

2024:PHHC:089481



107 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-9661-2018 (O&M)

Decided on:-17.07.2024

Om Parkash Saini

....Appellant..

vs.

Municipal Corporation, Hisar and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Ms.Garima Modi, Advocate for
Mr.Rose Gupta, Advocate,
for the appellant.

HARKESH MANUJA J. (Oral)

CM-18709-C-2018

Prayer in this application is for condonation of delay of 06 days
in re-filing the appeal.

Having heard learned counsel for the applicant-appellant and
gone through the contents of the application, sufficient cause has been made
out to condone the delay in refiling the appeal. Thus, the application is
allowed and delay of 06 days in refiling the appeal is condoned.

Main case

1. By way of present appeal, challenge has been laid to the
judgments and decrees dated 04.03.2014 and 06.03.2018 passed by the
Courts below, whereby suit for permanent injunction filed at the instance of
appellants-plaintiffs, seeking prohibitory injunction against respondent

No.1-defendant and restraining it from implementing the notices dated 02.07.2009 issued to them for demolishing the construction, came to be dismissed.

2. In the present case, on receipt of notices dated 02.07.2009 from the office of respondent No.1, the appellant-plaintiffs filed a suit for permanent injunction assailing the same while submitting that the land of the houses in question owned by the appellant-plaintiffs, situated in Chandu Lal Garden, Hisar, regarding which T.P. Scheme No.4-C (**hereinafter referred to as “T.P. Scheme”**) was prepared by the office of District Town Planner, Hisar, however, the same was never sanctioned or implemented and thus, there was no question of the house built-up by appellant-plaintiffs to be unauthorised or illegal in any manner and as such, impugned notices were liable to be set aside while restraining respondents from implementing those notices.

3. On the other hand, respondent No.1-defendant filed written statement while submitting that the suit land was situated in Chandu Lal Garden, Hisar, which formed part of the T.P. Scheme and the appellant-plaintiffs having encroached upon some land reserved for park, were rightly served with the notices dated 02.07.2009, directing them to remove the unauthorized construction and thus, the suit was liable to be dismissed.

4. In terms of the aforesaid pleadings, the following issues were framed:-

- “1. Whether the plaintiffs are entitled for relief of permanent injunction on the ground as alleged in the plaint? OPP*
- 2. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD*

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

4. *Relief.”*

5. The Trial Court vide its judgment and decree dated 04.03.2014, dismissed the suit filed at the instance of appellant-plaintiffs. Aggrieved thereof, first appeal was filed, which came to be dismissed vide judgment and decree dated 06.03.2018, passed by learned Additional District Judge, Hisar.

6. Impugning the aforementioned judgments and decrees passed by the Courts below, learned counsel for the appellant-plaintiffs while relying upon a resolution dated 31.12.2007 (Ex.P-1) passed by the Municipal Corporation, Hisar, submits that in terms thereof, the T.P. Scheme was declared to be cancelled and thus, notices dated 02.07.2009, served upon the appellant-plaintiffs calling upon him/them to demolish his/their house(s) for the reasons that those were constructed over the land kept reserved for park under the T.P. Scheme were totally illegal.

Learned counsel further submits that impugned notices dated 02.07.2009 were even otherwise barred by limitation period prescribed under Section 208 of the Haryana Municipal Act, 1973 (***for short, “1973 Act”***). She submits that any such notice was required to be served upon the owner/occupier of an unauthorized construction within a period of six months from the completion of construction of the building whereas the constructions raised by the appellant/plaintiffs were 25 years old and thus, prayed for setting aside of the judgments and decrees passed by the Courts below. No other argument was addressed.

7. I have heard learned counsel for the appellant and gone through

the record. I am unable to find substance in the submissions made on behalf of the appellant-plaintiffs.

8. In the present case, from the evidence available on record, it can be discerned that the resolution dated 31.12.2007 (Ex.P-1) passed by the Municipal Corporation whereby the T.P. Scheme was cancelled, was stayed by the Commissioner, Municipal Corporation, Hisar vide its order dated 19.04.2010, which forms part of the evidence available on record as Ex.DA. Furthermore, this Court in its decision dated 09.03.2006 passed in RSA-3768-2003, titled as ***“Kuldeep Singh Vs. Municipal Corporation”*** (Ex.D12) went on to record that the T.P. Scheme in question was implemented and the development of the Colony was carried out in terms thereof. In such circumstances, no illegality can be found with the concurrent findings of fact recorded by the Courts below as regards, the T.P. Scheme having been implemented and enforced, thus, the impugned notices dated 02.07.2009 issued by respondent No.1-defendant upon appellant-plaintiffs cannot be termed to be illegal on this account.

9. Still further, in the humble opinion of this Court, no merit can be found in the submissions made on behalf of the appellant-plaintiffs as regards impugned notices dated 02.07.2009, being in violation of Section 208 of 1973 Act, the same been allegedly issued without any details as to whether these were served within 06 months of the unauthorized construction especially, when no sketch or site plan so as to establish the date or period of construction raised over the land in question was proved on record by the appellant-plaintiffs.

In the present case, appellant being one of the plaintiffs having raised the plea of impugned notices being hit by Section 208 of 1973 Act,

were to stand on their own legs, rather than, depending upon the weaknesses of the respondents/defendant and were thus, at the first instance required to *prima facie* discharge his/their burden to prove and establish on record that the construction raised at his/their instance was much prior to the 06 months period from the date of issuance of impugned notices to him/them. No credible documentary evidence to prove the same was produced on record by the appellant-plaintiffs and thus, the onus never shifted upon the respondents-defendants in this regard. In such circumstances, on this account as well finding no illegality or perversity in the concurrent findings recorded by the Courts below, there being no misreading/misinterpreted of the pleadings or the evidence available on record, the present appeal being devoid of merits is thus, dismissed.

10. Pending application(s), if any, also stand(s) disposed of.

17.07.2024

sonika

(HARKESH MANUJA)
JUDGE

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