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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-175-2014 (O&M)

Date of decision : 04.03.2025

Municipal Corporation, Amritsar

..... Appellant

versus

Central Mall A registered Partnership firm

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Anil Kumar Sharma, Advocate
for the appellant.

Mr. Akshay Bhan, Sr. Advocate with
Mr. Santosh Sharma, Advocate
for the respondent.

PANKAJ JAIN, J. (ORAL)

1 Municipal Corporation is in second appeal aggrieved of the judgment and decree passed by Courts below whereby suit filed by the plaintiff seeking decree of permanent injunction restraining defendant from damaging or demolishing the structure raised by the plaintiff stands decreed.

2 Learned counsel for the appellant submits that by way of judgment and decree the Courts below have even restrained the appellant-Corporation from taking action against illegal structures which are non-compoundable. The argument raised is misconceived for the reason that the Lower Appellate Court in the operative part of the judgment observed as under :-

“19 Defendant corporation was required to issue notice regarding demolition of unauthorized construction as per section 269(2) of Punjab Municipal Corporation Act, 1976 but no such notice was issued to the plaintiff by the defendant Municipal

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Corporation as no copy of such notice has been produced on record by the defendant corporation. Sh.I.P.S. Randhawa DW-1 has shown his ignorance regarding issuance of notice pertaining to Unauthorized construction under Section 269 (2) of Punjab Municipal Corporation to the plaintiff by the defendant when a question was put to him in this regard. So, defendant corporation cannot demolish alleged unauthorized construction of the plaintiff forcibly and illegally without issuance of notice under Section 269 (2) of Punjab Municipal Corporation Act regarding alleged unauthorized construction raised by the plaintiff. Since, no notice was issued in this regard to the plaintiff by defendant Municipal Corporation, therefore, it cannot be said that plaintiff was required to file an appeal before the Ld. District Judge against the order of demolition because no such order of demolition of any portion of the building of plaintiff has been passed by the defendant corporation as per law.

20. In view of my above discussion, there is no illegality in the well reasoned judgment dated 23.3.2009 passed by the Ld. Lower Court. Moreover, appeal was required to be filed by the Commissioner Amritsar as per of Municipal Corporation, section 394 (h) of Punjab Municipal Corporation Act, or by a person legally authorized by him in this regard as per section 408 (2) of Punjab Municipal Corporation Act. Present appeal was not filed under the signatures of the Commissioner of Municipal Corporation, Amritsar and it nowhere mentioned in the ground of appeal that a person through whom present appeal has been filed is duly authorized by the Commissioner of Municipal Corporation, Amritsar to file the present appeal on his behalf. Hence, appeal filed by the appellant/ defendant is hereby dismissed with costs. Decree sheet be prepared accordingly. Record of Lower Court be returned and file of this appeal be consigned to the record room, after due compliance.”

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3 The suit filed by the plaintiff has been decreed for the reason the Corporation acted in violation of the principles of the natural justice. More so, when the statute itself prescribed for the procedure. Liberty has already been granted to the Municipal Corporation to proceed in accordance with law. The Corporation being local government cannot act in teeth of the mandate of law. Thus Courts rightly decreed the suit.

4 Finding no merits in the present appeal, the same is ordered to be dismissed.

04.03.2025*Pooja Sharma-I***(PANKAJ JAIN)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No