

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

RSA No. 115 of 1994 (O&M)

Date of Decision: January 06, 2016

Amir Chand

-Appellant

Versus

Municipality, Thanesar

-Respondent

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

Present: Mr. A. P. Bhandari, Advocate  
for the appellant.

Mr. Bikram Chaudhary, Advocate  
for the respondent.

Mr. S. S. Dinarpur, Advocate  
for the applicant.

**RAJ MOHAN SINGH, J.**

**CM Nos. 2843-C-1994 & 9063-C of 2003**

This application has been contested by the plaintiff-appellant. I have considered the submissions on this application as well. It is a settled principle that additional evidence can be allowed at appellate stage in order to pronounce the judgment in

an effective manner. The basic question involved in the present appeal is whether TP scheme No.5 has been implemented within the prescribed time of 5 years or not. Statement of DW1 Sher Singh is sought to be diluted by the respondent by way of bringing adequate evidence to show that the TP scheme No.5 infact was implemented within period of 5 years in public interest. Even the plaintiff has admitted that some of the streets have been laid and in remaining, earth work has already been done. When public cause is pitted against individual cause, then the public interest should prevail and in order to espouse the public cause, the additional evidence sought to be adduced by the respondent is required to be allowed as these documents would facilitate the Court to arrive at just conclusion and Court should require these documents in order to pronounce the judgment satisfactorily. The evidence in question is not intended to fill lacuna in any manner rather the evidence is already in existence. It is a cardinal principle of law that if something remains obscure, the same can be filled by way of additional evidence. The document sought to be produced are necessary and sufficient to deal with the controversy in an effective and judicious manner and these documents will certainly help in pronouncing and adjudicating the controversy in just and fair manner. Therefore, the respondent claims that the Court should

require these documents at this stage in the form of additional evidence and ingredients of Order 41 Rule 27 CPC are fully satisfied. Though the plaintiff has vehemently opposed the application for additional evidence, but at this stage, keeping in view the nature of controversy involved in the present case where public cause is sought to be espoused with reference to validity or otherwise of scheme No.5, I am of the view that since implementation of scheme or otherwise as claimed by the parties to the litigation will be having impact upon overall growth of the inhabitants of the locality, therefore, this Court feels that in order to decide the controversy in an effective manner, respondent can be allowed to place on record the order passed in the writ petition as well as the details of plan of plot of persons whose sites were sanctioned during the intervening period from 1975 till 1980, since the existence of scheme is in issue, therefore, the application for impleading applicant Jyoti Nagar Welfare Association as respondent No.2 is also allowed. Applicant- Jyoti Nagar Welfare Association is ordered to be impleaded as party respondent No.2 in the present appeal. With the production of additional evidence as well as the preponderance of evidence already existing on record, it is established that TP scheme was floated and sanctioned on 30.10.1975 stood implemented in view of evidence on record

and plaintiff cannot be held entitled to take benefit out of statement of DW1 Sher Singh alone whose statement has explanatory note in the light of other attending circumstances. In view of aforesaid, it has to be held that TP scheme has been implemented on the spot.

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{1}. Plaintiff has assailed judgment and decree dated 22.12.1993 passed by Additional District Judge, Kurukshetra whereby judgment and decree dated 09.12.1991 passed by Senior Sub Judge, Kurukshetra has been set aside.

{2}. Plaintiff filed a suit for permanent injunction on the ground that he alongwith his wife and children is owner in possession of land as depicted in the plaint. Cinema building was constructed in the year 1971 on 5 Kanals of land and the same is in existence. Remaining open land measuring 7 Kanals 10 Marlas is in possession of the plaintiff but the defendant is adamant to take possession of 5 Kanals out of the aforesaid land on the basis of scheme No.5 allegedly sanctioned in the year 1973. Plaintiff also alleged that defendant never issued any notice regarding sanctioning of scheme nor any amenity has been provided pursuant to the alleged scheme. Plaintiff claimed that even if there was some scheme, the same was not binding upon the rights of the plaintiff as the scheme was never

implemented and has lapsed. With this background, the suit came to be filed.

