

204

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

RSA No.4013 of 2011 (O&M)

Date of Decision: 18.11.2015

MUNICIPAL COUNCIL, MOGA AND ORS.

.....Appellants

vs

SATISH KUMAR GROVER

....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Anil Kumar Sharma, Advocate
for the appellants.

Mr. B.R. Mahajan, Senior Advocate with
Mr. Prateek Mahajan, Advocate
for the respondents.

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?*

RAJ MOHAN SINGH, J.

[1]. The present Regular Second Appeal has been filed by Defendants-Municipal Council, Moga against judgment and decree dated 01.12.2010 passed by Additional District Judge, Moga vide which Civil Appeal No.41 filed by Municipal Council, Moga and others was dismissed with costs and Civil Appeal No.45 filed by plaintiff was partly accepted with proportionate costs, thereby entitling the plaintiff to compensation to the tune of Rs.7,00,000/- instead of Rs.3,00,000/- as awarded by the trial

Court along with interest @ 6% per annum from the date of institution of suit till final realisation.

[2]. Consequential relief of permanent injunction was also granted to the plaintiff to the effect that the Municipal Council, Moga will not demolish/damage the existing portion of ground floor and dispossess the plaintiff illegally and forcibly except in due course of law. However relief of mandatory injunction was declined.

[3]. Plaintiff filed suit for declaration to the effect that illegal and mala fide demolition by Municipal Council, Moga started on 01.09.2000 in respect of double storey shop of the plaintiff as shown in the site plan.

[4]. Initially Khasra No.1966 measuring 4 Marlas was owned by District Board which was transferred to Panchayat Samiti. Father of the plaintiff was tenant in the said plot. A shop shown in the red colour in the site plan was built up on this site after incurring huge expenses and he was running his shop for the last more than sixty years. District Board and thereafter Panchayat Samiti used to issue receipts.

[5]. Father of the plaintiff died in the year 1987. After the death of his father, plaintiff continued to be tenant in the premises and was running business in the name and style of M/s Dharamkotian Di Hatti. Plaintiff obtained permission from

Executive Officer, Panchayat Samiti on 15.03.1991 for construction of first floor on the shop. After obtaining requisite sanction from Municipal Council, Moga on 17.09.1991, plaintiff raised construction of first floor and also repaired the ground floor for the purposes of setting up a restaurant. When the construction was completed, Panchayat Samiti issued a letter to the plaintiff to stop construction. Plaintiff filed a civil suit against the Panchayat Samiti which was decreed by the trial Court vide judgment and decree dated 18.07.1994.

[6]. Factum of tenancy of the plaintiff remained an admitted fact by the Panchayat Samiti even in CWP No.12094 of 2000 before this Court.

[7]. In the year 1996, an inquiry was marked by the Director, Panchayat & Rural Development, Punjab in respect of Khasra No.1966 and the built up shop of the plaintiff. Additional Deputy Commissioner, Moga after going through the record and factual inspection of the site, submitted that no action was called for against the plaintiff. Demarcation of the property was also conducted and it was found in the report of Tehsildar that land falls under the Khasra No.1966.

[8]. On 01.09.2000, at about 5.30 p.m. defendants along with field staff bulldozed the shop and *chobara* illegally with the help of Police without any authority of law and without serving

any notice or giving opportunity of hearing to the plaintiff. Even the plaintiff was not allowed to remove his belongings i.e. two refrigerators, show case, fans, coolers, tubelights, fancy lights, exhaust fans, gas cylinders, bhatias, utensils and furniture etc. Defendant No.3, who was the Administrator of Municipal Council, Moga was instrumental in challenging the plaintiff openly that it was due to his malice towards the plaintiff. Even the remaining portion of the building was also demolished by the staff of Municipal Council, Moga on 02.09.2000.

[9]. Plaintiff filed CWP No.12094 of 2000 before this Court. In the written statement, respondents/defendants projected that they had served notice under Sections 172(2) and 220 of the Punjab Municipal Act (for short 'the Act') on 14.08.2000 and 28.08.2000 respectively. Even they pleaded demarcation done on 01.09.2000.

