

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

145

Regular Second Appeal No.2663 of 2015
Date of Decision: August 13, 2015

Ram Krishan Sharma @ Ram Kishore

...Appellant

Versus

Ashok Lakhira and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Sanjay Vij, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J.

This appeal has been filed by appellant-defendant No.1 against the judgment and decree dated 28.10.2013 passed by the Civil Judge (Junior Division), Gurgaon, directing the appellant-defendants 1 and 2 to remove the illegal construction made in the shape of ramp and projection over the public street within a period of two months from the date of judgment and further the respondent No.1-plaintiff has also been directed to remove the illegal construction made by him in the shape of ramp over the public street within two months from the date of the judgment. Direction has also been issued to the Municipal Committee (now Municipal Corporation), District Gurgaon-respondent No.2/defendant No.3 in case of failure by the appellant-defendants 1 and 2 and the respondent No.1-plaintiff to remove their illegal construction within the period granted to remove the same at the expense of the said plaintiff and defendants within a period of one month after the lapse of two months, which judgment and decree has been maintained by the Lower Appellate Court by its judgment dated 20.02.2015, which was on an appeal preferred by the appellants-defendants 1 and 2.

2. A suit was filed for permanent injunction and mandatory injunction by the respondent No.1-plaintiff for directing the appellant-defendants to remove the illegal construction of the extended ramp/chhajja and directing respondent No.2/defendant No.3-Municipal Corporation, Gurgaon, to demolish the same and clear the passage/path from encroachment by appellant-defendants on the ground that all the houses of the Laxman Vihar, Gurgaon, have been built as per rules and regulations and maps sanctioned by respondent No.2/defendant No.3-Municipal Corporation, Gurgaon. The said locality is very congested and the lanes are quite narrow. Appellant-defendants have expanded the veranda/ramp of their house up to 5 feet and balcony/chhajja up to 3 feet illegally in contravention of the rules and regulations of the Municipal Corporation, Gurgaon. The common passage/path measures 20 feet wide and due to the encroachment, the passage has been reduced to 15 feet causing hardship to the public and specially the persons of the locality. Because of this encroachment of the appellant-defendants, when a fire broke out in locality just behind the house of the respondent No.1-plaintiff, the fire brigade vehicles could not reach the spot to extinguish the fire, which resulted in huge loss. Instead of taking action against the said appellant-defendants, officials of the Municipal Corporation, Gurgaon-respondent No.2, have connived with them.

3. Appellant-defendants had filed written statement and stated that the suit is filed with a *mala fide* intention as they requested respondent No.1-plaintiff many times to remove the machines of the factory, which have been established in the basement of the house, which is owned by respondent No.1-plaintiff but when nothing happened, complaint was filed

in the office of the Municipal Corporation, Gurgaon, who inspected the spot and challaned respondent No.1-plaintiff and the Chief Judicial Magistrate, Gurgaon, fined Rs.3,000/- and gave warning to respondent No.1-plaintiff to remove the factory from the residential premises. It is because of this ill will, the false and frivolous suit has been filed to harass the appellant-defendants.

4. Counsel for the appellant-defendants, apart from asserting that there has been misreading of the evidence by the Courts below, has asserted that the street in question is not a public street as this was a colony, which has come into existence unauthorizedly and is developed by the owner of the said land. No terms and conditions were followed and the construction has been raised in haphazard manner and is not as per the site plan sanctioned by the Government. The Municipal Corporation cannot claim its right over the property nor does it have any right to act against the violators under the Haryana Municipal Corporation Act, 1994. He further contends that directions thus issued by the Courts below cannot be sustained and, therefore, the impugned judgments and decree passed by the Courts below deserve to be set aside.

5. I have considered the submissions made by the counsel for the appellant and with his able assistance, gone through the judgments passed by the Courts below.

6. On the basis of the evidence led by the parties, learned trial Court came to the conclusion that the appellant-defendants have encroached upon the public street and so as respondent No.1-plaintiff in the shape of ramp over the public street, which encroachments have been ordered to be removed. Respondent No.1-plaintiff has accepted the said judgment and

decree, whereas the appellant-defendants preferred an appeal, where the findings recorded by the trial Court have been affirmed.

7. Both the Courts below have come to the conclusion that the street in question is a public street and there has been encroachment on the part of the appellant-defendants as also the respondent-plaintiff. The findings so recorded by the Courts below cannot be faulted with as the same are based on due appreciation of evidence on record. A finding has been recorded that because of the encroachment made by appellant-defendants, the width of the street has come down to 16 feet from 20 feet.

8. The assertion of the counsel for the appellant-defendants that it is not a public street, cannot be accepted as admittedly the property in question is situated in Laxman Vihar, which is within the area of the Municipal Corporation, Gurgaon, and, therefore, the Haryana Municipal Corporation Act, 1994, would be applicable. Section 2 (44) of this 1994 Act defines the term 'public street', which means any street which vests in the Corporation or which under the provisions of this Act becomes or has been declared to be a public street. As Laxman Vihar, where the property in question is situated, falls within the notified area of Municipal Corporation, Gurgaon and the street in question is a common street, which has been left by the builders for ingress and egress of the habitants of the colony, the sanctity of the same has to be maintained and it would fall within the definition of public street as it becomes a public street. Since it is public street, any unauthorized encroachment thereon is bound to be removed by the Municipal Corporation, specially when it is not disputed that the ramp, as has been constructed by the appellant-defendants, is not on the land which is owned by them, it, therefore, is an encroachment. The Municipal

Corporation has, therefore, the authority to remove unauthorized encroachment on the public street and to remove illegal construction, which includes the ramp and the projection over the public street. The Courts have also found the respondent-plaintiff to be an encroacher on this public street and a direction has been issued to him to remove the same.

9. Keeping in view the concurrent findings recorded by the Courts below, which are based upon proper consideration/appreciation of the evidence led by the parties and there being no substantial question of law, which requires consideration of this Court, the present appeal being devoid of merit, stands dismissed.

August 13, 2015

Puneet

**(AUGUSTINE GEORGE MASIH)
JUDGE**