

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

RSA-426 of 2016 (O&M)

Date of decision: 12.05.2016

Inderjit Singh

...Appellant

Versus

Punjab Planning & Urban Development
Authority and another

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Balram Singh, Advocate
for the appellant.

Jitendra Chauhan, J. (Oral)

The suit for declaration filed by the plaintiff/appellant
(for short 'the appellant') was dismissed by the trial Court vide
judgment and decree dated 11.10.2013.

2. Aggrieved against the findings of trial Court, the
appellant filed an appeal which was dismissed by the learned
Appellate Court, vide judgment and decree dated 23.09.2015.

3. The 1st Appellate Court affirmed all the findings
recorded by the trial Court after discussing and evaluating the
oral as well as documentary evidence on record, hence, the

instant appeal at the behest of the appellant.

4. It is contended that both the Courts have gravely erred in dismissing the claim of the appellant. The appellant is owner in possession of three shops situated in land, bearing khasra No.65/3(0-12) and khasra No.68(0-6), as per jamabandi for the years 1980-81 and 2005-06. After the death of Pal Singh, the father of the appellant, the suit land was inherited by the appellant to the extent of half share. The learned counsel refers to the testimony of DW-2, Baldev Raj, whereby, he admitted the ownership of the appellant over the suit property. He further contends that both the Courts below have failed to consider the judgment passed by the Director Scheduled Road Commission from which it is apparently clear that the shops in dispute were constructed much prior to the declaration of Jalandhar-Kapurthala-Makhu road as a Scheduled Road. The shops were constructed in the year 1950, whereas, the notification of Punjab Government has come into existence in the year 1995. In fact, the shops in question were 25 meters away from Jalandhar-Kapurthala road and it was wrongly mentioned as 25 feet due to typographical error. Both the Courts below have ignored the fact that the provisions of Section 183 of Punjab Planning and Urban

Development Authority Act, 1995 (for short 'the act') could only be applicable in the instant case if the proceedings had been initiated against the appellant before the commencement of the Act.

5. Heard, the learned counsel for the appellant and perused the record carefully.

6. Along with the appeal, the appellant has also filed CM-1268-C-2016, whereby he has sought to place on record certified copy of counter affidavit filed in CWP-16519 of 2007. It is asserted that this counter affidavit sought to be relied upon came to the notice of the appellant in December, 2015.

7. The appellant is not party in the said writ petition. There are concurrent findings of facts recorded by both the Courts below. Therefore, stray record cannot be relied upon when the possession is clear in the face of the record available. Moreover, due diligence of the applicant-appellant is also not made out. Therefore, there is no sufficient or substantial cause to allow the additional evidence at appellate stage.

8. The application sans merit and is hereby dismissed.

9. The appellant has claimed to be the owner in possession over the suit land. The respondents have not denied

the title or right of the appellant over the shops in question. The appellant has alleged that half share of the suit land was inherited by him being legal heir of Pal Singh. The appellant has alleged that the shops in question were constructed in the year 1980 and the Act came in the year 1995, therefore, the Act is not applicable to the shops in dispute. As per the appellant, the shops had been constructed more than 25 feet away from Jalandhar-Kapurthala road. No doubt, the Act came later into force but in that eventuality, the Punjab Scheduled Roads and the Controlled Areas Restriction of Unregulated Development Act, 1963 would be applicable to the case of the appellant, which provides that no person shall erect or re-erect any building or make or extend any excavation or lay out any means of access to a road within one hundred meters on either side of the road reservation of a bye-pass or within thirty meters on either side of the road reservation of any scheduled road not being bye-pass.

10. In the present case, the shops in question falls on the scheduled road. As per own case of the appellant, the shops were 25 feet away from the road which certainly violates the provision of the Act, 1963. The appellant himself had admitted that he was given due notice to appear before the competent authority before

demolishing the shops in question. The contention of learned counsel that due to typographical error it was mentioned that road is 25 feet away instead of 25 meters has no merit as no document has been produced on record to prove this fact. Thus, in view of the above facts and circumstances of the case, this Court feels that there is no merit in the present appeal and the findings recorded by the Courts below neither suffer from any perversity or illegality nor any material point has been left un-addressed.

8. These are pure findings of fact. No question of law, much less substantial question of law, arises in the present appeal. Hence, no interference is called for.

Dismissed.

12.05.2016

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(JITENDRA CHAUHAN)
JUDGE