

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

**Regular Second Appeal No.224 of 2016 (O&M)
Date of Decision: February 29, 2016.**

Vinod Kumar

.....APPELLANT(s).

VERSUS

Municipal Council, Fazilka

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ashok Kumar Sama, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This is second appeal against the judgment and decree passed by Civil Judge (Senior Division), Fazilka, whereby the suit of the plaintiff, seeking relief of permanent injunction to restrain the defendant from interfering in his possession over the plot as fully described in the head note of the plaint, was dismissed.

2. As per case of plaintiff, the plot in dispute is owned by the Municipal Council, Fazilka. He being in possession of the same, raised construction of house over it and moved an application to the defendant to allot this plot to him on receiving requisite price but his request was not accepted. Now, this plot has been auctioned by the Municipal Council.

3. The lower Court declined to grant relief of injunction with the observation that the encroacher of the property is not entitled to seek

discretionary relief of injunction in his favour and has placed reliance on the observation in case of ***Mohan Lal Vs. Mohan Singh, 1996(1) Civil Court Cases 30 (P&H)***.

4. Appeal filed by the plaintiff was also dismissed by Additional District Judge, Fazilka.

5. Learned counsel for the appellant has argued that though the Municipal Council is the owner of the plot, but the possession of the plaintiff over it, is not disputed. He has raised construction of his house over this plot and having his electric connection, water connection, ration card etc. to corroborate his plea of possession over this plot. Plaintiff had also applied for allotment of this plot but his request was not acceded. Relying on observations in case of ***MariaMargarida Sequeria Fernandes and others Vs. Erasmo Jack de Sequeria (Dead) through LRs and others 2012(5) SCC 370***, learned counsel for appellant has argued that despite being trespasser and in unauthorised possession, plaintiff is entitled to the relief of permanent injunction.

6. So far as the proposition of law, discussed in the above cited case, that no one can take law in his own hands and even a trespasser in settled possession cannot be dispossessed without recourse of law is concerned, the same is not disputed but the same cannot be extended to possession over public property. If possession of a person over the public property is protected, it will cause loss to the society and will set a wrong precedent. This Court in case of ***Mohan Lal Vs. Mohan Singh (supra)*** has observed that the Courts are the guardian of public property and a encroacher of public property is not entitled to the discretionary relief of injunction.

Discussing the parameters for grant of relief of injunction, it was observed in para 5 of the above judgment as follows:-

“5. Apart from the three ordinary ingredients which must be satisfied for grant of injunction in favour of a plaintiff/petitioner, namely, a strong prima facie case, balance of convenience and irreparable injury, in cases involving public properties and public interest, the Courts have to bear in mind as to whether the grant of injunction would be conducive or detrimental to public interest. The Courts have to take note of the fact that Government lands belonging to the public at large and the community as a whole is entitled to enjoy the properties belonging to the Government. In fact, the Government holds property as a trustee of the people and, therefore, where any attempt is made by an individual or a group of individuals to misappropriate/misuse or otherwise interfere with the enjoyment of public property by the people in general, the Courts have to be extremely cautious in granting injunction in favour of such person only on the ground that he is in possession of the property. Possession of public property by such an individual or a group of individuals is no possession in the eyes of law. Such a person cannot claim any right whatsoever on the basis of unlawful occupation of the public property and Courts would be justified in declining any assistance to such a person. In such like cases, a plaintiff cannot claim parity with a person who has a dispute with another individual over a private property. Moreover, the Courts have to act as guardian of the public property and should not pass an order of injunction in favour of a person who has made unauthorised encroachment of the public property. For these reasons, I hold that the order passed by the learned

Additional District Judge does not suffer from any jurisdiction error or any other legal infirmity requiring interference by this Court.”

7. The plaintiff despite being aware of the fact that he is not owner of the disputed plot, appears to be an adventurous person, who opted to raise construction over the same and than asked the Municipal Council to allot this plot to him. After failing in his effort to get the allotment of the plot, he filed the suit claiming equitable and discretionary relief of injunction, which both the Courts below have rightly refused.

8. Keeping in view the facts and circumstances as discussed above, both the Courts below have committed no error of law or fact while declining the relief of injunction to the appellant-plaintiff, calling for any interference.

9. No substantial question of law requiring determination arises in this appeal, which has no merits.

10. Dismissed.

February 29, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE