

CWP No.20504 of 2017

[1]

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

**CWP No.20504 of 2017
Date of decision:11.09.2017**

Municipal Corporation, Ludhiana and another ...Petitioners

Versus

Sachin Malhotra and another ...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Harsh Aggarwal, Advocate,
for the petitioners.

Rakesh Kumar Jain, J.

The petitioners-Municipal Corporation, Ludhiana (hereinafter referred to as the "Corporation") is aggrieved against the order dated 04.09.2015 passed by the Appellate Authority against it in terms of Section 269(2) of the Punjab Municipal Corporation Act, 1976 (hereinafter referred to as the "Act").

In brief, property No.B-XXII-234, Kidwai Nagar, Ludhiana, situated at Plot No.8 (measuring 188.88 square yards) was allotted by the Ludhiana Improvement Trust to one Nahar Singh on 22.03.1978, who sold the same to one Rajinder Kumar on 28.06.1978 and Rajinder Kumar further sold it to Kulwant Rai, father of the respondents on 26.02.1982. Kulwant Rai allegedly raised construction on the said plot without getting any site plan approved and also allegedly encroached upon an area measuring 28' x 30' and

12' x 10' in front of the plot by converting the same into a parking. The matter was taken up by the Corporation and the unauthorized construction was compromised/compounded except the encroached parking area and a sum of ₹1,24,800/- was deposited by the respondents as compounding fee vide receipt no.32 dated 30.06.2000, receipts no.24 and 25 dated 19.09.2000 and receipts no.39 and 40 dated 06.10.2000.

A complaint was made by Desh Raj on the basis of which demarcation was conducted and the encroachment was found by the respondents and accordingly, notice under Section 269 of the Act dated 22.05.2006/06.06.2006 was issued to Amar Chand (grandfather of the respondents). Since the encroachment was not removed, therefore, demolition order dated 05.12.2006 was passed. The said demolition order was challenged by the respondents by way of Civil Suit for permanent injunction on 18.12.2006, in which interim stay was granted on 18.03.2010. The said order was also upheld in appeal but the operation of the said order was stayed by this court in Civil Revision No.5154 of 2011, which was otherwise disposed of on 10.05.2013. It is alleged that since the liberty was given to the Corporation for issuing fresh notice to the respondents, therefore, on 01.10.2010, a fresh notice was issued and, thereafter, the demolition order was passed on 11.11.2010. The Civil Suit for permanent injunction filed by the respondents was dismissed on 15.06.2013, which order was challenged in appeal by the respondents but in the meantime, they were served with another demolition notice dated 25.07.2013, in continuation of the earlier demolition order dated 11.11.2010. The respondents had also challenged the said notice dated 25.07.2013 by way of an appeal filed under Section 269(2) of the Act. The Appellate Authority,

by way of two separate judgments of the even date i.e. 04.09.2015, dismissed the appeal of the respondents, filed against the dismissal order of the suit dated 15.06.2013 but the appeal filed against the demolition notice dated 25.07.2013 was allowed, which has been challenged by the petitioners in this petition.

Learned counsel for the petitioners has submitted that the respondents have encroached upon the public street and the said encroachment was never compounded. It is also submitted that the respondents have filed appeal under Section 269(2) of the Act against the demolition notice dated 25.07.2013 and not against the demolition order dated 11.11.2010. He has further submitted that the finding recorded by the Appellate Court that there is no evidence on record brought by them that the construction has been raised by the respondents illegally on a public street as the area in question has not been declared as a public street in terms of Sections 224/227 of the Act is erroneous and has referred to Section 224 of the Act to contend that all streets within the city vests in the Corporation and, therefore, the Corporation had the jurisdiction to issue notice for removal of unauthorized encroachment and in case of refusal, it can pass an order of demolition.

I have heard learned counsel for the petitioners and perused the record with his able assistance.

Basically, the issue involved in this petition is as to whether the alleged construction raised by the respondents is on public street and if yes, as to whether the area, on which the construction has been raised, has been declared to be a public street in terms of the provisions of the Act?

