

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

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Regular Second Appeal No.2699 of 2015 (O&M)
Date of Decision: January 18, 2016

Municipal Corporation, Karnal

...Appellant

Versus

Surender Gupta and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. R.S. Kundu, Advocate
for the applicant-appellant.

Mr. Sumit Gupta, Advocate
for respondent Nos.1 and 2.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.6801-C of 2015

Notice of motion.

Mr. Sumit Gupta, Advocate, accepts notice on behalf of
respondents 1 and 2.

Heard counsel for the parties.

Keeping in view the reasons which have been mentioned in the
application which is duly supported by the affidavit of the Commissioner,
Municipal Corporation, Karnal, the present application is allowed.

Delay of 102 days in filing the appeal stands condoned.

RSA No.2699 of 2015

Challenge in this appeal is to the judgment and decree dated
18.01.2012 passed by the Civil Judge (Junior Division), Karnal, whereby
the suit filed by the respondents 1 to 4-plaintiffs for permanent and
mandatory injunction restraining the appellant-defendants from denotifying

TP Scheme No.36 dated 29.05.1985, Notification Exhibit P-1, stands decreed, appeal against which preferred by the appellant-defendants 1 and 2 has been dismissed by the Additional District Judge, Karnal, on 30.07.2014.

2. It is the contention of learned counsel for the appellant that the TP Scheme No.36 as notified on 29.05.1985 Exhibit P-1 was required to be implemented within a period of five years and since the implementation has not been given effect to within the stipulated period of five years which would expire on 28.05.1990, the scheme was recommended to be denotified by the Municipal Council by Resolution No.25 dated 26.07.2007. In support of this contention, he places reliance upon Section 203 (6) of the Haryana Municipal Act, 1973 (hereinafter referred to as the '1973 Act') and thus, contends that the judgments and decree passed by the Courts below cannot sustain.

3. On the other hand, learned counsel for respondents 1 and 2, states that the contention of learned counsel for the appellant cannot be accepted in the light of bare reading of the provisions of the statute which in fact are in the positive term casting a duty upon the appellant-defendants to implement the scheme within a period of five years. For the lapse committed by the appellant-defendants, they cannot be given the benefit of the same, specially when 90% of the scheme had been implemented and the remaining was in progress. He contends that more than one thousand houses have been built under the scheme and the respondents themselves have also after the year 2004, constructed three streets as per the said scheme. He, thus, contends that the findings recorded by the Courts below, both on facts and the decision on law, are fully justified which would not call for

any interference by this Court.

4. I have considered the submissions made by the learned counsel for the parties and with their assistance, have gone through the impugned judgments.

5. The basic question on which the case of the parties would hinge would be whether the scheme, if not implemented within the period of five years as provided under Section 203 (6) of the 1973 Act, was liable to be denotified as per the stand of the appellant-defendants?

6. Section 203 (6) of the 1973 Act reads as follows:-

"203. Building scheme.--(1) *XXX* *XXX* *XXX*

(2) XXX XXX XXX

(3) XXX XXX XXX

(4) XXX XXX XXX

(5) XXX XXX XXX

(6) *After the scheme has been sanctioned, the committee shall proceed to provide internal services as soon as possible and complete it within a period of five years from the date of its sanction”.*

A perusal of the above would show that after the sanctioning of the scheme, the mandate is upon the Committee to proceed to provide the internal services as soon as possible and to complete the same within a period of five years from the date of such sanction.

7. The mandate, thus, is upon the Committee to execute the scheme at the earliest but in any case, within a period of five years from the date of sanction. The appellant-defendants, therefore, because the scheme has been implemented by them by not providing the internal services as per the scheme sanctioned and notified, cannot turn around and assert that it has to be denotified because of non-implementation of the scheme. It may,

however, be added here that in pursuance to the said scheme as per the evidence brought on record, 90% of the scheme has been implemented and more than one thousand houses have been built as per the scheme and layout plan. The site plans of the houses were duly got sanctioned from the Municipal Committee. It has also come on record as per Exhibit DW1/C that three streets as per the plan have been constructed by the Municipal Committee after the year 2004. This clearly shows that the process for implementing the scheme is continuing and the scheme is still alive. The Municipal Committee should have, as per the statutory requirements, given effect to the scheme and the responsibilities put on them as per Section 203 (6) of the 1973 Act, which they, it appears, have not yet complied with. The findings recorded by the Courts below, thus, cannot be faulted with. The provisions of the statutes, as has been explained above, rather puts a mandate upon the appellant-defendants to do its part as per the statutory requirements. It may be added here that although a recommendation was made by the Municipal Committee by Resolution No.25 dated 26.07.2007 for denotification of the TP Scheme No.36 dated 29.05.1985 but no action has been taken by the Government till date.

8. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

9. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

10. In the light of the dismissal of the appeal, the application for stay i.e. CM No.6802-C of 2015, stands disposed of as infructuous.

January 18, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE