

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

Date of decision:02.03.2015.

Tek Chand and others

.....Petitioners

v.

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE JASWANT SINGH

Present:- Mr.Amit Jhanji,Advocate for the petitioners

Jaswant Singh,J.(Oral)

The conceded fact is that land measuring 2044 square yards in Rajesh Market, Ghumar Mandi, Ludhiana was acquired for utilisation by the Improvement Trust, Ludhiana under a Town Planning Scheme way back in the year 1972. It is also not in dispute that the said land was owned by Banarsi Dass who filed a civil suit challenging the said acquisition. The said suit was disposed of in terms of a written compromise deed dated 30.3.1972(Annexure P-3 herein) whereby the aforesaid disputed property stood vested in the Municipal Corporation, Ludhiana for construction of a park and roads under the Town Planning Scheme. It is not in dispute that the said decree attained finality. It appears that since no timely construction of park was undertaken

certain shopkeepers started encroaching upon the said land which is situated in the heart of the City. The Municipal authorities finally woke up after a lapse of almost 30 years when notices were issued in the month of May 2011 to such encroachers on the property in question under Section 246(1) read with Section 269 of the Punjab Municipal Corporation Act, 1976 for removal of the encroachments. Since the encroachers including the petitioners who were issued similar notices did not remove the encroachments demolition orders were passed and concededly implemented also. The appeal filed by 17 encroachers including petitioners was dismissed vide common impugned order dated 14.3.2014 (P-15). Out of said 17 appellants, only five of such appellants/petitioners have approached this Court under Article 226 of the Constitution assailing the order dated 14.3.2014 (P-15) passed by learned District Judge, Ludhiana exercising the appellate powers under Section 269 of the Punjab Municipal Corporation Act, 1976.

Having heard learned counsel for the petitioners at length this Court finds no merit in the present writ petition.

The plea that the petitioners were tenants of original owner Banarsi Dass cannot be countenanced since there is nothing on record to show that they were ever inducted as tenants in the suit property by Banarsi Dass. In fact, it has come on record that Banarsi Dass himself had moved a written request before the Corporation on 15.6.2011 for removal of encroachments from the disputed property.

and to develop the same as a park while categorically stating that the persons who had encroached were not his tenants. It is established on record that the aforesaid land in question had vested with the Municipal Corporation, Ludhiana with ownership and possession after following due process of law adopted while promulgating the town planning scheme and further consolidated by the compromise deed dated 30.3.1972, which concededly has attained finality. It is also not in dispute that Banarsi Dass had himself subsequently filed a suit no.61/1984 seeking relief of mandatory injunction against the Municipal Corporation, Ludhiana on the basis of non-utilisation of the suit land under the town planning scheme and the compromise deed. The said suit was dismissed vide judgment and decree dated 10.9.1993 with a direction to the Municipal Committee to remove the encroachments and develop a park. The appeal filed by Banarsi Dass was also dismissed vide judgment and decree dated 21.10.1977 which concededly has also attained finality. Still further it has also been noticed in the impugned award that this Hon'ble High Court vide order dated 4.10.2008 had passed detailed directions directing the State Government and Municipal Corporations to remove encroachments from the public properties after following due process of law. The present action of the Municipal Corporation is precisely in consonance with such directions passed by Hon'ble High Court. Thus, this Court is in total agreement with the detailed reasons given by the appellate

authority in the impugned order dated 14.3.2014 (P-15).

As regards the plea that RSA No.1724 of 1986 filed by Banarsi Dass and others is pending before this Court and therefore, no action should be taken by the Municipal Corporation is concerned, it is evident from the reading of interim order dated 18.6.1996 passed in said RSA that the dispute therein is regarding declaration of ownership with possession of land measuring 25 bighas 17 biswas as per mutation no.6697 sanctioned on 27.7.1964 alongwith one residential house No.BOXX-280 comprising of an area of 300 sq.yards out of khasra number 971 and 972 in revenue estate of Mahal Baghat, Tehsil and District Ludhiana, and therefore, not connected at all with the present land in question. Said RSA has been filed against judgment and decree dated 2.8.1984 passed by trial court and upheld by the learned Additional District Judge, Ludhiana vide judgment dated 15.4.1986. Apart from the same, if any rights flow from the said decree, the successful parties therein would be entitled to seek their remedy in accordance with law, if at all the said property is relatable to the present property in question.

In view of the above this Court finds no ground to interfere with the impugned orders and accordingly the present writ petition is dismissed.

Before parting with this order, it is however, deemed appropriate to issue notice to Municipal Corporation, Ludhiana, to

explain as to why for almost 30 years the suit land was not utilised for the purpose it was acquired and secondly after the demolition what steps have been taken for construction of a park.

Let notice be issued to Commissioner, Municipal Corporation, Ludhiana for 7.4.2015 in that regard.

02.03.2015.
joshi

(Jaswant Singh)
Judge