[10]. Plaintiff did not admit issuance of such notices by the defendants and pleaded that alleged notices were the manufactured affair. No procedure was followed, nor the notices were served through any regular process server. Fake records were prepared and there was total non-compliance of mandatory provisions of law.

[11]. The alleged notice dated 14.08.2000 was not served through any process server, rather a report from Chhotte Lal,

Baildar was obtained. The reports on the notices were fake. As per report dated 16.08.2000, the plaintiff was not available at the shop and on 18.08.2000, alleged refusal by the plaintiff was recorded vide notice, thereafter no order was passed by the defendants/Municipal Council, Moga. On 28.08.2000, Chhotte Lal made a report that notice was not accepted by the plaintiff. Both these notices had separate dispatch No.11 and 20 respectively in fresh dispatch register which was not a regular dispatch register. The aforesaid fact highlighted the fact that the record was manipulated. The notices were never sought to be served by registered post. Subsequent notice dated 05.09.2000 was sent by post which was entered in the regular dispatch register.

[12]. The registered notice dated 23.12.2000 was sent to the defendants in reply to letter dated 21.12.2000. No demarcation was conducted in respect of *Khasra* No.1966. The defendants alleged in the report dated 01.09.2000 that after the shop of Goyal Travels the record is silent and Tehsil building was situated in Khasra No.194/81, whereas in fact the Tehsil compound was not situated in 194/81. In the alleged report 15 days time was granted to file objections, but without granting any opportunity the shop was demolished on the same day i.e. on 01.09.2000. The report was supplied to the plaintiff only on

25.10.2000 and the plaintiff filed objections thereto. The objections were not decided prior to the demarcation of the property made by the Kanungo as per the orders of the Tehsildar, Moga on 15.07.1998 and it was proved on record. The construction of the shop was in Khasra No.1966 that too after obtaining necessary permission/sanction by the defendants' Authorities.

[13]. The plaintiff further pleaded that defendants alleged that the width of the road was 66 feet as per revenue record and the road was in Khasra No.1980 and bore 17 Kanals 13 Marlas and the total length of road from chowk Joginder Singh upto Railway Crossing was 1962 feet. The width of the road was 48.9 feet. Defendants concealed revenue record. Plaintiff was paying *Tehbazari* to the defendants against receipt for the last many years.

[14]. In the notice under Section 67(3) of Punjab Municipal Act issued by the Municipal Council, Moga the value of the property was assessed to be Rs.4,88,400/-. The illegal demolition by the defendants was duly photographed and the illegal demolition made the plaintiff to claim restoration of original condition and reconstruction of shop. The damages to the tune of Rs.20,00,000/- were claimed in the suit.

[15]. Upon notice defendants appeared and contested the

suit on all customary pleas. It was claimed that the plaintiff has raised illegal construction over road which was 66 feet wide in front of shop. The demolition drive was conducted in view of directions contained in **CWP No.7639 of 1995**, titled as **Nimit Kumar vs. State** and Authorities implemented the judgment in letter and spirit. It is further alleged that the Deputy Commissioner held meeting on 16.07.1998 and another meeting on 09.08.2000 and issued notice under Section 172(2) of the Act to the plaintiff on 14.08.2000 and then issued another notice on 28.08.2000 under Section 220 of the Act and demarcation was conducted on 01.09.2000. In demarcation it was found that the plaintiff had encroached upon the road upto 16 feet. Suit was claimed to be bad for non-joinder of necessary parties.

[16]. On merits defendants claimed that the Panchayat Samiti declared construction of the plaintiff on the first floor to be illegal and it was claimed that proper opportunity was afforded to the plaintiff before demolition of illegal construction and due course was adopted in such a course of demolition.

