

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Civil Writ Petition No.23770 of 2014
Date of Decision: November 03, 2015

Harneet Kaur

....Petitioner

versus

The State of Punjab and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE P.B.BAJANTHRI.

Present: Mr.R.S. Pandher, Advocate, for the petitioner.
Mr.Rajesh Bhardwaj, Additional AG, Punjab.
Mr.Ashok Bazaz, Advocate, for respondent Nos.2 & 3.

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- 1· *Whether Reporters of Local papers may be allowed to see the judgment?*
- 2· *To be referred to the Reporters or not?*
- 3· *Whether the judgment should be reported in the Digest?*

Surya Kant, J. (Oral)

In this writ petition filed in the year 2014, the petitioner has laid challenge to the order dated 17.10.2006 whereby Chief Town Planner, Municipal Corporation, Ludhiana rejected her site-plan for the construction of a residential house, on the plea that the subject-site falls under the Town Planning Scheme, Mata Nagar Part-2 and that the share of plot owned by the petitioner falls under road/park of the said Scheme.

[2] Notwithstanding the inordinate delay in approaching the Court, we have heard learned counsel for the parties on merits and propose to decide the case accordingly.

[3] The facts may be noticed briefly. The petitioner purchased the land measuring 453.33 square yards comprising

khasra No.571, Khatta No.656/717, Hadbast No.160 of village Jawadi in Punjab Mata Nagar, within the Municipal area of Ludhiana. The plot was purchased vide registered sale deed dated 03.04.1997.

[4] It is undeniable that the Town Planning Scheme of Punjab Mata Nagar, Part-II at Jawadi road, Ludhiana was sanctioned by the State Government in the year 1990 and as per that Scheme the petitioner's site falls within the road/park.

[5] Section 275 of the Punjab Municipal Corporation Act, 1976 used to empower the Competent Authority to utilize 25% of the land of a land-owner situated within the Town Planning Scheme Area, for public purposes like road or park without payment of any compensation. The subject-land was also included in the 1990 Scheme for such public purpose(s) in purported exercise of the power vested under Section 275 (1) (c) of the Act.

[6] It is also not in dispute that a pari-materia provision contained in the Punjab Municipal Council Act, 1976, namely, Section 192(1)(c) was struck down by the Hon'ble Supreme Court in Yogendra Pal versus Municipality, Bathinda, (AIR 1994 SC 2550), decided on 15.07.1994. Their Lordships, however, further held that the law so declared would be prospective and the said judgment shall have no bearing on the Town Planning Schemes already sanctioned.

[7] In the instant case, the Town Planning Scheme was admittedly sanctioned by the Government on 12.07.1990. The same is thus saved from the effect of the Apex Court judgment in Yogendra Pal's case (supra). Resultantly, the action of the respondent-authorities in utilizing 24% land of

the then land-owner, namely, the vendor of the petitioner, for the purpose of road and park without payment of any compensation to him, is unassailable.

[8] Having held so, we cannot be oblivious of the fact that there is a serious dispute with regard to location of the petitioner's land and/or the proposed site to construct the road and park. While the petitioner claims that the road has already been constructed on some other land and no park is proposed to be developed, such a factual issue is seriously disputed by learned counsel for the respondent-Corporation. Reference is made by the petitioner to communications dated 27.08.1998 and 04.09.2009 [P-9 colly.].

[9] Such like factual issues, in our considered view, can be effectively resolved by carrying out the demarcation at the site. If on demarcation it is found that the road already stands constructed and/or park is proposed to be developed at a different site and not on the land of the petitioner, there can possibly be no legal impediment against re-consideration of the building plans submitted by the petitioner. However, if the proposed park and/or road are to be developed as per the sanctioned Town Planning Scheme through the petitioner's land, no exception can be made to the decision taken by the authorities in rejecting her building plans. The other aspect which requires consideration at the hands of the authorities would be whether the petitioner's entire land falls within the proposed road and park or a substantial part of it remains unutilized and thus can be permitted to be used for residential purposes? This question can also be determined only after carrying out the demarcation.

[9] We thus dispose of this writ petition with a

direction to the respondent-Corporation to constitute a team of its Town Planner, Architect and Engineer(s) and also take assistance of the revenue officials of the District Administration for the purpose of carrying out a fresh demarcation. It is further directed that a week's advance notice be sent to the petitioner before the demarcation is carried out and she may be associated during the demarcation process. Determination of rest of the issues shall depend upon the demarcation report.

[10] Let the needful be done within a period of four months from the date of receiving a certified copy of this order.

[11] Dasti.

[SURYA KANT]
JUDGE

November 03, 2015
mohinder

[P.B.BAJANTHRI]
JUDGE