

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2334 of 2010 (O&M)

Date of Decision: 17.07.2015

Municipal Corporation, Amritsar

... Appellant

Versus

Amritsar Diocesan Trust Association

... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. V.K. Sandhir, Advocate,
for the appellant.

Mr. S.K. Garg Narwana, Sr. Advocate,
with Mr. Naveen Gupta, Advocate,
for the respondent.

1. To be referred to the Reporters or not? Yes.
2. Whether the judgment should be reported in the Digest? Yes.

RAJIV NARAIN RAINA, J.

This is a misconceived appeal which merits outright dismissal. But outright dismissal based on instinctive judicial reflexes also requires writing of a judgment containing reasons and the motions have to be gone through and the facts of the case narrated to support the conclusion of dismissal with exemplary costs.

This is an appeal filed by Municipal Corporation, Amritsar against concurrent findings of facts recorded by the courts below in a suit filed by the plaintiff that the defendant Corporation be restrained from interfering in the peaceful possession of the Diocesan Church administered by the Amritsar Diocesan Trust Association and from forcibly digging the private passage or land or laying sewerage pipes in the private passage/lane

forming part of the aforesaid Mission Compound or installing any street lights in any portion of the private passage leading to Mission Compound aforesaid from Court Road side or any portion of property known as Mission Compound or its private passage/land. The decree passed by the trial court reads as follows:-

"This suit as coming on this day for final disposal before me (Ranjeev Kumar P.C.S. Civil Judge (Jr. Divn.) Amritsar). In the presence of Shri P.M. Sharma, Advocate counsel for the plaintiff and Shri Sanjiv Soni Advocate counsel for the defendant. It is ordered that the suit of the plaintiff succeeds and is hereby decreed with costs and a decree for permanent injunction thereby restraining the defendant from interfering and inter-meddling in the possession and ownership rights of the plaintiff over the property known as Mission Compound situated at Taylor Road and Court Road in area containing 75 Kanals 15 marlas or thereabouts and comprising khasra No.1168 and 1169 and bounded as under:-

North: by the approach and road leading to the said Alexandra High School from Taylor Road aforesaid. East: by the land and premises of the said school; South: by Court Road aforesaid; West: by Taylor Road aforesaid; is hereby passed in favour of the plaintiff and against the defendant Corporation."

A few words on the dispute may be appropriate. It is not disputed that about 100 tenants live in 75 K and 15 M of Church property comprising a part of the Mission Compound situated on Taylor Road, Amritsar. The Municipal Corporation has supplied water through pipes, as a sewerage system installed by the Corporation connects with the Church buildings where, as said earlier, about one hundred tenants live in the Mission Compound. The supply of water ends in Church premises and does not flow to any other part of the city for onward water supply. If the Municipal

Corporation, Amritsar as in duty bound is to supply metered water to the residents of the municipal areas and has connected Church premises with water pipes that does not mean that because of it, they can interfere or intermeddle in the suit property. On April 06, 2015 Mr. Sandhir appearing for the appellant had made following statement before this Court:-

"Mr. Sandhir, learned counsel for the appellant submits that the dispute had been settled even prior to the grant of permanent injunction. The sewerage and water supply pipes had been laid and connected with the church property, and, therefore, the dispute had ceased to exist."

Mr. S.K. Garg Narwana, learned senior counsel appearing for the respondent submits that the statement made before the court was fallacious since Mr. Sandhir even today at the hearing presses the appeal for setting aside or varying the judgments and decrees of the courts below.

Mr. Sandhir submits that there is no dispute existing with the Municipal Corporation and the Church with respect to possession or ownership. He says that Municipal Corporation is not in fact interfering in any manner in the ownership, possession and management of the Church property. If that is so then it seems peculiar that an appeal should have been filed in this court under section 100 CPC.