[17]. After filing of replication, following issues were framed by the trial Court:-

- “1) *Whether demolition started on 1.9.2000 by Municipal Council, Moga regarding disputed shop is illegal and against the provisions of*

Municipal Act? OPP

- 2) *Whether alleged notice U/s 172(2) and U/s 220 of Punjab Municipal Act is illegal and not binding upon the rights of plaintiff? OPP*
- 3) *Whether the plaintiff is entitled to mandatory injunction? OPP*
- 4) *Whether plaintiff is entitled to a sum of Rs.20 Lac as compensation alongwith future interest @ 18% p.a.? OPP*
- 5) *Whether plaintiff has concealed material facts from this Court? OPD*
- 6) *Whether notice U/s 172(2) and U/s 220 of Punjab Municipal Act were duly served upon the plaintiff? OPD*
- 7) *Whether suit is bad for non joinder of necessary parties? OPD*
- 8) *Relief.”*

[18]. Both the parties led their respective evidence on the aforesaid issues to prove their case.

[19]. Issues No.1, 2 and 6 were considered by the trial Court jointly and it was held that the plaintiff was tenant over *Khasra* No.1966 which was under ownership of the Panchayat Samiti. The possession of the plaintiff was that of tenant. Site plan Ex.R-43 was sanctioned by the defendants and it was also admitted by them that shop was demolished upto 16 feet at the

ground floor and complete first floor.

[20]. Demarcation report Ex.P-4 of *Khasra* No.1966 was conducted on the spot. Demarcation report in respect of *Khasra* No.1980 was also conducted which was exhibited on record as Ex.D-2. No demarcation was done in respect of *Khasra* Nos.1980, 1969, 1966 and 1965. The demarcation of one *Khasra* number was not sufficient to conclude that any encroachment was made on any other *Khasra* number.

[21]. The plea of the defendants was that the demarcation made on 01.09.2000, found the plaintiff to have made encroachment on some portion of road bearing *Khasra* No.1980. Notice under Section 172(2) of the Act (Ex.D-4) was issued on 14.08.2000, whereas notice under Section 220 of the Act (Ex.D-5) was issued on 28.08.2000. The defendants had issued these notices without there being any proof of demarcation as the demarcation was only done on 01.09.2000. Even 15 days time was given in the demarcation report dated 01.09.2000 i.e. Ex.D-2 to file objection, if any by the plaintiff. The defendants did not wait for 15 days and demolished the portion of the ground floor and complete first floor in a hasty manner.

[22]. Trial Court after discussing, decided issues No.1 and 2 in favour of the plaintiff and against the defendants, whereas

issue No.6 was decided against the plaintiff. Mandatory injunction was declined to the plaintiff, however he was held entitled to the compensation to the tune of Rs.3,00,000/- under issue No.4. Issues No.5 and 7 were not pressed and ultimately suit was decreed for a sum of Rs.3,00,000/- as compensation/damages along with interest @ 6% per annum till realisation of the amount. Consequential relief of permanent injunction was granted and defendants were restrained from demolishing the remaining portion of the ground floor vide judgment and decree dated 11.08.2008 passed by the trial Court.

[23]. Feeling aggrieved against the aforesaid judgment and decree, both the parties went in appeal before the lower Appellate Court.

[24]. Lower Appellate Court clubbed both the appeals and ultimately dismissed the appeal filed by Municipal Council, Moga i.e. C.A. No.41 and allowed the appeal filed by the plaintiff i.e. C.A. No.45, thereby enhancing the compensation from Rs.3,00,000/- to Rs.7,00,000/- along with interest @ 6% per annum from the date of initiation of rent till realisation of the amount. Permanent injunction was also granted restraining the defendants from illegally and forcibly demolishing the remaining portion of ground floor and from dispossessing and interfering in

peaceful possession of the plaintiff over the suit property.

[25]. In view of Full Bench judgment of this Court in **Ganpat vs. Smt. Ram Devi and others 1977, PLR Page I**, framing of question of law was having no effect on the maintainability of the appeal. However, in view of amendment of Section 100 CPC, framing of substantial question of law is *sine qua non* for maintaining regular second appeal in this Court. Prior to amendment, the appeal could have been filed on the ground set out in clauses (a) to (c) of Section 100(1) CPC. Now second appeal requires substantial question of law to be framed. The interference cannot be made only because the order is contrary to law, but when the disputed issues raised a substantial question of law. Limiting such a power in the Appellate Authority is based on public policy having roots in the maxim "*interest reipublicae ut sit finis litium*".

