

(2013) 05 CHH CK 0015

In the Chhattisgarh High Court

Case No : Second Appeal No"s. 10 and 73 of 2009

M/s. Mangilal Pagariya Builders and Contractors

APPELLANT

Vs

Nagar Palika Nigam
 Municipal Corporation Vs M/s.
Mangilal Pagariya Builders and Contractors

RESPONDENT

Date of Decision : 02-05-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 23, Order 41 Rule 23A, Order 7 Rule 11, 80

Citation : (2013) 3 CGBCLJ 133 : (2013) 3 CGLJ 65 : (2014) 1 MPJR 65

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Division Bench

Advocate : Gautam Bhaduri, in S.A. No. 10/2009 and Mr. H.B. Agrawal and Miss Priti Yadav, in S.A. No. 73/2009, for the Appellant; Gautam Bhaduri, counsel in S.A. No. 73/2009, Mr. H.B. Agrawal and Miss Priti Yadav, counsel in S.A. No. 10/2009 for Respondent No. 1, Mr. Satish Gupta, Govt. Advocate for the State/ Respondent No. 2 and Smt. Anju Ahuja and Mr. C.P. Soni counsel for Respondent No. 3 in S.A. No. 10/2009, for the Respondent

Final Decision : Dismissed

Judgement

Prashant Kumar Mishra, J.—These two second appeals i.e., Second Appeal No. 10/2009 (M/s. Mangilal Pagariya Builders and Contractors Vs. Nagar Palika Nigam, Raipur) and Second Appeal No. 73/2009 (Municipal Corporation, Raipur Vs. Mangilal Pagariya and another) have been preferred by respective appellants challenging the judgment and decree dated 24.12.2008 passed by Second Additional District Judge, Raipur in Civil Appeal No. 2-A/2008. By the impugned judgment and decree, the first appellate Court has allowed the appeal preferred by the Municipal Corporation, Raipur, and has set aside the judgment and decree dated 26.04.2008 passed by the trial Court decreeing the suit preferred by the plaintiff M/s. Mangilal Pagaria Builders and Contractors. The appellant of Second Appeal No. 10/2009, M/s. Mangilal Pagariya Builders and Contractors (hereinafter referred as the "Plaintiff") has challenged the dismissal of his suit whereas the

appellant in Second Appeal No. 73/2009 Municipal Corporation, Raipur (hereinafter referred as "Defendant No. 1") has preferred the appeal inter-alia praying that the findings recorded by the First Appellate Court with regard to Issue Nos. 1 to 5 in favour of Mangilal Pagaria Builders and Contractors be set aside, meaning thereby the First Appeal preferred by the said appellant be allowed on merits after deciding issue Nos. 1 to 5 in its favour and against the Plaintiff.

2. Plaintiff Mangilal Pagariya Builders and Contractors preferred a suit inter-alia claiming decree for declaration that the entire construction of new bus-stand to be legal and in accordance with the sanctioned building plan; for issuance of permanent injunction restraining the defendants from demolishing any part of the building and to restrain them from disturbing the plaintiff with regard to property/saleable area granted to the plaintiff from being transferred/alienated to any other person.

3. According to the plaintiff, the erst-while Madhya Pradesh Road Transport Corporation (in short "MPSRTC") which was in existence prior to 01.11.2000 i.e., prior to creation of the State of Chhattisgarh decided to construct a new bus-stand in Raipur town at Pandri on plot admeasuring 7.20 acres bearing Khasra Nos. 517, 138, 139 & 149. The said plot was handed-over to MPSRTC by the then State of M.P., through its Nazul Department. The MPSRTC, thereafter, invited tenders under BOT Scheme (Built, Own and Transfer Scheme) from eligible tenderers for construction of new bus-stand at Pandri. The plaintiff being engaged in construction work of all types viz., road projects, buildings, hotel etc., participated in the tender process and being the most suitable tenderer his tender was allowed and the contract was awarded to him on 06.01.1994.