The issues framed by the trial court require to be taken stock of. They are reproduced below:

- "1. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP*
- 2. Whether the suit has not been filed by a competent person? OPD*
- 3. Whether the suit has become infructuous? OPD*
- 4. Whether suit is not maintainable? OPD*
- 5. Whether the plaintiff has no cause of action to file the*

present suit? OPD

6. Whether the suit is bad for want of service of notice u/s 396 of the PMC Act upon the defendant.

7. Relief."

The argument of Mr. Sandhir rests on the proposed alleged substantial questions of law as framed in the grounds of appeal which are to the following effect:-

"1. Whether the cause of action survived to the plaintiff for permanent injunction, after the admission of plaintiff of already laying of water and sewerage lines in the demised property?

2. Whether the statutory body can be restrained from carrying out the work of providing basic amenities to the inhabitants of the locality?

3. Whether there was hidden relief of declaration to the effect of ownership, if so, whether the suit was maintainable without serving advance notice u/s 369 of PMC Act?"

The Municipal Corporation in a flight of fancy imagines that there was a hidden relief of declaration of ownership in the Association in the plaint. I fail to read from the prayers in the suit of any lurking request to court to declare title over the Mission Compound in the Amritsar Diocesan Trust Association.

As a matter of historical fact the Church Compounds have not been invested ownership rights across the country of Church properties and only their management came to be vested in those who run the affairs of the Christian Churches as the properties where Churches have been built were made by the grants given by the British Government of India during pre-partition times. These Church Associations became minority institutions with the advent of the Constitution of India and fortified by the protections afforded therein to conserve, practice and propagate their religion freely as a

fundamental right. Secularism commended that there would no longer be public funding of any religion or religious institution and their managements, including Churches etc. were to run on private funding.

Therefore, any intervention in Mission Compound could be only by consent otherwise would be an illegal intrusion on protected rights. If there was no free consent then the plaintiff was within its right in approaching court seeking a permanent injunction as prayed for and the Municipal Corporation could not forcibly enter the suit premises, its paths and passages and trespass on the Mission Compound without permission. If repairs are needed of the water and sewerage pipes then Municipal Corporation, Amritsar is required to notify the Church authorities for the purpose of their entry to carry out their municipal duties in the Punjab Municipal Act, 1911.

Both the courts below have properly protected such rights after appreciating the evidence and documents on record and based their findings on the principle of consent. The court has held that the Municipal Corporation has failed to prove whether consent was obtained from the Manager of the Association in connection with work of digging of a path or passage or for laying down sewerage pipes, to provide civic amenities. Even if the intention is good it is bad for not obtaining prior consent in writing. But the Corporation has no right to claim ownership of the property which is vested in State Government. The State and its instrumentalities including municipal authorities in India are areligious and are to act dispassionately respecting all religions and people. Motive becomes inconsequential in such an enterprise when we speak of erecting street lights and laying

underground water pipes or to carry out repair to provide civic amenities but that work cannot be done unilaterally by trespassing over private possession of Church Compound without necessary prior assent, concurrence and sanction.

I have no doubt the appeal is misconceived, frivolous and vexatious and appears to have been filed in routine to obtain the stamp of this Court. There is not a whisper of a question of law required to be determined and adjudicated by this Court in this appeal. A substantial question of law arising in this appeal is a far cry and I have no hesitation in dismissing the worthless endeavour in filing the appeal with costs of Rs. 5 lacs for wasting the time of this court at the hearing and in the making of this order, the Municipal Corporation unfortunately imputing and imagining a “ hidden relief of declaration to the effect of ownership” in the plaintiff while there was none whatsoever claimed in the suit. The argument in second appeal is a rather unhappy and an ominous suggestion totally uncalled for in the frame of the suit. The other side of the coin in the making of the suggestion and that too in writing is even more portentous and largely disrespectful to Church Compound in its undercurrents and the sentiments of the Trust as though the land has been occupied by the plaintiff and its tenants against the will or sanction of the municipality, that the residents of the Church Compound live at its pleasure and mercy in turning on and off water taps and switch boards that carry and supply water and electricity. It is not the case that the the Municipal Corporation, Amritsar obtained prior permission to enter upon the Church Compound.

For these reasons the appeal is found wholly without merit and is

accordingly dismissed with costs as imposed above, together with costs in all the courts against the defendant. Costs be paid to the Amritsar Diocesan Trust Association.

(RAJIV NARAIN RAINA)
JUDGE

17.07.2015
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