
(2009) 01 P&H CK 0128
In the Punjab And Haryana At Chandigarh

Municipal Committee

APPELLANT

Vs

Dream City Builders Pvt. Ltd. and Another

RESPONDENT

Date of Decision : 29-01-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 23, 39
Specific Relief Act, 1963 — Section 38

Citation : (2009) 154 PLR 60 : (2009) 3 RCR(Civil) 234

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Judgement

Vinod K. Sharma, J.—The Municipal Committee, Gurgaon by way of this regular second appeal has challenged the judgment and decree passed by the learned Addl. District Judge, Gurgaon vide which suit for declaration and injunction filed by the plaintiffs-respondent, has been ordered to be decreed.

2. Plaintiff No. 2 Smt. Veena Bindal proprietor M/s Rohit Raj potteries is the exclusive owner of the land measuring 22,000 Sq. yards situated on Delhi-Gurgaon road.

3. The proprietor i.e. the Rohit Raj potteries entered into an agreement with plaintiff No. 1 Dream City Builders Pvt. Ltd. Gurgaon, to promote/construct Commercial/ residential, multi-storey buildings in the said land.

4. It was claimed by the plaintiff that after raising construction the plaintiff-respondents intended to sell the flats to the prospective purchasers.

5. The case set up by the plaintiff, therefore, is that appellant Municipal Committee, was obstructing the progress of the construction which necessitated the plaintiff to file a suit for prohibitory injunction. In the suit filed, ex parte injunction was granted in favour of the plaintiff on an application moved u/s 39 Rules 1 & 2 of the CPC and order was confirmed on 18.9.1987.

6. It is further the case of the plaintiff-respondents that during the pendency of the appeal it came to the notice of the plaintiff-respondents that the property of

the plaintiffs did not fall within the Municipal limits of Gurgaon and, therefore, the suit was withdrawn by moving a detailed application.

7. In spite the property being outside the municipal committee a notice u/s 208 of the Haryana Municipal Act, calling upon plaintiff No. 2 to demolish the construction was issued. It was claimed by the plaintiffs that in case the land is held to be situated within the municipal limits of Gurgaon, then the plan submitted by the plaintiffs is deemed to have been passed before raising construction as the building plan along with the building application fee was filed on 16.12.1987. The Municipal Committee was under an obligation either to sanction or to reject the said plan within the period of 60 days.

8. The case of the plaintiffs is that as the application was not rejected within the statutory period of 60 days, the plan submitted by the plaintiff got automatically sanctioned in view of the provisions of Section 205(2) of the Haryana Municipal Act, 1973.

9. The plaintiffs further claimed that in compliance with the order of trial Court dated 18.9.1987 passed in the previous suit the entire amount of building fee stands deposited. It was pleaded that notice u/s 208 of the Municipal Act was illegal, beyond jurisdiction and void. The plaintiffs-respondent prayed for a decree of declaration that the impugned notice was illegal, unwarranted, unconstitutional and void. Relief of prohibitory injunction was also sought restraining the defendant-appellant from interfering or causing hindrance/obstruction in the construction being raised by the plaintiff on the suit land.

10. The suit was contested, wherein defendant-appellant took the defence that the suit land is situated within the municipal limits of Gurgaon and that defendant was competent to issue notice u/s 208 of the Municipal Act because the proprietor of the land had not obtained any sanction prior to raising construction. It was denied that the site plan submitted by the plaintiffs stood sanctioned. The defendant-appellant further claimed that the plaintiffs suppressed the material facts. The case set up by the defendant-appellant is that plaintiff No. 2 had moved an application earlier on 7.11.1986 for obtaining the sanction of building plan but the same was rejected and the plaintiff-respondents were duly informed about the decision taken.

11. The plaintiff No. 2 thereafter gave a fresh application for sanction of building plan on 16.2.1987 regarding which the permission had earlier been refused. It was claimed that in view of the provisions of Section 205 of the Municipal Act, the Municipal Committee was competent to decide about the revised plan i.e. the second application within a period of 120 days from the date of its submission.

12. It was asserted that second plan was rejected by the Committee vide order dated 30.4.1987 and information regarding the rejection of the site plan was sent to the plaintiffs-respondents, as such the suit was not competent.

13. It was also claimed that the second suit was barred under the provisions of

Order 23 of the CPC as the earlier suit on the same cause of action was withdrawn by the plaintiffs-respondent without permission to file a fresh one on the same cause of action.

14. The plea was also raised that suit was bad for want of notice u/s 52 of the Haryana Municipal Act as also on account of mis-joinder of parties and plaintiff No. 1 did not have any locus standi to file the suit.

15. In the replication filed the plea was raised in the plaint was reiterated and that taken in the written statement was denied and it was stated that notice u/s 52 of the Act was not necessary.

16. It was claimed that the suit was also not barred under Order 23 Rule 1 of the CPC as fresh cause of action arose to the plaintiffs on 6.1.1988 when the notice was received. It was also pleaded that in pursuance to the order passed in the previous suit the entire amount of building fee was deposited within the period allowed, which was accepted by the defendant-appellant.

17. The plea was also taken that communication dated 14.10.1986 was addressed to the Minister of State for Local Bodies, Government of Haryana for approval of a commercial-cum-residential scheme on the suit property and the communication or the subsequent correspondence in this regard could not be termed as a notice u/s 201(2) of the Municipal Act, much less an application in terms of Bye-law 3 of the Haryana Municipal Building Bye-laws or a valid application under bye-law 8.

18. It was claimed that it is only a valid application which can be entertained by the Municipal Committee, which is required to be considered under bye-law 9 after making such enquiry as the Committee considers necessary and the Committee was, therefore, required to pass an order, sanctioning or rejecting it within the period prescribed u/s 205 of the Act. The decision was required to be conveyed in Form D.R. IV along with one mounted copy of the plan duly sanctioned or rejected as the case may be.

19. It was also the case set up that if the application is not valid on account of failure of compliance of the bye-laws it was required to be returned to the applicant. It was also the case that notice No. 15 dated 2.1.1987 received by defendant could not be treated to be a communication regarding rejection of plaint. The stand taken in the application that the notice dated 2.1.1987 was to be treated as invalid on account of failure of compliance of the building bye-laws by plaintiff No. 2 in as much as the building plans and the requisite fee, as required by the said Building Bye-laws were not deposited by the plaintiff No. 2 with the Committee. As such, that application could not even be entertained. Thus, a notice dated 2.1.1987 issued by defendant-appellant could not be treated as a communication of an order passed under bye-law 9 rejecting the plan of plaintiff No. 2. The said notice was said to be illegal, null and void, ineffective, inoperative and dishonest, thus, liable to be ignored.

20. It was reasserted by the plaintiffs-respondent that the valid application, which was moved for obtaining sanction of the building plan was moved on 16.2.1987 and that it was the first and the only valid application, therefore, period for passing an order was to be taken as 60 days from 16.12.1987 and on expiry of 60 days the application of the plaintiffs was deemed to have been sanctioned on 17.4.1987. It was pleaded that building plan was described as revised plan, because the construction already existed on the suit land.

21. On the pleadings of the parties, the following issues were framed by the learned trial Court:

1. Whether the suit property falls beyond the Municipal Limits of Gurgaon? OPP
2. Whether the building plan submitted by the plaintiff is to be deemed to have been sanctioned by the defendant? OPP
3. Whether plaintiff No. 2 had earlier moved an application for sanction of building plan on 7.11.86 and the same was rejected, as alleged? OPD
4. Whether the (revised) plan of plaintiff No. 2 had also been rejected by the Committee vide order dated 30.4.1987? OPD
5. Whether the impugned notice issued by the defendant u/s 208 of the Haryana Municipal Act is illegal, void and beyond jurisdiction? OPP
6. What is the effect of withdrawal of the earlier suit by plaintiff No. 2? OP Parties
7. Whether the suit is bad for want of notice u/s 52 of the Haryana Municipal Act? OPD
8. Whether plaintiff No. 1 has no locus standi to file the suit? OPD
9. Relief.

22. The learned trial Court on issue No. 1 held that the property fell within the Municipal Limits of Gurgaon in view of admission by the parties.

