(2014) 08 P&H CK 0038

In the Punjab And Haryana At Chandigarh

Case No : RSA No. 4029 of 2014 (O and M)

Suresh Kumar APPELLANT

Vs

Suresh Pal and Others RESPONDENT

Date of Decision : 05-08-2014

Acts Referred:
Haryana Municipal Act, 1973 — Section 246 253 50

Citation : (2015) 178 PLR 785

Hon'ble Judges : R.P. Nagrath, J

Bench : Single Bench

Advocate : Parminder Singh, Advocate for the Appellant;

Final Decision : Dismissed

Judgement

R.P. Nagrath, J.

1. This Regular Second Appeal has been filed against the concurrent findings of the Courts below recorded against the appellant who was defendant No. 2 in the suit. The suit was filed by respondent No. 1 against respondent No. 2-defendant No. 1-Municipal Committee, Nilokheri (for brevity ''MC'') and appellant-defendant No. 2.

2. The dispute is concerning allotment of the site adjoining shop No. 10 which is already on rent with appellant-defendant No. 2 under MC-respondent No. 2. Dimensions of the shop originally allotted to appellant-defendant No. 2 was 9'' x 20'' and now by adding the additional structure the area of the shop would become 15'' x 20'' meaning thereby that area of 6'' x 20'' was proposed to be added to the existing shop of appellant-defendant No. 2. It was stated by respondent No. 1-plaintiff that the disputed site i.e. the shop adjoining shop No. 10 was constructed by spending public money which therefore, cannot be allotted to any individual without putting the property to public auction. The appellant-defendant No. 2 is stated to have close connection with the Chairman of MC being his supporter.

3. Plea of the appellant-defendant No. 2 was that MC Nilokheri has prepared a scheme for extending the area of the shop to 15'' x 20'' with the condition that appellant-defendant No. 2 would deposit an amount of Rs. 1 lac as non-refundable advance and increasing rent of the shop to Rs. 1600/- per month from Rs. 800/- per mensem . Appellant-defendant No. 2, thus, deposited the aforesaid amount of Rs. 13 lac on 03.12.2007 in the office of MC.

4. I have heard learned counsel for the appellant and have perused the judgments of both the Courts below.

5. The judgment of trial Court would show that respondent No. 2-defendant No. 1-MC did not appear to contest the suit at the later stage and thus it was proceeded against ex parte. However, the appeal against judgment of learned trial Court was filed both by appellant-defendant No. 2 and respondent No. 2-defendant No. 1-MC before the first appellate Court and both the appeals were dismissed.

6. It was vehemently contended by learned counsel for appellant-defendant No. 2 that the respondent No. 1-plaintiff has no locus standi to file the suit. Moreover the remedy if any against the lawful resolution passed by MC could be by having recourse to the provisions of Sections 246 and 253 of Haryana Municipal Act, 1973 (hereinafter referred to as ''the Act'') and that Section 50 of the Act as relied upon by the Courts below was inapplicable. It was also submitted that in fact the steps could be taken, if any, in terms of Rule 4 of Haryana Municipal Rules, 1976 (for short ''the Rules'').

7. So far as locus standi of respondent No. 1-plaintiff is concerned, I am of the view that the suit was maintainable at the instance of an individual belonging to the same town who could have the interest in participating in the auction of public property. The Courts below have not granted the decree directing MC to allot the disputed site to respondent No. 1-plaintiff. It was simply directed to put the shop to public auction. The effort of respondent No. 1-plaintiff in saving public property being alienated in a clandestine way rather deserves some appreciation.

8. In fact Haryana Management of Municipal Properties and State Properties Rules, 2007, (for short ''the Rules of 2007'') are directly applicable in respect of municipal properties and intention of the legislature is to dispose of the municipal property by public auction.

