

PETITIONER:
FARIDABAD COMPLEX ADMINISTRATION

Vs.

RESPONDENT:
YADU ETC.

DATE OF JUDGMENT: 11/12/1996

BENCH:
K. RAMASWAMY, G.T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT:

WITH
CIVIL APPEAL NO.895-900 OF 1986
O R D E R

These appeals by special leave arises from the judgment of the Punjab & Haryana High Court, made on July 17, 1985 and September 11, 1985 dismissing the appeals in limine.

The undisputed facts are that one Biharilal and Mahipal attempted to construct shops on the lands in question. Notices were issued to them for unauthorised construction. Thereafter, admittedly, they sold the lands to the respondents who filed suits for injunction restraining the appellant from demolishing the construction made by them on the premises Section 208 of the Haryana Municipalities Act, 1976 (for short, the 'Act') requires notice to be given within six months from the date of unauthorised construction. Since, admittedly, the notice was issued to Biharilal on March 18, 1982 and construction was made sometime in February 1981, it was beyond the period of limitation. That plea found favour with the courts below and accordingly the trial Court as well as the appellate Court decreed the suit and affirmed the same. The High Court dismissed the second appeals in limine. Thus, there are appeals by special leave.

It is not disputed that the appellant is the successor in interest by operation of Faridabad Complex Administration (Regulation & Development) Act, 1972 (Act 4 of 1972) and succeeded to the property held by Balladgarh Municipality. Section 61 (1) (f) of the Act provides that subject to any special reservation made or special conditions imposed by the State Government all properties of the nature mentioned in that Section specifically and situated within the Municipality shall vest in and be under the control of the Committee and that all other properties which have already vested shall thereafter vest in the Committee and shall be held and applied by the Committee for the purpose of Act. i.e., to say "(f) all lands... or other properties transferred to the Committee by the State Government or acquired by the Government by purchase or otherwise for public purpose". It would be seen that all properties as enumerated in sub-section (1) of Section 61 are possessed by

the Ballabgarh Municipality. The appellant being the successor-in-interest, they stood transferred to and vested in the appellant by virtue of Section 15 of the Act.

In the written statement filed by the appellant, it was averred that that notice was given to Biharilal to the effect that he was in "unauthorised occupation of the land" and he was construting unauthorisedly. He had given a reply thereto stating that he had already transferred the land. D.W.4. Krishan Lal had stated in his evidence that notice was issued to Biharilal earlier for unauthorised construction and reply thereto was received from him stating that he had already transferred the land. thus, it could be seen that the appellant had asserted the title over the land and the unauthorised construction carried thereon was asserted and notice on that premise was given to Biharilal. Admittedly, the respondents have purchased the properties from Biharilal and others. Thus, they being the successors-in-interest in title from Biharilal and others, the question emerges: whether they had the right to and title over the land in question and whether notice could be issued against the appellant? Unfortunately, the court below have not adverted these aspects and they have proceeded on the basis that notice for unauthorised construction was given under Section 208 of the Act. The trial Court found thus:

"therefore, it is amply clear notice dated 18.3.1982 served upon Biharilal related to land other than the one involved in the previous litigation. Even if it is held that notice dated 18.3.1982 served upon Biharilal related to the site in dispute then also the same cannot be binding upon the plaintiff."

It is obviously incorrect finding recorded by the trial Court since, admittedly, the respondents had purchased the lands from Biharilal and it is not their case that Biharilal had title independent of the Municipality. In these circumstances, the question arises: whether the notice issued by the appellant is vitiated by any error of law? It is seen that the notice issued under Section 208 is relateble to unauthorised construction on the premise that the person proceeding with the construction is the owner of the property. in this background, it is not their case that they are the owners and were proceeding with the construction in accordance with law after obtaining permission for construction according to building rules. Therefore, the limitation would arise only when it is asserted that they ate the owners of the property and they were proceeding with the constructions in violation of the Municipal Rules. In these circumstances, the limitation of Section 208 would not arise. In this case, the findings of the courts below is clearly erroneous. There is no error in issuing notice for removal of the unauthorised construction on the land of the appellant. Therefore, the decree granted by the Courts below are clearly unsustainable. The High Court has not adverted to and applied its mind to consider this aspect of the matter. No injunction could be issued against the true owner, i.e., appellant.

Thus, the appeals are allowed and the suits stand dismissed. No costs.