering its operation. In the aforesaid suit, the plaintiff sought decree for permanent injunction restraining the officials of the State Government from interfering in the operations of the plaintiff. In the aforesaid suit, no interim relief was granted to the plaintiff.

2.2 Residential Welfare Association also filed the another writ petition i.e. CWP-5839-2017, which is stated to be pending. In the meantime, the State Government and its officials have been issuing repeated notices to the plaintiff to stop its operation in the area which is reserved only for convenience shopping of the residents and not for opening car showrooms, however the respondents continued. Ultimately, on 20.02.2019, the premises was sealed by the authorities. The plaintiff filed the second suit for the grant of decree of declaration with a consequential relief of mandatory injunction. The trial Court dismissed the application for grant of temporary injunction, however, the First Appellate Court has issued mandatory injunction directing removal of seals and permitting the plaintiff to continue to run automobile showroom.

2.3 The correctness of the First Appellate Court's order is challenged before this Court.

3. Arguments adduced by the parties:-

3.1 This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook and relevant provisions of the Haryana Development and Regulation of Urban Areas Act 1975(hereinafter referred to as the “1975 Act”), Punjab, Scheduled Roads and Controlled Areas Restriction of Unregulated Developments Act 1963 (hereinafter referred to as the “1963 Act”), and Haryana Municipal Corporation Act, 1994.

3.2 Learned counsel representing the Residential Welfare Association while referring to the various notices issued by State of Haryana submits that automobile showroom is not permitted in the area in question. He submits that in fact, the plaintiff is indulging in forum shopping as the previous suit as well as second suit is pre-dominantly on the same cause of action.

3.3 Learned Senior Advocate representing respondent No.1 while appearing in CR-1308-2021, submits that the plaintiff is estopped from challenging jurisdiction of the DTCP because there is a specific stipulation in the conveyance deed executed in favour of plaintiff to the effect that the provisions of 1975 Act would govern the field. He further submits that the jurisdiction of 1975 Act, is applicable to all urban areas in State of Haryana including the areas falling within the municipal limits. Hence, the judgment passed by the Division Bench in “**Rajat Kuchhal and others Vs. State of Haryana and others 2012(11) R.C.R(Civil) 297**” is not applicable because in that case, the jurisdiction of the authority to issue notices with respect to the permission which were located within the municipal area in relation to 1963 Act, was involved which is not applicable in the present case.

3.4 Learned counsel representing the plaintiff while heavily relying upon the *Rajat Kuchhal's case (supra)* submits that DTCP and have jurisdiction to issue notice with respect to area falling within the municipal limits.

4. **Analysis and Discussion:-**

4.1 This Court has carefully read the judgment passed in *Rajat Kuchhal's case (supra)*. In that case the petitioners were served notice under Section 12(2) of 1963 Act. In Para-5 of the judgement, the Division Bench noted the point in issue to the effect that whether the authorities under the 1963 Act, are competent to initiate any proceedings against violation of conditions of licence with respect to premises which is located within the municipal limits. In this case, the notices have not been issued and the orders have not been passed under the 1963 Act. In fact the First Appellate Court has overlooked this material aspect while passing the impugned order. Before relying upon a judgment, it is the duty of the Court to carefully study the judgment and apply it after understanding the context in which the point in issue has been decided. The notice which was subject matter of challenge was issued under Section 10 of the 1963 Act, and not under the Section 1(2) and Section 2(O) of the 1975 Act. Hence, the judgment in case of 'Rajat Kuchhal' is not applicable.

4.2 Section 1(2) Section 2(O) of 1975, Act, are extracted as under :-

“Section 1(2):-

It shall apply to all urban areas in the State of Haryana.

Section 2(O):-

“Urban area” means any area of land within the limits of a municipal area or notified area of the Faridabad Complex or situate within five kilometres of

the limits thereof, or any other area where, in the opinion of the Government, there is a potential for building activities and the Government by means of a notification declares.”

4.3 It is evident that the Act shall apply to all urban areas in State of Haryana including the area which falls within the municipal limits.

4.4 Moreover, the First Appellate Court has failed to apply three well known tests for grant of injunction namely:-

(i) *Prima facie* case

(ii) Balance of convenience, and

(iii) Irreparable loss and injury which cannot be compensated at a later stage.