4. The MPSRTC, thereafter, executed Power of Attorney in plaintiff's favour. Under the Scheme, the plaintiff was required to pay a sum of Rs. 25 lakhs as premium to MPSRTC and to construct the entire bus-stand complex including bus terminal, passengers rest house/restaurant, office block, ticket counter etc. In lieu of the said construction, MPSRTC agreed to provide the saleable area in the ratio of 1:1 Floor Area Ratio (FAR) in the complex. The lay out was approved by the Town and Country Planning, Department of Government of Chhattisgarh.

5. It has been specifically stated in Para 9 of the plaint that the approved map was handed over by the MPSRTC to the plaintiff for construction in accordance with the sanctioned map. According to the plaintiff, feeling practical difficulty in execution of work in accordance with the sanctioned plan it decided to revise the plan and requested the MPSRTC for submitting the revised map which was sent to Municipal Corporation, Raipur, for approval. The Town and Country Planning approved the revised map on 20.06.2000 and was forwarded to Municipal Corporation for necessary action. Since the MPSRTC or for that matter the plaintiff did not receive any communication from the Municipal Corporation, it proceeded with the construction in accordance with the revised map treating the same to be a case of deemed sanction u/s. 295 of the C.G. Municipal Corporation

Act, 1956. It has been stated in the plaint that the plaintiff was permitted to sell the entire area to recover the expenditure incurred by them for construction of bus-stand. It has further been averred that during demolition drive undertaken by the Municipal Corporation and the State authorities in the year 2001, newspapers reports were published to the effect that the subject building shall also be demolished as it has been constructed without there being any sanction of the building plan or the same being not in conformity with the sanctioned plan.

6. The plaintiff preferred W.P.(C). No. 969/2001 in which interim relief was granted, however, later on, the plaintiff was permitted to make a representation before the authority for decision of the case in accordance with law. The plaintiff applied for regularization of the unauthorized construction by moving an application under the provisions of Chhattisgarh Andhikrit Vikas Ka Niyamitikaran Adhiniyam, 2002 (in short "Adhiniyam 2002"). However, the said application for regularization was rejected by the State Authority.

7. After rejection of his application for regularization under the Adhiniyam 2002, the plaintiff apprehended demolition, therefore, he preferred W.P. No. 3087/2004 wherein this Court vide order dated 28.02.2005 allowed three weeks time to the plaintiff to move the civil court as the matter requires adjudication of disputed questions of facts. The plaintiff thereafter filed the present suit on 09.03.2005. By incorporating a new Para 17-A in the plaint, the plaintiff stated that the suit is maintainable even without serving a statutory notice to the Municipal Corporation u/s. 401 of the Municipal Corporation Act, 1956 because the suit has not been filed challenging any act of the Municipal Corporation or its officers for execution or implementation of any provision of Municipal Corporation Act.

8. The Municipal Corporation filed its written statement inter-alia stating that the suit is not maintainable without joining the State of Madhya Pradesh and the Chhattisgarh Infrastructure Development Corporation (for short CIDC), the successor in interest of the erstwhile MPSRTC; the plaintiff has not filed the BOT Agreement, therefore, the pleadings are vague and not supported by the documentary evidence; the Municipal Corporation has not approved any revised map nor was the same ever submitted before the Corporation and that Town and Country Planning Department has no authority in law to approve the building plan in relation to a building falling within the Corporation area which is governed under the Municipal Corporation Act, 1956; in absence of approval of revised map, relief for declaring the said construction as lawful is not acceptable; the Corporation was doing its statutory duty for removal of unauthorized construction which has been made contrary to the sanctioned plan; the question of deemed sanction does not arise because the revised map was never presented before the Municipal Corporation; the High Court never issued a direction for filing a suit and the said statement of fact in the plaint is absolutely incorrect; the suit is not maintainable because the same has been filed without following the mandatory requirement of law as contained under the Municipal Corporation Act.