23. Issues No. 2 & 3 were taken together and the learned trial Court was pleased to observe that plaintiff No. 2 had earlier moved an application for sanction of building plan dated 14.10.1987, which was rejected and, thus, the learned trial Court further held that the building plan submitted by the plaintiff-respondent on 16.2.1987 could not be deemed to have been sanctioned. The issues No. 2 & 3 were held against the plaintiffs.

24. On issue No. 4, the learned trial Court observed that the building plan submitted by the plaintiff-respondents on 16.2.1987 stood rejected on 13.4.1987. The learned trial Court further held that the rejection was conveyed on 14.5.1987.

25. On issue No. 5, it was held that as the plan submitted by the plaintiff-respondent stood rejected and, therefore, it could not be said that the notice was

illegal or beyond jurisdiction. The said issue was also decided against the plaintiffs.

26. Issue No. 6 was decided in favour of the plaintiffs-respondent and it was held that the suit filed was not barred under Order 23 Rule 1 of the Code of Civil Procedure.

27. Issue No. 7 was also decided in favour of the plaintiffs and against the defendant by holding that notice u/s 52 of the Municipal Act was not required as the suit filed was for injunction.

Issue No. 8 was not pressed.

Consequently, the suit filed was ordered to be dismissed.

28. The plaintiff-respondents preferred an appeal against the judgment and decree passed by the learned trial Court. The learned lower appellate Court reversed the findings of the learned trial Court by recording the following findings:

11. The crucial point for determination in this case is as to whether the application Ex.P4 was in accordance with the municipal bye laws and was to be treated as notice by the Municipal Committee or not. Admittedly, this application was moved not to the Executive Officer/Secretary of the Municipal Committee, Gurgaon. It was addressed to the Minister of State, Local Bodies, Chandigarh and was received by the committee on 7.11.86. This application was not accompanied by requisite fees required to be deposited by the applicant seeking permission to erect or re-erect a building. It was also not accompanied by any site plan showing the position of the site proposed to be built upon or other plans of elevation etc. structural drawings for the foundations and roofing system etc. It is the mandate of Sub-section (4) to Section 201 of the Haryana Municipal Act, 1973 where by laws have been framed, no notice under Sub-section (2) shall be considered to be valid until the information, if any, required by any such laws has been furnished to the satisfaction of the committee. Rule 8 of the Haryana Municipal Building Bye Laws also provides that no application shall be considered to be valid unless it is made on the prescribed form and is accompanied by requisite number of plans and documents together with the requisite fee as laid down in Schedule IV. In case of failure of such plan, the application together with plans shall be returned to the applicants for resubmission with the bye laws. Since there was no duly completed application with the municipal Committee, therefore, the application dated 14.10.86 (Ex.P4) cannot be treated as a valid notice. The learned trial court, in my view, has fallen in error on this aspect of the case and has not referred to these provisions minutely, scrutinizing the same in the light of the aforesaid provisions and this has led to the miscarriage of justice. The application dated 14.10.86, in my opinion, was not a valid notice, and, therefore, the application dated 16.2.87 which is complete in all respects, duly accompanied with the requisite fee and plan as envisaged under the bye laws should be treated as the first application.

12. Admittedly, the sanction has not been accorded by the Municipal Committee within a period of 60 days, therefore, the plan already furnished with the application dated 16.2.87 shall be deemed to have been sanctioned. I am fortified in my view by an authority contained in Friends Housing Society and Others Vs. The Delhi Administration and Others, This authority declares that where the standing committee allowed 60 days to expire, without rejecting plan or for asking, for further information, it would be deemed to have been sanctioned. This view was also taken in Manohar Lal Saini Vs. Municipal Corporation, , which lays down that order refusing sanction must be communicated within 60 days from the date of application for sanction. In AIR 1946 Lah 413 Municipal Committee Hoshiarpur v. Darshan Lal, no order was passed within a period of 60 days and the plaintiff completed a building after the statutory period. It was held that sanction to build must be deemed to have been granted by the Municipal Committee and subsequent notice for demolishing the building is invalid. It cannot be contended that notice was valid vis-a-vis portion of the building which has been erected without sanction.

