2023:HHC:7993

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No.418 of 2025
Reserved on: 17.04.2026
Decided on: 27.04.2026

M/s Kahan Chand and sons Agencies Pvt. Ltd. ….Petitioner

Versus

Ravi Chand Sood & others ...Respondent

Coram
Hon'ble Mr. Justice Romesh Verma, Judge
Whether approved for reporting?

For the petitioner:	Mr. R.K. Bawa, Senior Advocate with Mr.Abhinav Thakur, Advocate.
For the respondents:	Mr. Bhupender Gupta, Senior Advocate with Ms. Seema Sood, Advocate, for defendants No.1 to 3.
	Mr. Anil Chauhan, Advocate, for respondent No.4.
	Mr. Tejasvi Dogra, Advocate, for respondent No.5.
	None for respondent No.6.

Romesh Verma, Judge

The present petition arises out of the order, as passed by learned Additional District Judge (I), Shimla, H.P., dated 30.11.2022, whereby the appeal preferred by the present respondents/defendants has been allowed and the order as passed by learned Civil Judge, Court No.8, District Shimla, H.P.

dated 23.07.2022 has been set aside, whereby the application filed by the plaintiffs under Order 39 Rules 1 and 2 of CPC was allowed.

2. Brief facts of the case are that the present petitioner/plaintiff filed a suit for permanent prohibitory injunction and mandatory injunction in the Court of learned Civil Judge, Court No.8, District Shimla, H.P. on 27.08.2019. It was stated in the plaint that the plaintiff is the tenant under M/s Puran Chand Ramesh Chand since 1952. The terms of tenancy were renewed w.e.f. 01.01.1997 vide agreement dated 10.03.1999 and the rent was increased exorbitantly by the landlords/respondents 1 to 3. The petitioner/plaintiff has been in peaceful possession of the property since the creation of tenancy. The building known as 114/2 Lower Bazaar, Shimla, is four-story structure under the occupation of other tenants. The plaintiff is occupying the third floor and the uppermost floor. In January 2016, partial portion of the building was damaged, but was immediately restored by the tenants and rest portion of the building i.e. 114/2 Lower Bazaar Shimla was not damaged. Defendants No.4 to 6, in order to harass and dispossess the plaintiff and other tenants, filed a false and frivolous civil suit in the Court of learned Civil Judge (Senior Division), Court No.2, which was later on transferred to the Court of learned Civil Judge(Senior Division), Court No.1, Shimla. The

plaintiff was granted a specific right by the landlord to carry out the repairs in the premises under his occupation. The restoration of the damaged portion did not attract the prior sanction of the Municipal Corporation, Shimla. The sole intention of defendants No.4 to 6 was to dispossess the plaintiff and other tenants without adopting due process of law.

3. The plaintiff had contested the above mentioned civil suit by filing a detailed reply. However, the said suit was dismissed in default for non-appearance of defendants No.4 to 6. Defendants No.4 to 6 in order to dispossess the plaintiff from the suit property i.e. from building No.114/2 Lower Bazaar, Shimla, in collusion with defendant No.1 got issued a notice dated 26.03.2018 under the provisions of Section 258(2) of Himachal Pradesh Municipal Corporation Act, 1994 (for short, “the Act”). The said notice was duly replied by the plaintiff as the said notice was apparently wrong, false and illegal. It was sated that the notice under Sections 258(2) of the Act issued by defendant No.1 to the plaintiff and other tenants is wrong and illegal and the same has been issued in collusion with defendants No.4 and 6. Therefore, the plaintiff filed a suit for declaration that the notices dated 26.03.2018 and 03.08.2019 issued by defendant No.1 under Sections 258(2) and 258(5) of the Act, are wrong, illegal, malafide and not binding on the rights of the plaintiff. Further it

was prayed that the defendants be restrained, by way of decree of permanent prohibitory injunction, from implementing/executing notices dated 26.03.2018 and 03.08.2019 issued by defendant No.1 without adoption of due process of law. Further, it was prayed that the decree for mandatory injunction be passed against the defendants in case the defendants, during the pendency of the suit, succeed in implementing the notices dated 26.03.2018 and 03.08.2019 by restoring the basic amenities from the suit property.