[26]. In the present appeal, appellants have formulated following substantial questions of law in para No.20 of the grounds of appeal:-

- “(i) Whether the findings recorded by both the courts below are perverse and therefore, liable to be set aside?
- (ii) Whether the evidence adduced by the appellants has been ignored and evidence adduced by the respondent has been given

undue weightage by both the courts below?”

[27]. I have heard learned counsel for the parties and have gone through the records of this case.

[28]. Question No.(i) is based on merits of the case on over all appreciation of evidence. Since the demolition drive has been done in a very hasty manner and the notices under Sections 172(2) and 220 of the Act were issued in the absence of demarcation which was allegedly conducted on 01.09.2000 and which itself prescribes 15 days notice to the plaintiff to file objections, therefore, activity of demolition was conducted in a very hasty and unlawful manner. Both the Courts below have recorded categoric findings in respect of illegality done by the Authorities and, therefore, the findings recorded cannot be held to be perverse in any case. Hence the question No.(i) does not arise at all.

[29]. Question No.(ii) is not even a question of law much less a substantial question of law. On the basis of material on record it cannot be said that the findings recorded by the Courts below are the result of misreading of evidence or having suffered with any perversity of any type. The findings are based on correct appreciation of evidence. Oral as well documentary evidence available on record found that the *Khasra* No.1966 was in ownership of Panchayat Samiti and the same was in possession

of the plaintiff as tenant. Admittedly, site plan Ex.P-43 was sanctioned by the defendants. It is admitted by the defendants that the shop was demolished upto 16 feet on the ground floor and complete first floor.

[30]. Plaintiff has placed on record demarcation Ex.P-4 of *Khasra* No.1966. Municipal Council, Moga has also placed on record demarcation report of *Khasra* No.1980 Ex.D-2, but the record did not show that *Khasra* Nos.1980, 1969, 1966 and 1965 were ever demarcated by either of the parties. Only on the basis of demarcation of one *Khasra* number, the impugned action in considered opinion of this Court was not the right conclusion to say that the encroachment has been made on any particular *Khasra* numbers. The alleged demarcation was conducted on 01.09.2000 and it was found that the plaintiff had encroached upon some portion of road bearing *Khasra* No.1980.

[31]. A notice was issued under Section 172(2) of the Act by the Municipal Council, Moga on 14.08.2000 and another notice under Section 220 of the Act was issued on 28.08.2000. The notice Ex.D-4 dated 14.08.2000 did not carry any recital of any encroachment by the plaintiff over the property of Municipal Council, Moga and by notice Ex.D-5 dated 28.08.2000, plaintiff was asked to remove the illegal encroachment. It could not be

explained on record as to how the defendants/Municipal Council, Moga came to this conclusion that the plaintiff had encroached upon its property. The demarcation dated 01.09.2000 was subsequent to these notices, therefore, at the time of alleged notices prior to 01.09.2000, there was no material available with the Municipal Council, Moga to observe that the plaintiff had encroached upon any portion of its property.

[32]. Despite the fact that 15 days notice was recited in the demarcation dated 01.09.2000, still demolition activity was done without awaiting for the said period and demolition was done in a hurry and on the same day. Concededly width of the road was 66 feet. As per site plan Ex.P-43, width of the road was shown to be 66 feet. As per site plan Ex.P-31 produced by the plaintiff also depicted the road bears khasra No.1980 towards eastern side of the shop. *Khasra* No.1969 between the shop and *Khasra* No.1980 was not shown. Pachayat Samiti was owner of *Khasra* No.1966 and did not challenge the act of the defendants to demolish portion of the shop.

[33]. The reconstruction of the shop was not possible as it would have hit the interest of the public at large, therefore, relief of mandatory injunction was declined. However grant of compensation was lawfully judged by the trial Court, though on

inadequate note, but the same was suitably enhanced by the lower Appellate Court so as to meet the ends of justice.

[34]. In considered opinion of this Court, no interference is called for in the impugned judgment and decree passed by the lower Appellate Court, consequently this appeal is found to be totally bereft of merit and the same is dismissed accordingly.

November 18, 2015

Atik

**(RAJ MOHAN SINGH)
JUDGE**