9. I am further of the view that Sections 246 and 253 of the Act cannot create a bar to such a suit especially, when the Deputy Commissioner has himself recommended transfer of the property in question in favour of the appellant-defendant No. 2. How would he Deputy Commissioner consider the request for cancellation or suspension of a resolution which has his prior approval. These provisions do not in fact deal with the transfer of municipal property of the Committee.

10. Sections 246 and 253 of the Act read as under:-

246. Powers to suspend any resolution or order of committee - The Deputy Commissioner may, by order in writing, suspend the execution of any resolution or order of a committee, or joint committee or prohibit the doing of any act which is about to be done, or is being done in pursuance of or under cover of this Act, or in pursuance of any sanction or permission granted by the committee in the exercise of its powers under this Act, if, in his opinion, the resolution, order or act is in excess of the powers conferred by law or contrary to the interests of the public or likely to cause waste or damage of municipal funds or property, or the execution of the resolution or order, or the doing of the act, is likely to lead to a breach of the peace, to encourage lawlessness, or it causes injury or annoyance to the public or to any class or body of person.

253. General powers of State Government over officers. - Notwithstanding anything in this Act, the State Government shall have the power of reversing or modifying any order of any officer of the State Government passed or purporting to have been passed under this Act, if it considers it to be not in accordance with the said Act or the rules or to be for any reason inexpedient, and generally for carrying out the purposes of this Act the State Government shall exercise over its officers all powers of superintendence, direction and control:

Provided that the power of reversing or modifying any order of any officer of the State Government shall not apply to the orders passed by the [Tribunal] or the District Judge in an election petition.

11. The suit before the trial Court was filed on 03.01.2008 and by then the Rules of 2007 had come into force. The sale of site/building of the municipality and lease of site/building by auction are dealt with by Rules 6 and 7 of the Rules of 2007. The only saving provision is Rule 8(1) of the Rules of 2007 which is as under:-

8. Sale of site/building by allotment.- (1) A municipality may allot a site with the prior approval of the State Government to the owner of the adjoining plot/house hold at market rates, on an application made in this behalf, if, -

(a) the size of the plot is less than 100 yards;

(b) it cannot be sold by auction as a separate and independent unit;

(c) it is not reserved for any public purpose and is not being used for common purposes;

(d) it is not a part of any scheme;

(e) it cannot be utilized for the benefit of the people or in the interest of the municipality; and

(f) it is not part of street/road and its disposal shall not hinder the smooth movement of the traffic/people.

12. Instant was not a case in which approval of the State Government was either sought or granted.

13. It would be seen that there is total breach of the established practice prevalent in this municipality. DW-1 Jaipal Clerk of the MC in the cross examination stated that MC, Nilokheri gives all the shops through auction and regarding the shop in question there is no auction ever conducted. The learned 1st Appellate Court referred to the further statement of DW-1 and made the observations as under:-

"?.. This witness has also testified as correct that Munadi is carried out for conducting auction and publication is also made in the newspaper. He has also testified that the shop in question is adjacent to shop No. 10 and he does not know about the number of the shop. He has clearly deposed that regarding shop in question neither any auction has been conducted nor Municipal Committee, Nilokheri has ever carried out any munadi or effected publication for conducting auction. He has also admitted that even later on no resolution has been passed in favour of Suresh Kumar to give him the shop which is situated adjacent to shop No. 10. The above reproduced cross-examination of DW-1 Jai Pal has formed a formidable and acceptable base to decide this controversy. It is quite imminent from the cross-examination that shop of Municipal Committee, Nilokheri are being let out after conducting auction and no auction has been conducted so far as the shop situated adjacent to shop No. 10. The Municipal Committee, Nilokheri can not deviate its settled procedure to let out the shop after conducting auction, entirely on its own whims and fancies."

14. It has also been correctly observed by the trial Court though it was stated that the scheme was launched to give adjoining land to the appellant-defendant No. 2 but no such scheme has been proved. It seems unacceptable that the MC can prepare a scheme to help an individual. The act of MC is clearly to dole out the public property for peanuts. No substantial question of law arises. The instant appeal is dismissed.