Chapter XIII of the Act is dedicated to streets. The street is defined under Section 2(56) of the Act and is divided into two parts, namely,

public and private streets. For a ready reference, Sections 2(38), 2(43) and 2 (56) of the Act are reproduced as under:-

- “2. **Definitions,-** In this Act, unless the context otherwise requires,-
- (1) to (37) xxx xxx xxx xxx
- (38) **"private street"** means any street, which is not a public street and includes any passage securing access to two or more places belonging to the same or different owners;
- (39) to (42) xxx xxx xxx xxx
- (43) **"public street"** means any street which vests in the Corporation as a public street or the soil below the surface of which vests in the Corporation or which under the provisions of this Act becomes, or is declared to be a public street;
- (44) to (55) xxx xxx xxx xxx
- (56) **"street"** shall mean any road, footway, square, court, alley, gully or passage, accessible, whether permanently or temporarily to the public and whether a thoroughfare or not; and shall include every vacant space, notwithstanding that it may be private property and partly or wholly obstructed by any gate, post, chain or other barrier, if houses, shops or other buildings abut, thereon, and if it is used by any persons as means of access to or from any public place or thoroughfare, whether such persons be occupiers of such buildings or not, but shall include any part of such space which the occupier of any such building has right at all hours to prevent all other persons from using as aforesaid and shall include also the drains or gutters therein, or on either side, and the land, whether covered or not by any pavement, verandah or other erection, upto the boundary of any abutting property not accessible to the public;
- xxx xxx xxx xxx”

From the perusal of the aforesaid definitions, it is crystal clear that a private street means any street which is not a public street, whereas a public street is the one which vests in the Corporation as a public street or the soil

below the surface of which vests in the Corporation or has been declared to be a public street. Section 224 of the Act deals the vesting of public streets in Corporation. It says that all streets within the city, which are or at any time become public streets and the pavements, stones and other materials thereof shall vest in the Corporation. Section 227 of the Act confers the powers upon the Corporation through its Commissioner to make new public streets, Section 242 of the Act deals with the declaration of public streets and Section 269 of the Act deals with the demolition and stoppage of buildings and works in certain cases and appeal, in which the power has been conferred upon the Corporation to remove the unauthorized construction and remedy has been given to the aggrieved person to file an appeal to the Court of District Judge. For a further ready reference, Sections 224, 227, 242 and 269 of the Act are reproduced as under:-

“224. Vesting of public streets in Corporation. - All streets within the City which are or at any time become public streets and the pavements, stones and other materials thereof shall vest in the Corporation.

(2) All public streets vesting in the Corporation shall be under the control of the Commissioner and shall be maintained, controlled and regulated by him in accordance with the bye-laws made in this behalf.

xxx xxx xxx xxx

227. Power to make new public streets. - The Commissioner may, at any time with the previous sanction of the Corporation,-

- (a) lay out and make new public streets ;
- (b) construct bridges and sub-ways ;
- (c) turn or divert any existing public street ; and
- (d) lay down and determine the position and direction of a street or streets in any part of the City notwithstanding that no proposal for the erection of any building in the vicinity has been received.

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242. Declaration of public streets. - (1) If any street has been levelled, paved, metalled, flagged, channelled, sewered, drained, conserved and lighted under the provisions of Section 241, the Commissioner may, and on the requisition of the majority of the owners referred to in sub- section (1) of that section shall declare such a street to be a public street and thereupon the street shall vest in the Corporation.

(2) The Commissioner may at any time, by notice fixed up in any street or part thereof not maintainable by the Corporation, give intimation of his intention to declare the same a public street, and unless within one month next after such notice has been so put up, the owner or any one of the several owners of such street or such part of a street lodge objection thereto at the Corporation office, the Commissioner may, by notice in writing, put up in such street or such part, declare the same to be a public street vested in the Corporation.

