

(2014) 07 RAJ CK 0143
In the Rajasthan High Court
Case No : Civil Second Appeal No. 200/2013

Municipal Board

APPELLANT

Vs

Lalit Kumar

RESPONDENT

Date of Decision : 07-07-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Rajasthan Municipalities Act, 2009 — Section 170(8)

Citation : (2014) 4 WLN 301

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Rajat Dave, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Arun Bhansali, J.—This second appeal u/s 100 CPC is directed against the judgment and decree dated 27.4.2005 passed by the Additional Civil Judge (Jr. Div.), Chittorgarh and the appellate judgment and decree dated 29.8.2013 passed by Additional District Judge No. 1, Chittorgarh, whereby the suit filed by the respondent has been decreed by the trial court and the appeal filed by the appellant herein has been dismissed.

2. The facts in brief may be noticed thus: the respondent-plaintiff filed a suit, inter-alia with the averments that the land situated at Gandhi Circle is owned and possessed by him, hospital and commercial shops have been situated on the said land, construction is going on the commercially converted plot, land was converted first by order dated 13.12.1976 and later on, by order dated 30.5.1986. It was claimed that the application was filed by the plaintiff on 30.8.2003 seeking permission for raising construction on plot ad measuring 36.6 ft. x 77 ft. and fee was deposited. Despite passage of three months, the map was not approved and therefore, on 19.11.2003 an application was given to the defendant and whereafter a notice dated 1.1.2004 was given inter-alia indicating that as per Rules after giving 15 days" notice, construction work can be started

under deemed permission. The plaintiff started construction after 1.1.2004, whereafter shops have been constructed and finishing work is going on. The defendant is interfering in the construction work and threatening the plaintiff, though no notice has been issued. It was prayed that the defendant be restrained by way of permanent injunction not to interfere with the work of the plaintiff and if any action is taken during the pendency of the suit by way of mandatory injunction, the plaintiff may be permitted to raise construction.

3. A written statement was filed by the defendant disputing the claim of the plaintiff. It was claimed that after application dated 30.8.2003 was filed, notice seeking objection was issued on 3.9.2003 and technical report was submitted by the Junior Engineer on 10.9.2003 indicating that if the construction takes place 60 ft. away from the centre of the road, there was no objection, whereafter the grant of permission is under consideration. The plaintiff is not entitled to treat the notice dated 1.1.2004 as notice u/s 170(8) of the Rajasthan Municipalities Act ("the Act"). The right of the plaintiff to claim injunction was also disputed.

4. The trial court framed as many as five issues and after evidence were led by the parties, it came to the conclusion that the application was made on 30.8.2003 seeking permission for raising construction; on 19.11.2003, notice was issued to the Municipality, whereafter again notice dated 1.1.2004 was issued indicating that the plaintiff would be free to raise construction, which notice was received by the defendant, however, no action was taken and therefore, the plaintiff was justified in raising construction under deemed permission and consequently, decreed the suit filed by the plaintiff.

5. Feeling aggrieved, the defendant filed appeal, the First Appellate Court after hearing the parties reiterated the findings recorded by the trial court and dismissed the appeal.

6. It is submitted by learned counsel for the appellant that both the courts below were not justified in decreeing the suit filed by the plaintiff. The notice issued did not comply with the requirement of Section 170(8) of the Act and therefore, the plaintiff was not entitled to work under the deemed permission and both the courts, therefore, fell in error in decreeing the suit.

7. I have considered the submissions made by learned counsel for the appellant and have perused the judgment passed by both the courts below.

8. Both the courts have concurrently found that the construction permission was sought by the plaintiff by way of application dated 30.8.2003, thereafter, notice dated 19.11.2003 was issued and in notice dated 1.1.2004 it was indicated that the plaintiff would be starting the construction, the notices were admittedly received by the defendant, however, no action was taken by them on the said notices.

9. If in the opinion of the respondent, the notice dated 1.1.2004 did not comply with the requirement of Section 170(8) of the Act, it was incumbent on the

defendant to clearly indicate the same to the plaintiff and/or reject the same, however, having not done either of the two things, the defendant cannot claim that the plaintiff was not entitled to raise construction under the deemed permission. The findings recorded by both the courts below, which are concurrent in nature, does not call for any interference.

10. In view of the above discussion, there is no substance in this appeal and the same is, therefore, dismissed.