{3}. Defendant contested the suit on all counts. Defendant claimed that the scheme No.5 has been sanctioned by the government on 30.10.1975 and the same is applicable. It has been pleaded that according to scheme No.5, the land in question has been reserved for Municipal Park and Municipal Committee, Thanesar is the owner of the land. Existence of cinema has not been denied but due to adoption and sanctioning of scheme, defendant has become owner of the property, therefore, question of dis-possession of the plaintiff by the defendant does not arise.

{4}. After filing replication by the plaintiff, following issues were framed by the trial Court:-

{1}. Whether the plaintiff alongwith his wife and children is owner in possession of the suit land? OPP.

{2}. Whether the plaintiff has no locus standi to file the suit? OPD.

{3}. Whether the suit is not maintainable in the present form? OPD.

{4}. Whether plaintiff has no cause of action to file the present suit? OPD.

{5}. Whether the suit is hit under Section 52 of the Haryana Municipal Act? OPD.

{6}. Whether the civil court has got no jurisdiction? OPD.

{7}. Whether there is a valid scheme qua suit land and disputed land is a path on the scheme? If so to what effect? OPD.

{8}. Relief.

{5}. Both the parties led evidence. Trial Court dealt issues No.1 and 7 together and held that there is no document on record to show that scheme was ever implemented. No document was placed on record, showing the amount spent on the scheme during process of implementation. Even DW1 Sher Singh during his cross-examination admitted that there is a record relating to streets and parks, but no evidence was led by the defendant Committee to prove the development of street and park during process of implementation of the scheme. No document has been produced on record to show that the scheme has been implemented. DW1 Sher Singh even admitted that plaintiff is in possession of the suit property as he had occupied the same in the year 1985 and the witness also expressed his ignorance about existence of street light and water supply line through the suit property. Even from the notice

Ex.DW1/A dated 01.03.1990 issued by the Municipal Committee to the plaintiff, it appears that the plaintiff is in possession of the suit property. From the application Ex.D1 to Ex.D6, it appears that the plaintiff admitted the reservation of the land for Municipal Park as he was insisting for exclusion of the suit land from scheme No.5 for the reservation of Municipal Park. According to the defendant, plaintiff cannot claim his ownership and possession over the suit property. Trial Court discussed the evidence on record and found that there is no evidence to show as to when possession of the suit land was delivered to the defendant. Sher Singh DW1 has admitted in his cross-examination that plaintiff is still in possession of the suit land as he had occupied the same in the year 1985 by erecting angle irons and wires. There is nothing on record to show that after the year 1985, defendant Committee had ever taken possession of the suit land. Revenue record reflects the plaintiff to be owner in possession of the land. The scheme was sanctioned on 30.10.1975 and the same was to be implemented within 5 years from the date of its sanction as per Section 203 of Haryana Municipal Act. The evidence on record does not show any such implementation of the scheme during 5 years of its sanction and, therefore, the scheme has lapsed in the year 1980. Trial Court concluded that since the scheme has been lapsed, therefore,

plaintiff and his family members will be deemed to be in continuous possession as owner of the land. Even if the suit land was reserved for Municipal Park under scheme No.5 sanctioned on 30.10.1975, the same cannot be utilized as the scheme already stood expired after 5 years of its sanction. Issues No.2 and 4 have been decided against the defendant. Findings under issues No.3, 5 and 6 have also been recorded against the defendant and consequently, suit has been decreed by the trial Court vide judgment and decree dated 09.12.1991.

{6}. Feeling aggrieved against the aforesaid judgment and decree of the trial Court, Municipality Thanesar filed appeal before the lower Appellate Court. Lower Appellate Court after discussing the evidence on record and also by taking judicial notice of decision by the High Court accepted the appeal, thereby setting aside the judgment and decree dated 09.12.1991 passed by the trial Court. That is why the present appeal came to be filed before this Court.

{7}. I have heard learned counsel for both the sides.