The learned Counsel for the respondent-Municipal Committee has merely relied upon the authorities contained in Shri. Chet Ram Vashist Vs. Municipal Corporation of Delhi and Another, , for the proposition that failure of the standing committee of Delhi Municipal Corporation to consider u/s 313(3) an application for sanction to a lay out plan within the period specified in the subsection does not result in a "deemed" grant of sanction. On the basis of this authority, learned Counsel urges that no sanction can be assumed even if the order rejecting the building was passed after 60 days. I am afraid that I do not concur with the submissions of the learned counsel for the Municipal Committee, Gurgaon. The authorities Shri. Chet Ram Vashist Vs. Municipal Corporation of Delhi and Another, is not attracted to the facts of the present case and is distinguishable. The provisions of Delhi Municipal Corporation Act, 1957 are quite distinct from the provisions made under the Haryana Municipal Act, 1973. In order to bring out distinct clarification, it is relevant to reproduce the provisions of Sub-Section 2 to Section 205 and sub-section 5 to Section 205 are as under:

"Sub Section 2 to Section 205:

(2) when the erection or re-erection of a building is likely, in the opinion of the committee or the Executive Officer, as the case may be, to interfere with the enforcement of a scheme proposed u/s 203, the committee may refuse its sanction, and in such case shall communicate its refusal in writing together with the ground therefore, to the applicant within sixty days of the receipt of his application and the applicant may thereafter by written notice require the committee to proceed with the preparation of the proposed scheme with all possible speed. The application shall be deemed to have been sanctioned in an order of refusal is not passed by the committee, or the Executive Officer, as the case may be, within the time specified above, or if the proposed scheme has not received the sanction of the State Government within twelve months of the date

of delivery of applicant's written notice hereinbefore referred to:

Provided that should a resolution refusing such sanction by suspended u/s 26, the period prescribed above shall commence to run afresh from the date of communication of final orders by the Commissioner or the Deputy Commissioner u/s 249.

Sub Section 5 to Section 205

Notwithstanding anything contained in Sub-section (1) or Sub-section (3) but subject to the provisions of Sub-section (2) of Section 202 and Sub-section (2) of this section if the committee or the Executive Officer as the case may be, neglects or omits, within sixty days of the receipt from any person of a valid notice of such person's intention to erect or re-erect a building, or within one hundred and twenty days if the notice relates to a building and twenty days if the notice relates to a building on the same or part of the same site, on which sanction for the erection of a building has been refused within the previous twelve months, to pass orders sanctioning or refusing to sanction such erection or re-erection, such erection or re-erection shall, unless the land on which it is proposed to erect or re-erect such buildings belongs to or vests in the committee, be deemed to be sanctioned, except in so far as it may contravene any bye law, or any building or town planning scheme sanctioned u/s 203.

From the perusal of the both these provisions under the Haryana Municipal Act, 1973 it would be seen that application shall be deemed to have sanctioned if an order of refusal is not passed by the Committee or the Executive Officer as the case may be, within the time specified. Such like provisions did not exist in Delhi Municipal Corporation Act, 1957. A reference may be made to para 6 of the judgment contained in Shri. Chet Ram Vashist Vs. Municipal Corporation of Delhi and Another, , where it is observed that neither Sub-section (3) nor sub-section 5 of Section 313 declares that if the standing committee does not deal with the application within the prescribed period of 60 days, it may be deemed that sanction has been accorded. Statute merely requires the standing committee to consider the application within 60 days. It does not indicate that what will be the result if the standing committee failed to so do. If it intended that failure of the standing committee to deal with the matter within the prescribed period . which imply a deemed sanction, it would have said so. To recapitulate, there is no deemed provision under the Delhi Municipal Corporation Act which existed in the Haryana Municipal Act, 1973 and in these circumstances their Lordship of the Supreme Court observed that failure of the standing committee to consider an application u/s 313(3) for sanction to a lay out plan when the period prescribed by sub-section does not relate in a deemed grant of sanction. Thus, in my opinion, learned Counsel for the Municipal Committee cannot make any capital of this authority. I cannot resist adding that he has tried to confuse the matter and also the court.