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269. Order of demolition and stoppage of buildings and works in certain cases and appeal. - (1) Where the erection of any building or execution of any work has been commenced, or is being carried on, or has been completed without or contrary to the sanction referred to in section 262 or in contravention of any condition subject to which such sanction has been accorded or in contravention of any of the provisions of this Act or bye-laws made thereunder, the Commissioner may, in addition to any other action that may be taken under this Act, make an order directing that such erection or work shall be demolished by the person at whose instance the erection or work has been commenced or is being carried on or has been completed within such period (not being less than three days from the date on which a copy of the order of demolition with a brief statement of the reasons therefor has been delivered to that person) as may be specified in the order of demolition:

Provided that no order of demolition shall be made unless the person has been given by means of a notice served in such manner as the Commissioner may think fit, a reasonable

opportunity of showing cause why such order should not be made:

Provided further that where the erection or work has not been completed, the Commissioner may by the same order or by a separate order, whether made at the time of the issue of the notice under the first proviso or at any other time, direct the person to stop the erection of work until the expiry of the period within which an appeal against the order of demolition, if made, may be preferred under sub-section (2).

(2) Any person aggrieved by an order of the Commissioner made under sub- section (1) may prefer an appeal against the order to the Court of the District Judge of the City within the period specified in the order for the demolition of the erection or work to which it relates.

(3) Where an appeal is preferred under sub-section (2) against an order of demolition, the Court of the District Judge may stay the enforcement of that order on such terms, if any, and for such period, as it may think fit:

Provided that where the erection of any building or execution of any work has not been completed at the time of the making of the order of demolition, no order staying the enforcement of the order of demolition shall be made by the Court of the District Judge unless security, sufficient in the opinion of the Court, has been given by the appellant for not proceeding with such erection or work pending the disposal of the appeal.

(4) Save as provided in this section no court shall entertain any suit, application or other proceeding for injunction or other relief against the Commissioner to restrain him from taking any action or making any order in pursuance of the provisions of this section.

(5) Every order made by the Court of the District Judge on appeal and subject only to such order, the order of demolition made by the Commissioner shall be final and conclusive.

(6) Where no appeal has been preferred against an order of demolition made by the Commissioner under sub-section (1) or where an order of demolition made by the Commissioner under that sub-section has been confirmed on appeal, whether with or without variation, the person against whom the order has been made shall comply with the order within the period specified

therein, or as the case may be, within the period, if any fixed by the Court of the District Judge on appeal, and on the failure of the person to comply with the order within such period, the Commissioner may himself cause the erection of the work to which the order relates to be demolished and the expenses of such demolition shall be recoverable from such person as an arrear of tax under this Act.”

The case of the petitioners is that the land in question, on which the alleged encroachment has been made by the respondents, is a part of street which vests in the Corporation, meaning thereby the street is being claimed as a public street. However, a positive finding has been recorded by the Appellate Authority that no evidence has been led by the petitioners to prove from the old revenue record that it has been declared as a public street or the soil below the surface, on which the construction has been allegedly made, vests in the Corporation.

The argument of the petitioners with reference to Section 224 of the Act is inconsequential because Section 224 of the Act only provides that all streets within the city, which has become a public street, would vest in the Corporation.

Thus, the *sine qua non* to initiate action against the respondents is first to prove that the land, on which the alleged encroachment has been made, is a part of public street. In this regard, the Appellate Authority has made reference to Sections 227 and 242 of the Act, which deal with the power to make new public streets and declaration of public streets. If there is no previous record using the land in question as a public street, the petitioners have to prove that in terms of Section 227/242 of the Act, the land in question has been declared as a public street and is being used as such when the

respondents had allegedly made the encroachment.

Insofar as the argument of the petitioners that the respondents have not challenged the order dated 11.11.2010 is concerned, the notice dated 25.07.2013 was in continuation thereof and has rightly been challenged by the respondents.

No other point has been raised.

In view of the aforesaid observations, I do not find any merit in the present petition and hence, the same is hereby dismissed in limine, though without any order as to costs.

September 11, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No