{8}. Trial Court relied upon statement of Sher Singh DW1 to hold that the scheme has not been implemented within 5 years of its sanction, and therefore, it has lapsed. Lower Appellate Court has reversed the findings by observing that even if statement of Sher Singh DW1 shows that no water

sewerage and electric lines have been laid near the plot of the plaintiff that precise no ground to show that the scheme has been executed but the same has lapsed. Even in the absence of any evidence showing the amount spent on the scheme during the process of its implementation, the factum of scheme having been implemented cannot be ruled out. No doubt, Sher Singh DW1 has admitted in his cross-examination that record relating to scheme and park is available but the same has not been produced. In Public Interest Litigation, the plaintiff could have summoned the necessary record in his detailed statement in rebuttal evidence particularly when he has invoked the jurisdiction of Civil Court to seek nullification of interest of public at large by asserting that scheme has lapsed. Sher Singh was appointed in service in the year 1985 only and, therefore, the preponderance of probability of evidence can very well be assessed even from the statement of plaintiff where he has admitted that some of the roads laid are pucca roads and on some of the kacha roads, earth work has been done. Lower Appellate Court concluded that from the evidence on record, it has not been established that scheme was not executed and has lapsed.

{9}. Before the lower Appellate Court, an application for additional evidence has also been moved with a prayer to

produce on record copy of order dated 19.05.1992 passed by the Commissioner and Secretary, Haryana Government, Chandigarh and copy of order dated 12.11.1992 passed by the High Court in CWP No. 14898 of 1992 and expenditure statement dated 14.02.1992 in order to show that the scheme stood implemented and the writ petition filed by Goran Devi was rejected on 12.11.1992 by the High Court. By way of said additional evidence, the defendant sought to highlight that the scheme has already been implemented. The Lower Appellate Court has observed that the judgment of the High Court can be referred to as precedent, for which no permission to lead additional evidence is required. The application for additional evidence was rejected qua other evidence. The Lower Appellate Court ultimately concluded that the scheme has already been implemented and after the lapse of 14 years of the date of notification, no such decision can be made that the open land left for the park should be taken away. Lower Appellate court reversed the findings and accepted the appeal. In the present appeal, Civil Misc. No. 9063-C-2003 has been moved by the applicant- Jyoti Nagar Welfare Association for impleading the association as respondent No.2 in the present appeal. The applicant pleaded that the scheme was sanctioned on 30.10.1975 and the same has been implemented and the land

has been reserved for Municipal Park and vests in the municipality. The applicant asserted that the plaintiff has not challenged the framing and sanctioning of scheme in any manner. Applicant also pleaded that the scheme was notified and objections were invited to the framing of scheme and after due procedure, the scheme was sanctioned and notified and the land in dispute has been ear-marked for Municipal Park. The said purpose was never amended or changed at any point of time. The plaintiff had the knowledge about the framing of scheme which was approved by the Deputy Commissioner and Town Planner. The aforesaid application was ordered to be taken up with the main case vide order dated 12.09.2003. Another application has been moved by the respondent under Order 41 Rule 27 CPC read with Section 151 CPC for permission to lead additional evidence. In this application, the respondent has sought to adduce evidence in the form of judgment rendered in CWP No. 9091 of 1993 **Virender and others vs. State of Haryana and others** in which it has been held that TP scheme No.5 sanctioned by the government stood implemented and an amount of Rs.23,43,000/- already stood spent for providing civil amenities by the Municipal Committee, Thanesar.

{10}. Respondent claimed that judgment rendered in

aforesaid writ petition is helpful in the present context and said judgment dated 07.01.1994 passed by this Court is required to be perused in present appeal as the same was rendered after decision of the lower Appellate Court and the same could not be produced before the lower Appellate Court. Decision dated 08.04.1994 passed in Civil Appeal No.118 of 1993 by Additional District Judge, Kurukshetra in case of Goran Devi versus Municipal Committee was also sought to be produced wherein it was held that town planning scheme No.5 already stood implemented in the year 1980 within the statutory period and the decision given by Additional District Judge on 08.04.1994 is relevant in the present controversy. The respondent also sought to highlight the factual details in respect of certain houses which fell within scheme No.5 and whose building plans have been sanctioned by the respondent- Municipal Committee during the stipulated period of 5 years from 30.10.1975 to 29.10.1980. The details of these houses have been given in para No.7 of the application which are 31 in number. With the help of aforesaid documents, learned counsel for the respondent craves indulgence of this Court that the documents are necessary for just decision of the case to show that the scheme had already been implemented by the Municipal Committee.

{11}. Appellant has also moved an application Civil Misc.