9. By filing its separate written statement the Town and Country Planning

Department inter-alia pleaded that the statement regarding submission of lay out plan is not denied but other statements made in the plaint are denied and that the Town and Country Planning Department being a part of the State Government, the suit is not maintainable without serving notice u/s. 80 of CPC.

10. The Trial Court framed six material issues for determination and after recording evidence of parties decreed the suit by declaring that the construction has been made in accordance with the revised plan sanctioned by the Town and Country Planning Department and the suit is maintainable even without service of notice u/s. 401 of M.P. Municipal Corporation Act, 1956.

11. Questioning the judgment and decree passed by the trial Court, the Municipal Corporation preferred First Appeal which has been allowed by the impugned judgment on the sole ground of non-joinder of parties as the plaintiff has filed the suit without joining the CIDC. However, the First Appellate Court maintained the findings returned by the trial Court to the effect that the construction has been made as per the revised plan sanctioned by the Town and Country Planning Department and it is a case of deemed sanction u/s. 295 of the Municipal Corporation Act, 1956.

12. In the present Second Appeal No. 10/2009 preferred by the plaintiff, his application for grant of stay/temporary injunction was dismissed on 17.09.2009 against which the plaintiff preferred SLP (Civil). No. 269-26271 of 2009 which was disposed of on 15.07.2010 with the following directions:

(a) The appellant is permitted to file an application before the High Court to implead the CSIDC, as a party.

(b) The appellant is also permitted to file an application for production of additional documents relating to the grant of BOT-contract in its favour and then move an application for appropriate interim injunction relating to the order of demolition.

(c) We direct the respondents to maintain the status quo as on date for a period of two months to enable the appellant to approach the High Court for grant of interim relief.

(d) All contentions are left open.

(e) Parties to bear their respective costs.

The plaintiff thereafter impleaded CIDC as Respondent No. 3 in the present appeal.

13. Second Appeal No. 10/2009 has been admitted by order dated 24.09.2010 formulating the following substantial questions of law:

Whether the first appellate Court has committed an error of law by allowing appeal preferred by Respondent No. 1 on the ground that the suit suffered from non-joinder of necessary parties?

14. The trial Court framed Issue No. 6 in this regard and decided the same in favour of plaintiff on the reasoning that CIDC is not a necessary party in the suit because the plaintiff has not claimed any relief against the erstwhile MPSRTC or for that matter the CIDC who is the successor in interest of the erstwhile MPSRTC. It was also held by the trial Court that there is no dispute between the plaintiff and MPSRTC or CIDC as the plaintiff was executing BOT agreement on behalf of MPSRTC/CIDC and has thus stepped into the shoes of the said MPSRTC. However, the first appellate court set aside these findings of the trial Court on the ground that plaintiff was working as a contractor/agent of the erstwhile MPSRTC now CIDC. Therefore, the real owner of the suit property is a necessary party and its non-joinder is fatal for the plaintiff. During the pendency of the second appeal, Hon"ble the Supreme Court permitted the plaintiff to move application for impleading the CIDC as a party and the said application has been allowed on 09.09.2010, as a result, the defect of non-joinder of necessary party has been cured and thus at present the suit cannot be dismissed for non-joinder of necessary parties. The dismissal of the suit on this ground is, therefore, required to be set aside, however, since the outcome of the entire litigation depends upon the fate of Second Appeal No. 73/2009, this Court shall now deal with the substantial questions of law formulated in the said second appeal.

15. Before proceeding further, this Court deems it appropriate to deal with one of the prayers made by the learned counsel for the plaintiff in course of hearing that in the event decision in Second Appeal No. 73/2009 goes against the plaintiff, the matter may be remanded to the trial Court.