4. Along with the suit, an application under Order 39 Rules 1 and 2 read with Section 151 CPC for grant of interim injunction was filed by the plaintiff against the defendants. In the application, it was prayed that the non-applicant/defendants may be restrained from implementing the notices dated 26.03.2018 and 03.08.2019 issued by defendant No.1, whereby directing the plaintiff to vacate the building 114/2 Lower Bazar, Shimla and further directing defendants No.2 and 3 to withdraw the basic amenities of the plaintiff till the final disposal of the suit.

5. The defendants contested the suit by filing separate written statements. The Municipal Corporation i.e. defendant No.1 filed an exhaustive reply, raising various preliminary objections with regard to maintainability, estoppel valuation etc. It was stated in the written statement that the suit of the plaintiff is bad for non

issuance of mandatory notice under Section 392 of the Act. Therefore, the present suit needs to be dismissed on this sole ground. On merits, it was averred that notices under Section 258(2) and 383 of the Act have been issued as per the provisions of the Act and as per report of the Inter Departmental Committee constituted for the purpose. It was denied that the notices were issued in connivance with defendants No.4 to 6. It was stated that the Municipal Corporation is performing its statutory duties and in the discharge of the same, the said notices have been issued against the plaintiff. The decision has been taken in view of the safety of the residents and the general public of the area. The Inter Departmental Committee constituted by the Commissioner vide office order dated 28.01.2015 visited the spot and found that the building in question is in dilapidated condition and unsafe for human habitation. Notice dated 26.03.2018 under Section 258(2) and 383 of the Act was issued as per the provisions of the Act and as well as on the basis of the report of Inter Departmental Committee constituted for the purpose. The defendants have followed the procedure as envisaged under the Act. Since, the building in question is in a dilapidated condition and not fit for human habitation, the notice under Sections 258 and 383 of the Act was rightly issued against the plaintiff, whereby the owner and the occupiers have been directed to remove/demolish/vacate the

premises, but the premises/building in question cannot be removed or demolished without vacation of the occupants. It was denied that the building in question is habitable and that there is no chance of its falling. It was stated that the building is in old and dilapidated condition and it has outlived its life and is not fit for human habitation.

6. Defendant No.4 filed a separate written statement by raising preliminary objections with regard to maintainability, alternative remedy, cause of action etc. On merits, it was stated that defendant No.1, pursuant to the falling of stones and debris from the rear and side walls of shop No.114/2, Lower Bazar, Shimla and on the several complaints of the media, the neighbours, pedestrians using Sabzi Mandi main street, took cognizance under Section 258(2) of the Act. Thereafter, based on the inquiry conducted by the Committee, it formed the opinion that the building is in dilapidated condition and has outlived its utility. The allegation regarding the fact that the Municipal Corporation is in league with the owners of the suit property was specifically denied. All the averments as made in the plaint were denied in toto, and the defendants sought the dismissal of the plaint as filed by the plaintiff.

7. Defendants No.5 and 6 have filed separate written statement taking therein same and similar grounds, as were taken by defendant No.4 in his written statement.

8. Defendant No.4 filed reply to the application under Order 39 Rules 1 and 2 CPC and sought dismissal of the application. It was averred that the notices dated 26.03.2018 and 03.08.2019 have been issued by the statutory authority invoking the provisions of the Act and there is no illegality or infirmity in the same. Therefore, the jurisdiction of the Civil Court is barred and the suit as filed is not maintainable in its present form.

9. Learned Civil Judge (Senior Division), Court No.8, Shimla vide its order dated 23.07.2022, allowed the application filed by the plaintiff under Order 39 Rules 1 and 2 CPC and the defendants/present respondents were restrained from executing the notice dated 26.03.2018 without adopting the due process of law and also restrained from disconnecting/withdrawing the basic amenities i.e. electricity and water supply connection to suit property till final disposal of main suit.

