

(1998) 01 SHI CK 0004

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 440 of 1990

Miss Ashima Narula and Others

APPELLANT

Vs

The Municipal Corporation

RESPONDENT

Date of Decision : 09-01-1998

Acts Referred:

Municipal Corporation Act, 1979 — Section 173, 262
Specific Relief Act, 1963 — Section 38(1)

Citation : (1999) 2 CivCC 60 : (1998) 3 RCR(Civil) 524 : (1998) 1 ShimLC 484

Hon'ble Judges : Kamlesh Sharma, J

Bench : Single Bench

Advocate : Bhupender Gupta, for the Appellant; K.L. Bali, for the Respondent

Final Decision : Dismissed

Judgement

Kamlesh Sharma, J.—This appeal is directed against the decree and judgment dated 27.10.1990 passed by the District Judge, Shimla, whereby the appeal of the original Appellant-Plaintiff Sunder Lai Narula was dismissed and the decree and judgment dated 28.11.1988 of Sub Judge (IV) Shimla, was confirmed. The Sub Judge had dismissed the suit of Sunder Lai Narula which he had filed for permanent, perpetual and prohibitory injunction for restraining the Respondent-Defendant Corporation from demolishing the stall or in any manner interfering with his possession thereof situate opposite the Rivoli Theatre, Shimla. Sunder Lai Narula has died during the pendency of the present appeal and his legal representatives have been brought on record.

2. The brief facts of the case are that late Sunder Lai Narula claimed that a piece of land situate opposite Rivoli Theatre, Shimla was allotted to him by the Respondent-Municipal Corporation and information in this regard was sent by the Tehsildar, Municipal Corporation, Shimla, vide his letter No. 2/6475/Secy/81 dated 1.1.1982, Ex. P.W-1/A, pursuant to which he had deposited an amount of Rs. 600/- as lease money for the period 1.1.1982 to 31.12.1982, Mark X. Thereafter, on the representation of Himachal Pradesh State Electricity Board

that the said piece of land belonged to them, late Sunder Lai Narula got it allotted in his favour on a monthly rent of Rs. 121.65 for a period of two years, that is, from 1.10.1982 to 30.9.1984 vide Office Order dated 22.10.1982, Ex. P.W- 8/B and also entered into an agreement dated 27.10.1982, Ex. P.W-3/A. Accordingly, he had paid rent to the H.P. State Electricity Board for the period from December, 1982 to March, 1983 against receipts Ex. P.W-3/C to Ex. P.W-3/E. Further case of late Sunder Lai Narula was that on 16.12.1982 he had submitted a plan for seeking sanction from the Respondent Corporation for construction of a stall which was neither sanctioned nor refused. Therefore, after the expiry of the stipulated time as required u/s 262 of the Municipal Corporation Act, 1979 (hereinafter referred to as "the Act"), considering his plan deemed to have been sanctioned, late Sunder Lai Narula raised construction of a stall which was completed on 28.2.1983 and started carrying on his business.

3. In the year 1987 in the face of threats received from the authorities of the Respondent Corporation to demolish his stall, late Sunder Lai Narula filed Civil suit and obtained stay order from the Court of Sub Judge (2) Shimla, but ultimately withdrew his suit with permission to file a fresh suit on the same cause of action. Thereafter on 21.3.1987, he again received threats of demolition from the authorities of the Respondent-Corporation which forced him to file the suit out of which the present appeal has arisen.

4. The Respondent-Corporation resisted the suit on preliminary objections, inter alia, that it was not maintainable in view of the previous suit and also that the piece of land in question was never allotted to late Sunder Lai Narula, hence part of the unauthorized structure raised by him was demolished with the assistance of Police on 21.3.1987 and the rest of it was not demolished on the assurance given by him that he would do it himself but on 23.3.1987 he obtained stay order by initiating the present litigation. On merits, it is vehemently denied that any lease was granted in favour of late Sunder Lai Narula or that lease deed was executed between him and the Commissioner of the Respondent Corporation, who is the competent authority to enter into a contract on its behalf. However, the deposit of the lease money was admitted. The further case of the Respondent-Corporation was that the piece of land in question was earlier in possession of the H.P. State Electricity Board, who used to keep its diesel tanks on it, therefore, it had approached the Respondent-Corporation not to grant it on lease. Further the transaction between late Sunder Lai Narula and the H.P. State Electricity Board was denied on the ground that the H.P. State Electricity Board had no authority to grant lease of the piece of land in question. It is admitted that late Sunder Lai Narula had submitted a plan but since he was not authorized to make construction on the piece of land in question, there was no occasion to give sanction to him.