4.5 Significantly, number of residents are suffering in-convenience because a car showroom has been opened in violation of the master plan approved by the Department of Town Planning. The showroom has also been opened in violation of the terms of the grant of licence. It has also come on record that the plaintiff has increased the built up area from 339.60 squares meters to 663.136 squares metres which includes basement. The additional area was constructed by the plaintiff after issuance of occupancy certificate on 17.03.2011.

4.6 Additionally it is not in dispute that shopping area in residential house building column has been permitted only for convenience shopping which means availability of the articles which are of day to day use for the residents of the area. A full-fledged automobile showroom of luxury cars namely Volvo, cannot be permitted to be operate from the planned residential area. The First Appellate Court was expected to

examine the aforesaid issue in the correct perspective.

4.7 Moreover, it is evident that the plaintiff (respondent) has indulged in 'forum shopping'. The plaintiff is a respondent in a writ petition filed by the Residential Welfare Association for the same subject matter. The plaintiff has also filed a previous suit alleging that Government Officials have started interfering in his working. It has been alleged in the previous suit that Government Officials are requesting him to close the showroom but failed to get any interim order. The order directing the plaintiff to close the showroom was passed in December, 2016, whereas the first suit was filed in December, 2017. The subsequent notices are only in the continuation of the earlier notices of the orders. Hence the plaintiff did not get any fresh cause of action. So it is apparent that the plaintiff has indulged in forum shopping.

4.8 The First Appellate Court has also erred in issuing mandatory injunction at interim stage. In substance, the suit of the plaintiff has been allowed. Such order of interim mandatory injunction can be passed only when a very strong *prima facie* case is made in favour of plaintiff and the Court is almost certain that the plaintiff would succeed in the suit. In the facts and the circumstances of the present case, it was not appropriate for the First Appellate Court to grant relief of mandatory injunction.

4.9 On perusal of the judgment passed by the First Appellate Court, it is evident that the following four reasons have been recorded while accepting the appeal apart from issues discussed previously:-

- (i) The department has taken a self-contradictory defence.
- (ii) The impugned notice in the suit cannot be in continuation of the earlier notice issued in the year 2016.
- (iii) High Court has not given direction to seal the premises.
- (iv) MC has sealed the premises in a hurry. It should have waited for the order of the Court.

4.10 The First Appellate Court has strangely noted that the defence of the Town Planning Department is self-contradictory. The contradiction pointed by the First Appellate Court is that on one hand the matter is sub-judice before the High Court in CWP-5839-2017, whereas on the other hand, Department is not ready to wait for the decision of the High Court. In the opinion of this Court there is no contradiction. The writ petition is filed by Resident Welfare Association to seek direction for taking action against the plaintiff. Hence it was not necessary for the department to wait for the High Court direction. Similarly, the next reason given by the First Appellate Court is also erroneous because if misuse of the premises continues, the department is required to issue notices and hence there is no restriction in issuing notices in continuation of the previous notice.

4.11 The next reason assigned by the Court is offshoot of the previous reason. The department is not required to wait for the direction of the High Court to seal the premises particularly when misuse has not been stopped and the plaintiff has not been granted any injunction in the previous suit.

4.12 The last reason assigned by the First Appellate Court is again perverse. The Town Planning Department was not required to wait till an order on an application for injunction was passed particularly when in the previous suit no injunction was granted to the plaintiff. In absence of restraint order the department has to take action in accordance with the law. It would not be appropriate for the department to wait for the Court's decisions in every matter. If a particular step is required to be taken in the interest of public, in absence of restraint order there is no restriction on the department to proceed with the matter unless there is any interim order.

5. **Conclusion:-**

5.1 Consequently, both the revision petitions are allowed. The impugned order passed by the First Appellate Court on 05.07.2019 is set aside and that of the trial Court is restored.

5.2 It shall be open to the State Government to seal again the premises, which is stated to have been opened by the plaintiff pursuant to the orders passed by the First Appellate Court.

(ANIL KSHETARPAL)
JUDGE

20.04.2024
Monika

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| 1. Whether speaking/ reasoned | : | Yes /No |
| 2. Whether reportable | : | Yes /No |