13. There is yet another reason to record that the Municipal Committee under

the bye laws had no power to reject sanction without assigning any reason. Under the constitution, a person has a right to build up his property on his land. The Haryana Municipal Act, 1975 is an Act of consolidation and amend the law relating to the municipality in the State of Haryana. This act came into force with some purpose. The purpose was not to reject the building plan outright. The applicant has to be afforded an opportunity to comply with the bye laws. This has not been done in the instant case by the Municipal Committee. Bye laws 8 of Haryana Municipal Building Bye Laws clearly provides that in case of failure of complying, the application together with the plans shall be returned to the applicant for resubmission in accordance with the bye laws. This provision entails the rule of natural justice. Before outright rejecting the request of a person to erect a building, the Municipal Committee has to afford an opportunity to comply with the Building Bye Laws. This has not been done in this case, and, therefore, the notice u/s 208 of the Haryana Municipal Act cannot be allowed to stand and has to be quashed. The committee is no doubt vested with the powers of brining down a building but this power can only be exercised in rare cases where demolition or alteration is necessary to avoid with building Scheme drawn up u/s 203. There is no evidence on record that Municipal Committee, Gurgaon, had drawn up any scheme u/s 203 of the Municipal Act, 1973 near or about the land belonging to the appellants. The findings of the learned trial Court on issue Nos. 2 and 3 are hereby set aside. The findings under these issues are returned in favour of the appellants and against the Municipal Committee.

The findings on issue No. 4 also cannot be allowed to stand as the rejection was invalid in law, as no opportunity was afforded and the appellants have been condemned unheard. They were not given any opportunity requiring them to comply with the provisions of the bye laws.

There is also no merit in the contention of the learned Counsel for the respondent-municipal committee that issued No. 6 was decided wrongly by the learned trial court and that the provisions of Order 23 of CPC are applicable. The plaintiff no doubt had commenced a suit bearing No. 221 of 1987 restraining the defendant from interfering and creating any obstruction in the construction work. That suit is distinct from the present suit inasmuch as in the present suit, notice u/s 208 served by the Municipality on the plaintiff is sought to be declared as void. In the earlier suit, there was no such circumstances nor any notice was issued by them. The cause of action in the present suit arose when the notice u/s 208 was received by the plaintiffs on 6.1.1988. These circumstances have not developed in the earlier suit. It is settled that where a cause of action or relief claimed in the second suit are not the same as the cause of action and the relief claimed in the first suit, the second suit cannot be considered to have brought in respect of the same subject matter as the first suit. I am fortified by an authority contained in AIR 1970 SC 587 Vallabdas v. Dr. Madan Lal and Ors. Alla Naur Sheikh Mohd. Ismail Vs. Mohd. Nisa Abdul Rehman and Others, ., and AIR 1972 Guj 63 Kurji Jinabha Kotecha v. Ambalal Kanjibhai Patel. Thus, there is no merit in the contention and the same is repelled.

The other submission of the learned Counsel for the respondent is that the suit is bad for want of notice u/s 52 of the Municipal Act which is also untenable. The finding on these issues are affirmed. It is true that no suit shall be instituted against committee in respect of any Act purporting to be done in its official capacity unless the expiration of one month next after notice in writing has been given. The provision to Section 52 is very relevant. This proviso provides that nothing shall be applicable to any suit instituted u/s 38 of the Specific Relief Act, 1963. Since notice u/s 208 was served on the plaintiff-appellants and they were required to pull down the building within 7 days, the matter was of urgent nature and did not require the notice as the plaintiff-appellants had obtained stay of demolition from the court. This contention is also devoid of any force and the same is hereby repelled. The findings on remaining issues are also affirmed." and consequently allowed the appeal.

28. The regular second appeal was dismissed by this Court. However, the appellant challenged the order passed by this Court in the Hon''ble Supreme Court of India and the appeal has been remanded back by the Hon''ble Supreme Court vide order dated 13.3.2002 with a direction to decide the case afresh.

29. Mr. H.S.Hooda, learned Sr. counsel appearing on behalf of appellant contents that the following substantial questions of law arise for consideration in this appeal:

1. Whether the second application dated 16.2.1987 (Ex.P/9) in continuation of first application dated 14.10.1986 (Ex.P/4) is to be decided within period of 60 days or 120 days as provided u/s 205 of Haryana Municipal Act?
2. Whether present suit is barred u/s 52 of Municipal Act as no prior mandatory notice was served before filing of the suit?
3. Whether present suit is maintainable as the earlier suit filed by plaintiffs/respondent on the same subject matter & cause of action had been withdrawn without permission to file fresh suit as per Section 23 of CPC?