16. The power of remand is made under Order 41 Rule 23 and Rule 23-A of CPC. While under Rule 23, the appellate Court may remand the case where the Court from whose decree the appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, under Rule 23-A an order of remand can be made where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point and the decree is reversed in appeal and retrial is considered necessary. Therefore, the case on hand does not fall under any of the Rules because the trial Court as well as the first appellate Court has dealt with the suit on merits and decided all the issues although the first appellate court while deciding the appeal on merits has dismissed the suit on the ground of non-joinder of necessary party which now stands cured after allowing the plaintiff's application for impleading CIDC.

17. In *P. Purushottam Reddy and Another Vs. Pratap Steels Ltd.*, it has been held that it is only in exceptional circumstances the appellate court may exercise the power of remand dehors the rules 23 and 23-A of Order 41 of CPC and further that an appellate Court should be circumspect in ordering a remand when the case is not covered either by Rule 23 or Rule 23-A or Rule 25 which empowers the appellate Court to frame additional issues and refer them for trial to Court whose decree is appealed from. It has been observed by the Supreme Court that an unwarranted order of remand gives the litigant an undeserved lease of life

and therefore, must be avoided.

18. In fact, since the finding on material issues have been recorded against the defendant Municipal Corporation, Raipur, an order of remand, if any, is to be considered on the prayer of Municipal Corporation, Raipur, and that too when this Court feels that a remand is necessary in the given set of pleadings and evidence on record.

19. Second Appeal No. 73/2009 has been admitted for hearing after formulating 3 substantial questions of law which shall be dealt with in seriatim.

The first substantial question of law is "whether the plaintiff's suit was maintainable in view of the fact that the statutory mandatory notice u/s. 401 of C.G. Municipal Corporation Act, 1956 was not served on the Municipal Corporation before filing of the suit?"

20. It has been argued on behalf of the plaintiff that initially the trial Court vide order dated 11.03.2005 returned the plaint by allowing the application filed by Municipal Corporation under Order 7 Rule 11 CPC. However, in an appeal preferred by the plaintiff, the first Addl. District Judge, Raipur, vide its order dated 04.04.2005 passed in Misc. Civil Appeal No. 11/2005 set aside the order of the trial Court holding that the suit is maintainable even without complying Sections 401 of the Act, 1956, against which, the Municipal Corporation, Raipur, preferred Misc. Appeal No. 466/2005 which was dismissed as infructuous by order dated 28.01.2010, therefore, the order passed by the ADJ Court has become final and binding and the Municipal Corporation cannot be allowed to raise this argument that the suit is barred u/s. 401 of the Act, 1956. It has also been argued that the Municipal Corporation has waived its right to raise objection regarding maintainability of the suit and further that even the statutory notice can be waived.

21. Learned Senior Counsel appearing for Municipal Corporation, Raipur, has urged that the principle of waiver and estoppel cannot be applied against the statute. He would submit that the provision contained in section 401 of the Act, 1956 is mandatory and non-compliance thereof makes the suit non-maintainable. He has relied on a judgment of this Court in Second Appeal No. 231/1996 (Municipal Corporation, Durg-Vs-Bhaiyyaji Netke).

22. Section 401 of the Act, 1956 is reproduced for ready reference:

401. Notice, limitation and tender of amends in suit against Corporation etc.- (1) No suit shall be instituted against the Corporation, the Mayor-in-council, or any Corporation officer or servant, or any person acting under the direction of the Corporation, the Mayor in Council or any municipal officer or servant, in respect of any act done or purporting to have been done in pursuance or execution or intended execution of this Act, or in respect of any alleged neglect or default in the execution of this Act or any rule or bye-law made thereunder until the expiration of one month next after notice in writing has been delivered or left at

the chief Corporation office or at the residence of such officer, servant, or person standing with adequate particulars:-

(a) the cause of action;

(b) the name and residence of the intending plaintiff and of his advocate, pleader or agent, if any, for purpose of the suit; and

(c) the relief which he claims.