10. Feeling dissatisfied, the defendants/respondents filed an appeal under Order 43 Rule 1(r) of CPC against the order dated 23.07.2022, as passed by learned trial Court. Learned First appellate Court vide its judgment dated 30.11.2022 accepted the appeal as preferred by the defendants/respondents and the

application as filed by the plaintiff/petitioner was ordered to be dismissed.

11. Feeling aggrieved by the impugned judgment, as passed by learned first appellate Court the plaintiff has approached this Court by way of present petition.

12. It is contended by Mr. R.K. Bawa, learned Senior Counsel, duly assisted by Mr. Abhinav Thakur, Advocate, for the plaintiff/petitioner that the impugned judgment, as passed by learned first appellate Court, is erroneous in the eyes of law. He has submitted that the findings as returned by the learned trial Court ought not to have been disturbed and the impugned judgment is not based on material placed on record by the respective parties. He has prayed for the acceptance of the present petition and after setting aside the judgment passed by learned first appellate Court seeks restoration of the order as passed by learned trial Court.

13. On the other hand, Mr. Bhupender Gupta, learned Senior Counsel, duly assisted by Ms. Seema Sood, Advocate, has defended the impugned judgment as passed by learned first appellate Court and he has submitted that while invoking the jurisdiction under Article of 227 of Constitution of India, this Court has got very limited jurisdiction to interfere with the impugned judgment. He has submitted that the learned first appellate Court

has rightly appreciated the point in controversy and dismissed the application of the plaintiff/petitioner in view of bar as contained in the Act with respect to the maintainability of the suit in hand.

14. Mr. Anil Chauhan and Mr Tejasvi Dogra, learned counsel for the Municipal Corporation and SJPNL have submitted that on the basis of Inter Departmental Committee, constituted by the Municipal Commissioner, the notices issued to the present petitioner which are strictly in consonance with the provisions of the Act.

15. I have heard learned counsel for the parties and have also gone through the record carefully.

16. The Hon'ble Apex Court in ***Garment Craft vs. Prakash Chand Goel, (2022) 4 SCC 181***, has laid the parameters and the scope of interference in a petition under Article 227 of the Constitution of India in paras 15 and 16, which read as follows:

> *"15. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is*

not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice

16. Explaining the scope of jurisdiction under Article 227, this Court in Estralla Rubber v. Dass Estate (P) Ltd.[2] has observed:—

"6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court

> *does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to."*

17. In the present case, the plaintiff has filed a Civil Suit for declaration, permanent prohibitory injunction and mandatory injunction to restrain the defendants/Municipal Corporation from implementing the notices dated 26.03.2018 and 03.08.2019. The Municipal Commissioner vide notice dated 26.03.2018 has come to the conclusion that the building in question is four-story structure, consisting of stone masonry and bricks walls with CGI sheet, roofing on top and the structure is supported by channel section from the Sabzi Mandi side and some repair work carried out was evident. The wooden members supporting the structure are in rotten condition and outlived. The cracks appearing/developed in the walls, were observed visually. This building, in question, is outlived its life and unsafe for human habitation. The Commissioner has directed the owner and tenants to remove the structure, failing which the Municipal Corporation

shall act in accordance with the provisions of Sections 258(2) and 383 of the Act. When the said compliance was not done by the owner and the tenants, the Commissioner, Municipal Corporation, Shimla vide its notice dated 03.08.2019 wrote a letter to the Managing Director, SJPNL, U.S. Club, Shimla and Senior Executive Engineer, City Electrical Division, Near Lift, Shimla to withdraw the civic amenities i.e. water and electricity connection at the earliest to avoid any untoward incident.

18. It is contended by learned Senior Counsel for the petitioner that the plaintiff filed a suit for declaration and mandatory injunction on account of the fact that the procedure as prescribed under the Act has not been followed. However, it has been admitted by learned senior counsel and it is also the part of the pleadings that the petitioner has filed a reply to the notices issued by the Municipal Corporation. The reply is the part of the record at page 75 of the paper book. Therefore, it cannot be presumed or assumed that the present petitioner was condemned unheard or no opportunity of hearing was given to him. The statutory authority i.e. defendant No.1 while discharging its duties issued notice on 26.03.2018 and subsequently passed an order for withdrawing the civic amenities of water and electricity connection from the suit premises.