30. Mr. H.S. Hooda, learned Sr. counsel appearing on behalf of the appellant vehemently contended that it is not in dispute that the plaintiffs-respondent had first of all approached the Hon''ble Minister, Local Bodies for permission to develop residential/commercial colony on the land in dispute which was forwarded to the Municipal Committee. The said application was considered and rejected on 2.1.1987 and, thus, the said application was to be treated as first application.

31. The learned senior counsel appearing on behalf of the appellant also contended that thereafter an application was moved by plaintiff No. 2 on 15.2.1987, which was rejected on 30.4.1987 and the decision was conveyed on 14.5.1987 i.e. within 120 days as envisaged u/s 205 of the Haryana Municipal Act and, therefore, the learned trial Court was right in deciding issues No. 1 and 2 in favour of the defendant-appellant. The judgment and decree of the learned

lower appellate Court, therefore, could not be sustained.

32. However, I find no force in the contention raised by the learned senior counsel for the appellant. Sections 3, 8 & 9 on which the strong reliance has been placed by both the parties are reproduced below for ready reference:

Section 3. Application for erection or re-erection of building.- (1) Any person intending to erect or re-erect any building in a municipality shall make an application in writing to the Executive Officer or Secretary, as the case may be, in Form BR I accompanied with a certificate in form BR III and the following documents in quadruplicate:

- (a) a site plan as required by bye-laws 4;
- (b) a building plan or plans as required by bye-law 5; and
- (c) details of specifications of the work to be executed in form BRII:

Provided that one copy of the plan shall be mounted on cloth and one copy shall be on the tracing paper.

(2) Every person giving application under bye-law 3(1) above shall appoint an architect for the preparation of plans. However, the supervision of erection or re-erection of the building may be undertaken by the same or another architect or engineer.

(3) The application, plans and specifications shall be signed by the applicant and the architect.

(4) A refundable amount of Rs. 200/- shall be deposited by the applicant with the application. This amount will be refundable to the applicant after the issue of the completion certificate and after satisfying the Executive Officer or the Secretary, as the case may be, or his representative, regarding clearance of the site and removal of debris therefrom:

Provided that if debris is not removed within thirty days of the completion of the building the aforesaid amount shall be forfeited.

Section 8.

Information necessary to validate application.- No application under bye law 3 shall be considered to be valid unless it is made on the prescribed form and is accompanied by the requisite number of plans and documents together with the required fee as laid down in the schedule IV.

In case of failure of such compliance, the application together with plans shall be returned to the applicant for resubmission in accordance with the bye-laws.

Section 9.

Sanction to erect or re-erect.- After an application in the prescribed form containing the required information and accompanied by necessary documents

and fee is received, the committee shall, after making such inquiry as it may consider necessary, pass an order within the period prescribed in Section 205, either sanctioning it or rejecting it and convey the same in BR.IV along with one mounted copy of the plan duly sanctioned or rejected as the case may be.

33. The reading of bye-laws reproduced above show that in order to constitute a valid application it is required to be filed before the Executive Officer or Secretary in the form prescribed therein and the procedural bye-law 8 provides for information which is necessary to consider an application to be valid. If any application is not in the form prescribed then the same is required to be returned to the applicant for resubmission in accordance with bye-laws. The reading of the bye-laws with the facts proved on record, would show that first application could not be said to be valid to attract the provisions of Section 205 of the Act nor the same could be rejected as claimed. In case it was treated to be an application for sanction of plan, the same was required to be returned for resubmission in accordance with bye-laws.

34. The contention of the learned senior counsel for the appellant that the application moved subsequently was second application in view of the forwarding letter attached with the application moved for sanction also can not be accepted. The finding of the learned lower appellate Court is, thus, in consonance with the evidence proved on record as also the building bye-laws referred to above. The decision on the application was required to be taken within 60 days and not 120 days.

So, the first substantial question of law, as framed, deserves to be answered against the appellant-defendant.