(2) Every such suit shall be commenced within six months next after the accrual of the cause of action, and the plaint therein shall contain a statement that a notice has been delivered or left as required by sub-section (1).

(3) If the Corporation or any person to whom any notice is given under sub-section (1) has tendered sufficient amends to the plaintiff before the suit is instituted, the suit shall be dismissed.

(4) If the defendant in any such suit is the Commissioner or any other Corporation officer or servant, payment of any sum or part thereof payable by him or in consequence of the suit may, with the sanction of the Mayor-in-council, be made from the Municipal Fund.

On a reading of the above quoted provision, it would be apparent that the provision starts with a negative expression that no suit shall be instituted against the Municipal Corporation until the expiry of one month next after notice in writing has been delivered to the Corporation and that the notice should contain particulars regarding cause of action, name and residence of intending plaintiff and his advocate and the relief which he claims. In the present case, it is not in dispute that the plaintiff has not delivered any notice u/s. 401 of the Act, 1956 before filing of the suit.

23. In the matter of Municipal Corporation Murwara-Katni, Katni Vs. Lalchand Jaiswal, , it has been held that it is mandatory to serve notice u/s. 401(1) of the Act prior to the filing of the suit and there is no provision in the Act that in case of emergency and where an injunction is sought, a suit could be filed without serving a notice u/s. 401(1) of the Act. There is also no provision for taking permission of the Court and that a suit filed without complying with the requirement of section 401(1) of the Act, 1956 is not maintainable.

24. In Baldev Singh Bhatia Vs. The Commissioner, Nagar Palika Nigam and Others, , it has been held that in the language of Section 401 of the Act 1956, there is no provision for grant of leave as has been envisaged under sub-section (2) of Section 80 of CPC. The Court after referring to the provision contained in Section 80 CPC prior to its amendment by CPC (Amendment Act 1976) (Act No. 104 of 1976) observed that under the said provision if a suit is filed before expiry of notice period of two months, it is not maintainable. Reference to the law laid down by the Supreme Court in the matter of Bihari Chowdhary and Another Vs. State of Bihar and Others, has been made to conclude that a suit filed without

following the requirement of prior notice u/s. 80 CPC is not validly instituted and such suit has to be dismissed as not maintainable, therefore, applying the ratio, the M.P. High Court held that if notice has not been issued or the suit has been filed before the expiry of period of notice, the Court had no authority to grant leave to file the suit before expiration of one month as such provision is not envisaged in section 401 of the Act, 1956.

For the foregoing reasons and in view of the law laid down by Supreme Court in the matter of Bihari Chaudhari (supra) relied by the High Court of M.P., in Baldeo Singh Bhatia (supra), there being no provision envisaging grant of leave to file a suit without serving notice u/s. 401 of the Act, 1956, any observation made in the writ petition allowing the plaintiff to move civil court within three weeks would not come to the rescue of the plaintiff, therefore, the suit filed without service of notice u/s. 401 of the Act 1956 is not maintainable and the Courts below have clearly committed serious error of jurisdiction by holding that the suit was maintainable even without service of notice u/s. 401 of the Act, 1956.

In the result, the first substantial question of law formulated in Second Appeal No. 73/2009 is answered against the plaintiff holding that the suit was not maintainable without serving notice u/s. 401 of the Act, 1956.

25. The second and third substantial questions of law are as follows:

2. Whether the findings recorded by the courts below that the construction raised by the respondent No. 1 was legal is perverse and is contrary to the provisions contained in Section 295 of the Municipal Corporation Act, 1956?

3. Whether the map presented before the Municipal Corporation for sanction was rightly held to be sanctioned under the deeming provision u/s 295 of the Act?

26. Since both the questions of law concern sanction of map and the effect of section 295 of the Act, 1956, they are decided analogously. The trial Court framed Issue No. 2 as to whether the plaintiff has raised construction in accordance with the revised map sanctioned by the Town and Country Planning Department and similarly Issue No. 4 was framed as to whether the subject construction is illegal.