19. It has been argued and pleaded by the Municipal Corporation that the building in question is in dilapidated condition and not fit for human habitation. Therefore, the impugned notices issued under Sections 258 and 383 of the Act were issued against the plaintiff and defendants No.4 and 6. It has been pleaded that the decision was taken keeping in view the safety of the residents and the general public of the area. Municipal Corporation has stated that Inter Departmental Committee was constituted by the Commissioner vide its office order dated 28.01.2015. Pursuant to that order, the Committee visited the spot and found the building to be in a dilapidated condition and unsafe for human habitation. It is only pursuant to the said visit, notices were issued to the plaintiff.

20. Learned senior counsel for the respondents has rightly pointed out that on account of dilapidated condition of the suit premises, it is the owner of the premises who would be under great difficulty. On the basis of media cutting in 2011, as pointed out by learned counsel for the Municipal Corporation, it was found that the stones were falling and debris from the rear and side walls of the shop got damaged. Various complaints were made by the pedestrians, neighbours and the media personnel. As admitted by both the parties, the suit property is situated in the heart of Shimla at Lower Bazar. Therefore, it will be very

dangerous to the general public in case the Municipal Corporation had not taken any action in the matter by issuance of the notice.

21. It is argued by learned Senior Counsel for the petitioner that, after the passing of the order by learned trial Court whereby the application under Order 39 Rules 1 and 2 was allowed, the Municipal Corporation, Shimla, did not file any appeal and it is the owner of the premises, who had preferred the appeal before the learned first appellate Court, which was not maintainable. He submits that since the aggrieved party was the Municipal Corporation, therefore, the appeal filed by the owner was not maintainable.

22. In response to this submission, it is contended by learned senior counsel for the respondents that the premises have become dilapidated and outlived its utility and are unfit for human habitation. In case any untoward incident occurs on the spot, it is the owner, who shall be held responsible for the same. Therefore, it is the owner who is the affected party after the passing of the order passed by learned trial Court.

23. The contention as raised by learned senior counsel for the respondents is legally sustainable as the authority after issuing the notices will be least concerned for the enforcement of the said order and it is only the owner who shall be held

responsible in case of any untoward incident happens on the spot.

24. Learned senior counsel for the respondents has taken this Court to the provisions of Section 392 of the Himachal Pradesh Municipal Corporation Act, 1994, which read as follows:

> *"392. Notice to be given of suits.- (1) No suit shall be instituted against the Corporation or against the Commissioner or against any Corporation officer or other Corporation employee or against any person acting under the order or direction of the Corporation or the Commissioner or any Corporation Officer or other Corporation employee, in respect of any act done, or purporting to have been done, in pursuance of this Act or any rule, regulation or bye-law made thereunder, until the expiration of two months after notice in writing has been left at the Corporation office and, in the case of such employee or person unless notice in writing has also been delivered to him or left at his office or place of residence, and unless such notice states explicitly the cause of action, the nature of the relief sought, the amount of compensation claimed and the name and place of residence of intending plaintiff, and unless the plaint contains a statement that such notice has been so left or delivered.*
>
> *(2) No suit, such as is described in sub section (1) shall, unless it is a suit for the recovery of immovable property or for a declaration of title thereto be instituted after the expiry of six months from the date on which the cause of action arises.*

> *(3) Nothing in sub-section (1) shall be deemed to apply to a suit in which the only relief claimed is an injunction of which the object would be defeated by giving of the notice or the postponement of the institution of the suit."*

25. The provisions of Section 392 of the Act clearly mandates that no suit shall be instituted against the Corporation or against the Commissioner or against any officer or other Corporation employee or against any person acting under the order or direction of the Corporation or the Commissioner or any Corporation Officer or other Corporation employee, in respect of any act done, or purporting to have been done, in pursuance of the Act or any rule, regulation or bye-law, until the expiration of two months after notice in writing has been left at the Corporation office and, in the case of such employee or person unless notice in writing has also been delivered to him or left at his office or place of residence.