35. The second substantial question of law, as framed, also deserves to be answered against the appellant-defendant as the bare reading of Section 52 of the Haryana Municipal Act would show that no prior notice was necessary to institute a suit for injunction. Section 52 of the Haryana Municipal Act reads as under:

52. Suits against committee and its employees: No suit shall be instituted against a committee, or against any employee of a committee, in respect of any act purporting to be done in its or his official capacity, until the expiration of one month next after notice in writing has been, in the case of a committee, delivered or left at its office, and in the case of an employee, delivered to him or left at his office or place of abode, stating the cause of action and the name and place of abode of the intending plaintiff, and the plaint must contain a statement that such notice has been so delivered or left:

Provided that nothing in this section shall apply to any suit instituted u/s 38 of the Specific Relief Act, 1963.

36. Thus reading of this Section would show that no advance notice is required for filing a suit for permanent injunction.

37. Similarly, the third substantial question of law deserves to be answered against the appellant as fresh suit was filed on a new cause of action i.e. the notice issued u/s 208 and, therefore, it was rightly held that the second suit was not barred under the provisions of Order 23 of the Code of Civil Procedure.

38. The learned senior counsel appearing on behalf of the appellant has also referred to the order passed by the Collector, Gurgaon on a claim petition filed by the plaintiff u/s 9 of the Indian Work of Defence Act, 1905 (Act No. VII of 1903), to contend that the stand of plaintiff/respondents that necessary permission from the defence authority for raising construction stood granted was a wrong. However, this contention does not arises in the facts of the present case as proceedings under the Section 9 of the Indian Work of Defence Act, 1905 (Act No. VII of 1903) are independent of Haryana Municipal Act and the authorities under the said Act can take appropriate action in accordance with law irrespective of proceeding under Municipal Act.

39. The learned senior counsel appearing on behalf of the appellant thereafter referred to the order dated 30.4.1987 to contend that the building plan submitted by the plaintiffs-respondent even if taken to be the first application stood rejected as the bar of 60 days could not apply if the rejection was on account of violation of bye-laws or the Scheme framed by the Municipal Committee.

40. The contention of the learned senior counsel appearing on behalf of the appellant, therefore, was that the reading of Annexure D-6 produced on record would show that the revised plan submitted by the plaintiffs-respondent stood rejected for the following grounds:

1. You have not sent full building fee application of the plan submitted by you. In addition to above you have not given details of block No. F, G, H, J and K, thus fee cannot be calculated. Besides, the Bank draft sent by you is not in the name of Municipal Committee Gurgaon.
2. You have not submitted the structural certification (BR-II) and structural drawing as required by the building by laws.
3. The sanction plans and elevation of block No. F, G, H, J and K have not been given.
4. The detailed drawings of commercial block No. K have not been given.
5. No details of swimming pool shown in the plan have been shown.
6. No demarcation plan has been submitted.
7. Location plan has not been enclosed.
8. You have not obtained certificate from the District Town Planner that your scheme falls in that very Zone for which you have proposed.
9. You have not obtained certificate from the District Town Planner that by

implementing the proposed scheme on the proposed area Urban Areas Act is not violated.

10. Your proposal is for six storey building while Delhi Air Port is quite near is about 16 K.M. from the proposed site. So, you are required to obtain No Objection Certificate from the Air Port Authorities.

11. A certificate to the effect that the proposed site is out of restricted area ammunition Depot has been obtained by you from a Squadron Leader which is not acceptable to the Municipal Committee because Commanding Officer is the incharge of Air Force Station. So you are required to obtain certificate from the Commanding Officer Air Force Station Gurgaon.