27. According to the trial Court, Ex. P-4 is the revised map sanctioned by defendant No. 2, the Town and Country Planning Department, which was sent to the Municipal Corporation on 11.02.2000 and further that the construction has been made in accordance with Ex. P4, therefore, the construction is legal. Similarly, the first appellate Court has affirmed this finding of the trial Court on the basis of Ex. P4 treating the same as sanction of revised map accorded by defendant No. 2, the Town and Country Planning Department. The appellate Court has also referred to an admission made by Sub-Engineer of Municipal Corporation, Raipur, Mr. Lokesh Chandravanshi who has stated that the construction has been raised as per Ex. P.4. Supporting the findings of the Courts below, learned counsel for the plaintiff has argued that the construction is in

accordance with the revised map and therefore, it is legal. On the other hand, learned counsel for the Municipal Corporation has strenuously argued that the Document Ex. P4 is not the revised map sanctioned by the Municipal Corporation and it is only a lay out plan. He has referred to other documents Ex. D-23 to D-25 to submit that the 2nd and 3rd questions of law have to be decided in favour of the Municipal Corporation and the decree deserves to be set aside.

28. On perusal of the exhibits itself, it would appear that Ex. P-4 is a letter issued by Joint Director, Town and Country Planning, Raipur, on 11.02.2000 whereby the lay out plan has been sanctioned. The document says that earlier permission for development was granted on 03.12.1996, however, since thereafter there is change in the boundaries of the lay out plan (Avinyas), therefore, fresh lay out plan (Seemankan Manchitra) is sanctioned. The document nowhere refers to the building plan. It is nobody's case that the lay out plan was not sanctioned by Town and Country Planning Department. On the contrary, it is the case of the plaintiff that the building has been constructed in accordance with the revised building plan submitted before the Municipal Corporation. However, in course of trial, copy of such revised building plan submitted before the Municipal Corporation has not been exhibited and proved by the plaintiff. The map attached with Ex. P-4 refers to outer boundaries, but it does not refer to any building plan. Even a layman cannot treat this map as a building plan so as to accord a legal sanctity to the map and pass a decree on the basis of this map attached with Ex. P-4 by treating the same that it has been duly sanctioned by Town and Country Planning Department. The Courts below have failed to adhere to fundamental principles of law that a building plan is to be sanctioned by the Municipal Corporation and not by the Town and Country Planning Department, when the earlier building plan was sanctioned by the Municipal Corporation on 05.05.1997 as referred in the sanction letter affixed on the reverse side of Ex D-1(C) to Ex. D-22. More over, the plaintiff himself has moved an application for regularization of unauthorized construction under the Adhiniyam 2002 vide Ex. D-23 which was rejected by the District Regularization Authority-cum-Joint Director, Town and Country Planning, Raipur, on 28.08.2004 (Ex. D-24). There is another admission made by the plaintiff himself vide its letter dated 18.06.2002 which is part of Ex. D-23 wherein the plaintiff has stated that after sanction of lay out by Town and Country Planning Department on 11.02.2000 (Ex. P-4) a revised map was produced before the Municipal Corporation for sanction which is still pending.

29. It is interesting to note that the sanction of revised lay out plan vide Ex. P-4 is dated 11.02.2000 and the revised building plan was allegedly submitted on 28.03.1998 (Ex. P-3). However, there is no proof of submission of any revised building plan after 11.02.2000 when the lay out plan was revised by the Town and Country Plan Department. In the letter annexed to Ex. D-23 written by the plaintiff on 18.06.2002, he has stated that after the sanction of revised lay out plan by Town and Country Planning Department on 11.02.2000, he has again submitted a revised building plan for sanction but there is absolutely no proof of submission of any such revised building plan after 11.02.2000. Thus it is

abundantly clear that no revised building plan has ever been submitted after 11.02.2000 and further that copy of the revised building plan as mentioned in Ex. P-3 has not been produced before the Court. In the absence of submission of revised building plan in accordance with law, and the said revised plan having not been produced during trial, there is no question of deemed sanction u/s. 295 of the Act, 1956.

