

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 6001 of 2012

Date of Decision: 03.02.2016

Urban Improvement Company (P) Limited

... Petitioner(s)

Versus

Omaxe Construction Limited and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Vaneet Soni, Advocate
for the petitioner(s).

Mr. Munish Gupta, Advocate
for respondent No.1.

Shekher Dhawan, J.

Present petition is challenge to the order dated 23.8.2012, whereby an application for leading additional evidence, filed by the petitioner (plaintiff), so as to produce copy of jamabandi of village Sarai Khawaza, Faridabad for the year 2000-01 and copy of zoning plan was partly accepted with the direction that applicant/plaintiff was permitted to tender copy of jamabandi for the year 2000-01. However, the prayer for leading additional evidence so as to produce zoning plan was declined.

Learned counsel for the petitioner submitted that the

matter in controversy is based on suit for permanent injunction having been filed by the present petitioner. As per petitioner, the plots have been allotted/sold according to zoning plan, duly approved by Director, Town & Country Planning, Haryana and the parties to the litigation are to go as per zoning plan only. Plaintiff, being the oldest and one of the largest colony in Asia, obtained an exemption under the law and floated a colony called "Green Fields Residential Colony" in the year 1955-60 situated at Faridabad. On 17.1.1994 and 6.10.1994, Hon'ble the Supreme Court passed the order for clearance of zoning plan on payment of amount as demanded by Haryana Government with interest in order to develop the colony under Haryana Development and Regulation of Urban Area Act, 1975. The zoning plan was sanctioned by the State Government/Director, Town & Country Planning as on 1.4.1994.

Learned counsel for the petitioner submitted that the defendant manipulated the demarcation report dated 27.4.2007, which is totally illegal. Plaintiff is absolute and exclusive owner in possession of the suit land comprised in rectangle No. 71, khasra Nos. 11, 12 & 13 and rectangle No. 72, khasra Nos. 13, 14 & 15. Plaintiff, being the owner of land is in dispute, raised a wall and barbed wiring. However, the defendants are illegally claiming right over the suit land. As per petitioner, later on petitioner could lay their hands on the zoning plan clearly demonstrating that the suit land falls in the zonal plan by the Director, Town & Country Planning, Haryana under orders of Hon'ble the Supreme Court dated 17.1.1994 and the defendants have no right to

encroach upon the suit land which falls in their own area and prayer was made to produce the zoning plan as well as copy of jamabandi. However, the Court below declined the said prayer of the petitioner for leading additional evidence and the same be allowed because the said document is part of official record and is essential for the just decision of the case. More so, the said document i.e. zonal plan is, already marked document, available on the file.

Learned counsel for the respondents submitted that application for additional evidence was filed when petitioner completed its evidence during long span of six years and after availing so many adjournments. Thereafter, the respondents also completed their evidence. As petitioner was aware of the existence of the document, the same should have been allowed in affirmative and same cannot be allowed by way of additional evidence. More so, the report of Local Commissioner is on the file that the petitioner had encroached upon the land of the respondents and just to delay the disposal of the present matter, present petition has been filed, although the same is without any merit and it be dismissed.

Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that most of the facts are not disputed that both the parties have led their respective evidence after availing several adjournments and thereafter application for additional evidence was allowed. As per provisions of Order 18 Rules 1 & 2 CPC read with Section 151 CPC, the Court may allow additional evidence as well. Needless to mention that leading of

additional evidence is an exception and not a general rule. For that purpose, party seeking additional evidence has to make out a case that the applicant was earlier not in a position to lead the said evidence despite exercise of due diligence or the same was not in the knowledge of the applicant.

In the case in hand, the document which the applicant wanted to prove by way of additional evidence is a zonal plan of the area, which is certainly most important, relevant and authentic document on the point. Photocopy of the same is already on the file. Such document is part of the official record and there is no question of manipulation or tampering with the evidence by either of the parties. The nature of litigation is such that zoning plan would be the most relevant document, so as to determine the rights of the parties regarding their ownership and possession and encroachment, if any. Law of procedure is meant for advancement of justice and not to create obstacles for justice. However, the Court below has not considered these facts while passing the order dated 23.8.2012 and allowed the application for additional evidence possibly so as to produce copy of jamabandi being the official record and at the same time disallowing the prayer for allowing additional evidence to produce zonal plan. Though the nature of both the documents is almost the same and both the documents are most relevant. To compensate the other party, the Court below has already imposed a cost of ₹ 1,000/-.

In view of above, present petition is allowed and order dated 23.8.2012 is set aside. It is ordered that application of the

petitioner for leading additional evidence, so as to produce and prove the record i.e. jamabandi for the year 2000-01 and zoning plan are allowed to be produced/proved on the file as per law and the petitioner shall be burdened with the payment of costs of ₹ 10,000/-. For that purpose petitioner shall be given one opportunity to lead the evidence at own responsibility.

(Shekher Dhawan)
Judge

February 3, 2016

"DK"