

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

**Regular Second Appeal No.2675 of 1989
Date of Decision: 04.02.2015**

Ramesh Chander & another

.....Appellants

Versus

The Municipal Committee Abohar, District Ferozepur.

....Respondent

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA

Present: Mr. P.N. Aggarwal, Advocate for the appellants.

None for the respondent.

RAJIVE BHALLA, J (ORAL)

The appellants challenge judgment and decree dated 06.10.1989 passed by the Additional District judge, Ferozepur accepting the appeal filed by Municipal Committee, Abohar and as a consequence setting aside judgment and decree dated 30.09.1987, passed by the Sub Judge 1st Class, Fazilka whereby the suit for permanent injunction, filed by the appellants, had been decreed.

Counsel for the appellants submits that the appellants were served with a notice under Section 172-A of the Punjab Municipal Act, 1911 (hereinafter referred to as “the Act”) for encroachment/raising construction on public property, namely part of a street. As the appellants had purchased the land by a registered sale deed and raised construction, the appellants filed a suit for permanent

injunction pleading that the construction raised does not fall within a public street. Both the trial Court as well as the first appellate Court have recorded concurrent finding of facts that construction raised by the appellants does not fall within a public street but surprisingly the first appellate Court has dismissed the suit by holding that the appellants are guilty of raising construction without a sanctioned plan i.e. have violated Section 189 of the Act. The first appellate Court did not realise that notice was not served under Section 195 of the Act and though the question of non-sanction of building plan was cast as an issue, the construction could not be demolished after three years as the Municipal Committee did not serve any notice under Section 195, read with Section 189 of the Act.

No one is present on behalf of the respondent.

The substantial question of law that arises for adjudication is whether the first appellate Court could have allowed the appeal filed by the Municipal Committee on a ground that was not subject matter of the impugned notice?

I have heard counsel for the appellants, perused the impugned judgment and decree as well as the entire record.

The appellants purchased a plot of land, vide registered, sale deed, dated 12.03.1982. The appellants

claim that they applied to the Municipal Committee for sanction of a building plan but as the Municipal Committee did not respond, within six months proceeded to raise and complete construction by July, 1982. The appellants were served with a notice dated 21.03.1985 Ex.DW2/K, asking the appellants to remove the construction as it has been raised in a public street. The appellants filed a suit, praying for a permanent injunction to restrain the Municipal Committee from demolishing the construction as no part of the plot purchased or the construction raised falls within a public street. The Municipal Committee put in appearance, filed a written statement controverting averments in the plaint and asserting that construction raised by the appellants is part of a public street. The Municipal Committee also averred that construction has been raised without sanction of a building plan.

After considering the pleadings, the trial Court framed the following issues:

- “1. Whether the suit is bad for want of notice U/s 49 of Pb. Municipal Act, OPD*
- 2. Whether the plaintiffs did not get the site plan approved from the municipal Committee? If so, its effect? OPD*
- 3. Whether the sit in dispute is a part of the public street? OPD*
- 4. Whether the plaintiffs are entitled to the injunction on prayed for? OPP*
- 5. Whether the plaintiffs have no locus standi to*

file the present suit? OPD

6. *Relief.”*

The parties were thereafter called upon to lead evidence.

On the basis of the pleadings and evidence, the trial Court recorded a finding of fact that construction raised by the appellants does not fall within a public street as the Municipal Committee has failed to adduce any evidence that construction was raised by encroaching upon any part of a public street. A relevant extract from the aforesaid judgment reads as follows:-

“ An adverse inference is liable to be drawn against the defendant committee for withholding the original lay out plan. The defendant committee produced on record site plan Ex.DW5/A but this plan is not original one and as such not much value can be attached to this site plan. Further none of the witnesses produced by the defendant committee has stated the width of the public street in front of the property in dispute. In the absence of any such evidence it cannot be said that the construction in dispute is standing over any portion of the public street. In view of the above discussion, I hold that the site in dispute is not a part of public street and consequently this issue is decided against the defendant and in favour of the plaintiffs.”

After recording this finding, the trial Court went on to hold that as the application for sanction of building plan was not decided, the Municipal Committee could not demolish the building. The trial Court decreed the suit by restraining

the Municipal Committee from demolishing or dismantling any part of the construction raised by the appellants.

Aggrieved by the aforesaid judgment and decree, the Municipal Committee filed an appeal.

The first appellate Court, affirmed the finding that no part of the disputed building falls within a public street by holding as follows:-

“..... Mr. Sajjan has not been able to point out any evidence to connect the site in dispute is a public street declared by the Municipal Committee as such. Further more, the plaintiffs purchased the plot in dispute on 12-3-1982 whereas the public street was declared subsequently and there is no evidence that earlier to its declaring of the street as public street the plot in dispute was part of any such street. I accordingly affirm the findings of the trial court on this issue.”

After recording the finding that construction was not raised in a public street, the first appellate Court allowed the appeal, set aside the judgment and decree passed by the trial Court and dismissed the suit by holding that as construction has been raised without a sanctioned plan, the Municipal Committee is empowered to demolish this building under Section 189 (1) of the Act read along with Section 195 of the Act.

A perusal of the show cause notice Ex.DW2/K reveals that the Municipal Committee did not invoke Section 189 (1) or Section 195 of the Act. Section 189 (1) of the Act

prohibits a person from erecting or re-erecting etc. any building without sanction of the Municipal Committee. Section 195 of the Act empowers the Municipal Committee to demolish such a structure but only after service of a show cause notice and then also by following the procedure prescribed by law. While accepting that the Municipal Committee has the power to demolish a structure raised without a sanctioned plan and that unauthorised constructions must be discouraged, the failure of the Municipal Committee to serve a notice under Section 189 (1) read with Section 195 of the Act, did not empower the first appellate Court to invoke Sections 189 (1) and 195 of the Act and dismiss the suit. The question in the present case was not whether the appellants had violated Section 189 (1) of the Act but whether they had raised construction by encroaching upon a public street. The first appellate Court having held that construction was not raised in a public street could not have dismissed the suit on a ground that was not subject matter of the impugned notice. The Municipal Committee, as already noticed, while issuing notice Ex.DW2/K did not invoke Section 189 (1) of the Act or Section 195 of the Act. The Municipal Committee having failed to invoke Sections 189 (1) and 195 of the Act, the first appellate Court could not have ignored the contents of the notice and dismissed the suit. The question of law is

answered in favour of the appellants.

As a consequence of the answer to the question of law in favour of the appellants, the appeal is allowed, judgment and decree dated 06.10.1989 in so far as it has reversed the judgment and decree passed by the trial Court is set aside and judgment and decree passed by the trial Court is restored, but with liberty to the Municipal Committee to proceed further in accordance with law. No order as to costs.

[RAJIVE BHALLA]
JUDGE

04.02.2015
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