5. By filing a replication, the averments made in the plaint were reiterated and the contrary stated in the written statement was denied.

6. On the pleadings of the parties, the following issues were framed:

1. Whether the Plaintiff is entitled to permanent, perpetual and prohibitory injunction against the Defendant? OPP

2. Whether there was no binding contract between the parties? OPD

3. Whether the plaint lacks material particulars pertaining to the suit property? OPD

4. Relief.

7. Holding the construction of the Stall as unauthorized on the ground that there was no deemed sanction thereof in favour of late Sunder Lai Narula, as he was not authorized to apply for sanction of building plan u/s 262 of the Act, read with the relevant bye-laws, as he was not the owner of the piece of land in question, the first issue was decided against late Sunder Lai Narula. So far, Issue No. 2 is concerned, it was decided against the Respondent Corporation holding that the document Ex. P.W-1/A though a communication from the Tehsildar of the Respondent-Corporation, yet, on the basis thereof it could be presumed that the competent authority had granted lease in favour of late Sunder Lai Narula. Issue No. 3 was also decided against the Respondent Corporation as it failed to substantiate it. However, in the result, the suit failed.

8. In the appeal filed by the Sunder Lai Narula, the District Judge, reversed the findings of the trial Court on Issue No. 2 and held that there is nothing on the record to show that the Commissioner, who is the competent authority u/s 173 of the Act, had ever granted lease of the piece of land in question in favour of late Sunder Lai Narula and affirmed the findings on Issue No. 1 by holding that he had no authority to apply for the sanction of construction of stall on the piece of land in question. Hence the present appeal.

9. This Court has heard the learned Counsel for the parties and gone through the record. The learned Counsel appearing for the Appellant has urged that in fact, it was the Commissioner of the Respondent-Corporation who had sanctioned lease in favour of late Sunder Lai Narula and the Tehsildar had given information thereof vide his letter Ex. P.W-1/A, as such, the District Judge was not right in reversing the findings of the trial Court. This Court does not find any substance in this submission as there is nothing on the record to show that the Commissioner, who is the competent authority u/s 173 of the Act to enter into a contract on behalf of the Respondent Corporation had ever granted lease in favour of late Sunder Lai Narula. Assuming it was granted in favour of late Sunder Lai Narula by the competent authority but in the absence of execution of the lease deed, which was admittedly never done, the contract of grant of the piece of land in question by lease was not complete despite late Sunder Lai Narula depositing the lease money which was only for one year, from 1.1.1982 to 31.12.1982. The terms and conditions, on which the lease deed was allegedly granted in favour of late Sunder Lai Narula, were to be determined in the lease deed which never saw the light of the day. Hence there cannot be two opinions that the piece of land in question was never allotted to late Sunder Lai Narula.

This conclusion is further fortified by the admitted facts that late Sunder Lai Narula had obtained lease of the same piece of land from the H.P. State Electricity Board considering it to be the owner of the land in question which has not been proved on record. On the other hand, the Respondent-Corporation has been able to prove that the piece of land in question is owned by the State of Himachal Pradesh and the Respondent-Corporation is its custodian whereas the H.P. State Electricity Board has nothing to do with it, which position is not denied by the learned Counsel appearing for the Appellants-Plaintiffs.

10. In this view of the matter, both the Courts have, rightly denied the decree of permanent, perpetual and prohibitory injunction in favour of late Sunder Lar Narula as he, and after him his legal representatives, the present Appellants-Plaintiffs, had no right to continue in possession of the piece of (and in question by raising a stall thereon as provided u/s 38(1) of the Specific Relief Act, which is as follows:

38 Perpetual injunction when granted:-(1) Subject to other provisions contained in or referred to by this Chapter a perpetual injunction may be granted to the Plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.

11. So far the plea of late Sunder Lai Narula that he had made construction under "Deemed Sanction", as his plan was neither sanctioned nor rejected within 30 days as provided u/s 262 of the Act, is concerned, both the Courts have rightly rejected it on the ground that since late Sunder Lai Narula had no right, title and interest in the piece of land in question, he had no authority to apply for sanction of the plan for making construction thereon as he was only a trespasser. In the absence of any valid lease deed in his favour, he could not apply for the sanction of the building plan and could not make construction taking the benefit of "Deemed sanction" u/s 262 of the Act. Hence the construction made by him is unauthorized which the Respondent Corporation could demolish by following the procedure laid down in law.

12. In this view of the matter, this Court need not consider the provisions of the Act and the bye-laws to find out whether being lessee, which he never was late Sunder Lai Narula was competent to apply for sanction of the building plan.

13. The result of the above discussion is that there is no merit in this appeal and it is rejected. Costs easy.