No. 12952-C-2015 for disposal of the aforesaid case being covered with the judgment rendered by the Hon'ble Apex Court in Civil Appeals No.818 with 814-816 of 1986 decided on 15.07.1994 titled as **Yoginder Pal and others vs. Municipality, Bathinda and another AIR 1994 Supreme Court 2550.**

{12}. I have considered the judgment rendered by the Hon'ble Apex Court in aforesaid case wherein it has been held that there is no provision in the Act to suggest that inspite of land being utilized for a public purpose, the possession and ownership of the land remains with the landowner. After utilization of the land, owner cannot deal with the property according to his wishes and he can exercise his rights in respect of land so transferred, rather he can exercise his right over the land so transferred only as member of public and no longer as owner of the land. His rights vis-à-vis the transferred land should at par with those other members of the public. The Hon'ble Apex Court also deprecated that it cannot be said that purpose is limited. The expression limited in that context has been explained and it is not suggested that the purpose for which the land is taken is of a limited duration and the land would be restored to the owner after the purpose is over. The Hon'ble Apex Court held that even for such use of land for a limited purpose, the owner has to be suitably compensated. The

Hon'ble Apex Court also deal with the provision in terms of Section 192 (1) (c) of Punjab Municipal Act and Section 203 (1) (c) of Haryana Municipal Act and held that the land which is transferred is nothing sought of acquisition, divesting the owner of his rights in the land. The purpose of the transfer itself suggests that landowner is not exclusively to be benefited by the public purpose rather he enjoins the benefit, if any, alongwith other members of the public. There is no reason why the owner alone should pay the said benefit in terms of his land on the ground that it increases the value of remaining land and also contributes to the increase in the value of land to all other landowners whose lands are similarly situated and are similarly benefited by said public purpose. Therefore, the Hon'ble Apex Court held that there is no reason why the landowners whose land is transferred for the purpose alone should pay for the increase in the value on his remaining land in terms of transferred land. Infact, where there is only the remaining land of the landowner which is benefited by such increase in value, if any, the whole of the land in the possession of other landowners is benefited by accretion in value. Thus, on both the counts, there is violation of Article 14 of the Constitution of India to make only the landowner suffer for public purpose. Concluding in the aforesaid context, the Hon'ble Apex Court has held that the

owner needs to be paid separate compensation for the land which is transferred. Ultimately, the provisions in terms of Section 192 (1) (c) of Punjab Municipal Act and Section 203 (1) (c) of Haryana Municipal Act have been held to be violative of Article 14 of the Constitution of India. However, the Hon'ble Apex Court in concluding part of the judgment held that if all the cases are re-opened on its pattern, it would create total chaos and an unmanageable situation may arise in respect of concluded transactions and that would not be in public interest to unsettle the settled things, therefore, the provisions of the respective statutes and the land acquisition made thereunder have been declared void only from the date of passing of the said decision i.e. 15.07.1994 if, the aforesaid analogy is applied in the present case, the land which has already been utilized under the scheme has to be tested on the date of judgment i.e. 15.07.1994. If the land has not been utilized on the date of passing of said judgment for that compensation has to be paid after proper acquisition of land. In the present case, the evidence on record is suggestive of the fact that plaintiff is still in possession of the suit land though the purpose of scheme was to ear-mark the site for Municipal Park, but even if the scheme is implemented in terms of different instances as given in the application for additional evidence, but still the possession of the

land in question remained with the plaintiff-appellant and this fact has been admitted by the defendant witnesses particularly DW1 Sher Singh who has admitted that plaintiff is still in possession of the suit land as he occupied the suit land in the year 1985. The question of implementation within 5 years from 1975 expired in the year 1980 and if the possession still remained with the plaintiff-appellant, in view of aforesaid judgment, the Municipal Committee would be at liberty to acquire the land in question in order to give effect to the scheme which is proved to have been implemented in different instances but plaintiff is proved in possession on the spot after the date of decision of aforesaid case i.e. on 15.07.1994. In view of aforesaid, let the land under possession of the plaintiff be also acquired in accordance with law and compensation be paid to the appellant-plaintiff in accordance with law.

{13}. With the aforesaid discussion, this appeal is disposed of.

**January 06, 2016**

*Jyoti Y.*

**(RAJ MOHAN SINGH)  
JUDGE**