

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

RSA No.4284 of 2012 (O&M)

Date of decision-04.09.2015

Tarlok Chand

...Appellant

Vs.

Municipal Corporation, Town Hall, Amritsar

...Respondent

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

Present:- Mr. Shashikant Gupta, Advocate for
Mr. L.M. Gulati, Advocate
for the appellant.

Mr. Shakti Mehta, Advocate
for the respondents.

RAJ MOHAN SINGH, J. Oral

C.M No. 11853-C-2012

After hearing learned counsel for the parties and in view of the averments made in the application, delay of 72 days in filing of appeal is condoned.

RSA No. 4284 of 2012

The plaintiff has filed the present suit for permanent injunction, against the defendants Municipal Corporation, Town Hall, Amritsar. Plaintiff seeks to restraint the defendant from blocking the passage abutting to property consisting of five shops and one service station used by the plaintiff for washing of vehicles. It has been claimed that the shop adjoining to the service station is being used by the plaintiff as shop-cum-office. One of the shops adjoining the house of Sh. Rattan Lal towards eastern side is in possession of the tenant namely Malkiat Singh, who is also doing the work of car repairs.

All these shops are facing towards circular road. There is an open space

between shops and the circular road, providing ingress and egress to the shops and the service station. Plaintiff has further alleged that an electric connection has also been installed by the Punjab State Electricity Board in the name of brother of the plaintiff and the property has been assessed to house tax. Both the Courts have returned findings of fact to the effect that the property vests in Municipal Council and is meant for execution of public utility schemes and execution of such schemes. The findings based on appreciation of evidence by the Courts below cannot be re-appreciated in second appeal, nor the same can be said to be perverse or result of any misreading of evidence. The findings of public utility vis-a-vis land in question cannot be re-appreciated inasmuch as that the public authorities cannot be restrained from exercising the statutory duty/authority vested in them.

For granting injunction qua public land at the instance of encroacher, convenience of general public is a permanent consideration and the Courts are required to be very conscious in granting such relief against public right of user of the public land.

Nothing has been shown that the findings recorded by Courts below are perverse or having suffered with any illegality. The questions of law as formulated by the appellant are pure questions of fact. In considered opinion of this Court, plaintiff-appellant is not entitled to any injunction. Hence the appeal is dismissed.

September 04, 2015

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**(RAJ MOHAN SINGH)
JUDGE**