12. The proposed plan submitted by you does not fall in approved area but falls in unapproved area.

41. By referring to this document the learned Counsel for the appellant vehemently contended that the bar of 60 days was not applicable, therefore, the learned lower appellate Court was in error in decreeing the suit. The reliance in support of this contention was placed on the Division Bench judgment of this Court in the case of Municipal Committee, Thanesar v. State of Haryana (1993)123 P.L.R. 759, wherein this Court has been pleased to lay down as under:

7. A careful and conjoint reading of the provisions quoted above shows that power to sanction or not to sanction a scheme framed by the Municipal Committee vests in the State Government u/s 203(3) and (4) of the Act and once the scheme is sanctioned, the Municipal Committee is under an obligation to implement and enforce the same. First part of Sub-section (1) of Section 205 imposes a duty on the Municipal Committee or the Executive Officer, as the case may be, to refuse to sanction the erection or re-erection of any building if it is contrary to any bye-law or any scheme sanctioned under Sub-section (3) of (4) of Section 203 of the Act. Sub-section (2) of Section 205 envisages refusal by the Committee to sanction the erection or re-erection of a building if it is likely to interfere with the enforcement of a proposed scheme. Sub-section (5) of Section 205 which beings with a non-obstante clause provides that if the Committee or the Executive Officer neglects or omits to pass order of sanction or refusing to sanction erection or re-erection of a building within 60 days of the receipt of a valid notice from a person who intends to erect or re-erect a building then the sanction will be deemed to have been granted. However, this rule of deemed sanction cannot be invoked if such sanction may result in violation of any bye-law, or any building or town planning scheme sanctioned u/s 203.

8. Having analysed the relevant statutory provisions, we may revert back to the facts of this case. A critical scrutiny of the record of this case shows that soon after the receipt of plan submitted by respondent No. 3 for proposed erection of building, the petitioner raised objections by pointing out that the same was not in consonance with the Town Planning Scheme No. 1 (Part II) and further that the required documents had not been submitted. Vide letter dated 8.11.1994,

respondent No. 3 was called upon to remove the objections/defects. This was reiterated in the communication dated 16.2.1995, 29.3.1995, 23.8.1995 and 15.12.1995. Instead of doing that he filed petition before respondent No. 2, who directed the petitioner to pass the building plan No. 124/1994-95. The reason which prompted respondent No. 2 to pass order dated 23.1.1996 was that in the case of similarly situated person, namely, Ashok Kumar, the petitioner had sanctioned the building plan. Respondent No. 1 also dismissed the petitioner's appeal mainly on the ground that in a similar case building plan had already been sanctioned by the Municipal Committee.

9. In our opinion, the reasons assigned by respondent Nos. 1 and 2 for directing the petitioner to sanction the building plan of respondent No. 3 is wholly irrelevant and extraneous to the scope of Section 20S of the Act and, therefore, the impugned orders are liable to be quashed. We are further of the opinion that the direction given by respondent Nos. 1 and 2 is ultra vires to Sub-sections (1) and (5) of Section 205 of the Act and, therefore, a writ in the nature of certiorari deserves to be issued to nullify the same. Unfortunately, the official respondents adverted to the provisions of Section 205 which clearly prohibits sanction of a building plan if it is contrary to the bye-laws or the sanctioned Town Planning Scheme. Neither of them decided the plea of the petitioner that the proposed construction was contrary to the Town Planning Scheme No. 1 (Part II) which had been sanctioned by the Government in 1977, We, therefore, hold that the impugned orders are illegal and ultra vires to Section 205 of the Act.

42. There can be no dispute with the proposition of law raised by the learned senior counsel for the appellant. However, the contention raised by the learned senior counsel appearing on behalf of the appellant deserves to be rejected for the reason that no such plea was taken by the defendant-appellant before the learned Courts below nor any evidence was led which could entitle the plaintiff-respondents to rebut the same by leading cogent evidence. The notice impugned issued u/s 208 of the Municipal Act also did not make any mention of the order Ex.D-6.

43. The substantial questions of law framed by the learned Counsel for the appellant, which are said to arise in the present appeal, do not mention any such substantial question of law.

44. The appellant cannot be permitted to make out altogether a new case before this Court in regular second appeal. The positive stand taken by the appellant-defendant before the learned Courts below was that the period of 60 days was not applicable as the application moved by the plaintiff-respondent was the second application, after the rejection of the plan on earlier occasion by the Municipal Committee. Thus, the stand taken was rightly rejected by the learned lower appellate Court.

45. In view of the findings recorded above, the substantial questions of law as framed are answered against the appellant-defendant and in favour of the

plaintiffs-respondent.

46. Consequently, this appeal being without any merit is ordered to be dismissed but with no order as to costs.