30. There is yet another reason as to why Ex. P-4 cannot be treated as sanction of revised plan because in course of his deposition P.W. 1 Sushil Chand Pagariya, partner of the plaintiff firm, has admitted that he has not produced copy of the revised map which was allegedly submitted before the Municipal Corporation. He also admits that a working drawing was handed over to him by the erstwhile MPSRTC, however, he has not produced copy of the said working drawing. He also admits that in the lay out plan attached with Ex. P-4 seal or signature of MPSRTC or its officer is not available nor does it contain seal or signature of Municipal Corporation, Raipur or its officer.

31. The appellate Court has referred to and has picked up one line from the statement of D.W. 1 Lokesh Chandravanshi, Sub-Engineer of Municipal Corporation, Raipur, to conclude that this witness has admitted that the construction has been made in accordance with the revised lay out plan Ex. P-4. It is settled law that evidence of a witness and that too in a civil case has to be read as a whole to gather complete meaning of what the witness deposes before the Court. In Examination-in-Chief, this witness of Municipal Corporation has proved Ex. D-25 and Ex. D-26 wherein the details of illegal construction which is made in excess of the originally sanctioned building plan is worked out. The statement with reference to Ex. P-4 is, therefore, not with respect to construction made by the plaintiff but it is with reference to the lay-out of the plot and not of the building. In any case, it is the statement of the partner of the plaintiff firm P.W. 1 Sushil Chand Pagariya that even the layout map attached with Ex. P-4 does not bear the seal and signature of the office of the MPSRTC or the Municipal Corporation, Raipur, or any of the officers of either of them.

32. Now if we again come to the documentary evidence, the authority under the Adhiniyam 2002 has clearly concluded in Ex. D-24 that the regularization of unauthorized construction is not in public interest. Ex. D-25 and D-26, report by Town Planner of Municipal Corporation, Raipur, has clearly mentioned the excess unauthorized construction on each of the floor and the block. In this report, it is clearly mentioned that additional blocks have been constructed and several notices were issued to the erstwhile MPSRTC for raising unauthorized construction in excess/violation of the sanctioned plan. The plaintiff has neither submitted any document by which these notices have been replied nor produced any other evidence to demonstrate by comparing the areas sanctioned for construction block-wise and floor-wise and the area actually constructed so as to come clean and prove its case that no unauthorized/excess construction is made by the plaintiff.

33. On the basis of the above discussion, this Court is of the opinion that on the basis of evidence available on record, the plaintiff has failed to prove submission of revised building plan, a copy of which is not in the record of the trial Court and to further prove that the construction existing today is in accordance with the revised building plan submitted before the Corporation. In absence of such evidence on record, it cannot be held that the principle of deemed sanction u/s. 295 of the Act 1956 would come to the rescue of the plaintiff. The answer to both the questions of law No. 2 and 3 is thus against the plaintiff and therefore, this Court has no hesitation in holding that the plaintiff having failed to prove its case, the declaration and injunction sought for cannot be granted and the decrees by the courts below deserve to be and are hereby set aside. In the result, both the appeals i.e., S.A. No. 73/2009 and S.A. No. 10/2009 are allowed. The judgment and decree passed by the Courts below are set aside and the plaintiff's suit is dismissed. There shall be no order as to costs. A decree be drawn accordingly.

HEADLINES

S.A. No. 10/2009

(M/s. Mangilal Pagariya Builders & Contractors V. Nagar Palika Nigam, Raipur)

S.A. No. 73/2009

Municipal Corporation, Raipur Vs. M/s. Mangilal Pagariya Builders and Contractors)

Civil Suit cannot be filed against Municipal Corporation without serving notice u/s 401 of Municipal Corporation Act.