26. Admittedly, in the present case no notice has been issued by the plaintiff. As rightly pointed by the learned senior counsel for the respondents in the absence of issuance of notice, the suit becomes bad for non-compliance of the mandatory notice, as envisaged under Section 392 of the Act.

27. To the similar extent, learned senior counsel has taken this Court to the provisions of Section 41 of the Specific Relief Act. He has pointed out that by means of the application under Order 39 Rules 1 and 2 of CPC, the statutory authority cannot be prohibited to perform and discharge its functions in accordance with the Act. The plaintiff cannot be permitted to prohibit the statutory to discharge its functions in accordance with law as envisaged under the Act. Learned first appellate Court has rightly come to the conclusion that Section 41 of the Specific Relief Act creates bar to claim such relief against the authority.

28. In order to obtain an injunction, the plaintiff has to pass the triplicate test of a *prima-facie* case, balance of convenience and irreparable loss. As discussed above, the Municipal Corporation, defendant No.1, constituted a Committee vide office order dated 28.01.2015 to visit the spot and to ascertain and verify the status of the building. The committee found the suit property to be in a dilapidated condition and unsafe for human habitation. Therefore, based on the report of the Committee, the notices were issued by the Municipal Corporation. Consequently, it cannot be said that the plaintiff has got *prima-facie* case in his favour. Rather, it is defendants/respondents who have got *prima-facie* case in their favour. The balance of convenience also lies in favour of the defendants. Irreparable loss

shall be of the defendants in case the statutory authority is restrained from performing its duties. On the basis of the report which was submitted by the Committee, the Municipal Corporation has issued notices for the removal of the structure which has become unfit and unsafe for human habitation. In case the said action on the part of the Corporation is restrained, in that event there can be loss to the life and the property, as the property is situated in the heart of the town. Therefore, it is the defendants who shall suffer irreparable loss in case the authority is restrained from discharging its functions.

29. One more important aspect of the matter in the present case is that the notice dated 26.03.2018 was issued to the owner and four different tenants, including the present petitioner. However, it is only the plaintiff/petitioner who has filed the civil suit. As far as the other three tenants are concerned they have chosen not to file any suit against the Municipal Corporation and the owners.

30. The contention of the learned senior counsel for the petitioner that the proceedings have been initiated at the behest of the owner to dispossess the tenants from the suit premises does not hold good. The petitioner has failed to plead and prove that it is on the asking or at the behest of the owners that the Municipal Corporation has issued the notices to the petitioners.

Such allegation has been vehemently and specifically refuted by the Municipal Corporation and it has stated in its reply that on the basis of the report of the Committee, the said action has been taken by it. Even otherwise, the independent expert committee formed by the Municipal Corporation carries weight, and the said report of the Committee cannot be brushed aside lightly.

31. The present petitioner has filed reply to the notices, which were issued to him, which *prima-facie* shows that he was duly heard and an opportunity was given to him to place on record his case. Therefore, the submission of learned senior counsel for the petitioner that the procedure in the case has not been followed does not good hold. It has been pointed out by learned senior counsel for the petitioner that the observation/finding by the learned first appellate Court that the petition filed by the owner under Section 378 of the Act is still pending before the learned Additional District Judge is contrary to the record. Since the impugned judgment was passed by learned first appellate Court on 30.11.2022, whereas the said proceedings stand dismissed by the learned Additional District Judge (II), Shimla on 23.05.2022, therefore, findings to this effect require interference by this Court. Record reveals that the proceedings under Section 378 of the Act stand decided on 23.05.2022 i.e. prior to the passing of the impugned judgment. Therefore, the

said observations/findings by learned first appellate Court requires interference. Consequently, the said findings in para-30 of the impugned judgment are set aside.

32. In view of the observations made hereinabove, this Court is of the opinion that the learned first appellate Court has not committed any jurisdictional error by passing the impugned order. Therefore, the same is legally sustainable and requires to be upheld. Ordered accordingly.

33. Consequently, the present petition being devoid of any merit deserves to be dismissed and the same is accordingly dismissed along with pending application(s), if any.

(Romesh Verma)
Judge

27th April, 2026
(vt)