

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

Regular Second Appeal No.3056 of 2009 (O&M)

Date of Decision : December 22, 2017

Dinesh Kumar and others

... Appellants

Versus

Municipal Council, Karnal

... Respondents

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Mr. Sanjiv Gupta, Advocate,
for the appellants.

Mr. Raman B. Garg, Advocate, for
Ms. Gitanjali Chhabra, Advocate,
for the respondent.

RAJ SHEKHAR ATTRI, J.

The plaintiffs-appellants have come up in this appeal against the judgment and decree passed by the learned first appellate court dated 7.8.2009 thereby reversing the judgment and decree of the learned trial court dated 17.1.2007. As a result, the suit filed by the plaintiffs appellants was dismissed.

Undisputedly, the plaintiffs appellants are the owners of the property in question. Initially, this property was purchased from the Rehabilitation Department by Shri Iqbal Chand, Ram Sarup and Vinod Kumar in an open auction held on 22.11.1995 out of Khasra No.5191, 5192 and 5193 and the sale certificate was issued to them. Undisputedly, the present appellants are the subsequent vendees under the original allottees.

After purchase of the suit property, the plaintiffs appellants

submitted site plan to the Municipal Council, Karnal on 24.3.2003 for the

purpose of its sanctioning. They have also raised and completed the construction on the plot under their possession.

Subsequently, the defendant-respondent council issued notice under Section 208 and 209 of Haryana Municipal Act, 1973 (in short, “the Act”) asserting therein that the construction raised by the plaintiffs appellants is in defiance to the provisions of the Act and declined sanctioned of the plan mainly on the three reasons : a) that no notice under Section 52 of Haryana Municipal Act was issued; b) that khasra No.5192 is in fact a park/open space and it was also claimed that there was scheme No.6-A/TP Scheme vide DTP(A) 1625/70 and c) that the construction raised by the plaintiffs appellants in the open park is illegal which amounted to encroachment of municipal property and the construction raised by the plaintiffs-appellants is liable to be removed.

The instant suit has been filed by the plaintiffs appellants for permanent injunction with consequential relief of declaration, restraining the defendants from demolishing the suit property in an illegal and forcible manner and also that notice dated 14.3.2003 is illegal, null and void and not binding on the appellants.

The suit was contested, *inter alia*, on the grounds that the civil court has no jurisdiction; that the suit is not maintainable as no notice under Section 52 of the Act has been served upon. It is the case of the defendant Municipal council that the site in dispute vests in Municipal Council as per Town Planning Scheme, therefore, the plaintiffs appellants have raised illegal construction on the property of Municipal Council which is reserved for park/open space. Therefore, the defendant Municipal Council had issued notice upon the plaintiffs appellants under Sections 181, 208 and 235 of the

Act. However, it is denied if the plaintiffs appellants had ever submitted site plan for the purpose of raising construction in khasra No.5192.

According to the defendant Municipal Council, the plaintiffs-appellants made encroachment in its land and, therefore, the construction is liable to be removed.

Replication was filed controverting the averments made in the written statement by reiterating that of the plaint.

From the pleadings of the parties, following issues were struck in the case : -

1. Whether the plaintiffs are owner of property mentioned in para no.1 of the plaint by dint of three sale deeds? OPP
2. If Issue No.1 is proved, whether property in question is part and parcel of Khasra No.5192 and 5193? OPP
3. Whether Khasra No.5192 is open space as part of scheme, if so, to what effect? OPP
4. Whether the plaintiffs raised the construction over the site in dispute, if so to what effect? OPD
5. Whether the suit is not maintainable in present form? OPD
6. Whether civil court has no jurisdiction to entertain and try the present suit? OPD
7. Whether notice under section 52 of Haryana Municipal Act is mandatory, if so to what effect? OPD
8. Whether plaintiffs have no locus standi to file and maintain the present suit? OPD
9. Relief.

Learned trial Court has afforded adequate opportunities to both the parties to adduce evidence. On appreciation of evidence, the suit was decreed by the learned trial Court on 17.1.2007. However, the first appellate court vide its judgment and decree dated 7.8.2009 reversed the findings of the learned trial court; mainly on the ground that the suit property falls under Town Planning Scheme and thus, vested in Municipal Council and further that the Court has no jurisdiction to try the suit.

I have heard the learned counsel for the parties and gone through the record.

Learned counsel for the plaintiffs appellants has submitted that the plaintiffs appellants are the lawful owners in possession of the suit property; that they submitted the site plan and raised construction; that neither any Town Planning Scheme was framed nor Deputy Commissioner raised any demand for this purpose; that the suit property was never acquired by the State nor any compensation was awarded to the plaintiffs but the learned first appellate court failed to appreciate all these facts; that nothing was produced before this court to prove if any Township Scheme has been launched or any land was acquired thereunder. As an alternative argument, it has been submitted that even if Town Planning Scheme has been brought into force, even then the same may violate the fundamental rights of the plaintiffs appellants; the same is against the principles of natural justice and the Hon'ble Supreme Court in **Yogender and others v. Municipality Bhatinda and others**; AIR 1994 SC 2250 has already declared this part of the Act as unconstitutional and ultra vires. According to him, the findings of the learned first appellate court do not base on proper appreciation of evidence and liable to be reversed.

On the other hand, learned counsel for the defendant respondent has submitted that Township Scheme has been well established; that under this scheme, the suit land vests with Municipal Council, therefore, the construction raised by the plaintiffs appellants be treated as an encroachment.

This Court has given its thoughtful consideration to the rival contentions and carefully gone through the evidence available on record.

The ownership of the plaintiffs is not disputed, rather, the same is duly proved by producing cogent documentary evidence. Ex.P4 to P6 are the jamabandi entries for the years 1943-44, 1969-70 and 1979-80 respectively. Ex.P7 and P8 are the jamabandis for the years 1984-85 and 1989-90. Ex.P9 is the mutation. Ex.P10 is the jamabandi for the year 1994-95 and Ex.P11 is the jamabandi for the year 1999-2000, Ex.P12 is the mutation and Ex.P15 is the report of the Local Commissioner. All these documents establishes that the plaintiffs are in possession of the said property as owners.

The defendant Municipal Council never disputed the ownership of the plaintiffs, rather, it took a distinct plea with regard to acquiring the land for the purpose of development of the Town Planning Scheme (TP Scheme) inbuilt area. It is specifically mentioned in the written statement that in fact Khasra No.5192 is a park/open space as per Town Planning Scheme vide No.6A of Drawing No.DTP-A 1625/70 in the inbuilt area as per the provisions of the Act. In this view of the matter, the park/open space/road and streets vests in Municipal Council in pursuance of Section 61 of the Act. It is further alleged that the plaintiffs are raising construction which amounts to encroachment, therefore, notices under Sections 208, 209 and 235 had been issued to them. The Municipal Council claimed that there

is no bar for removing of construction/site in dispute. This Court has considered all the contentions but the same are without substance. There is no provision for acquisition of private property for the purpose of building plan. Section 203 of Haryana Municipal Act, 1973 deals with this scheme and it reads as under :

203. Building schemes.

(1) The committee may, and if so required by the Deputy Commissioner shall, within six months of the date of such requisition, draw up a building scheme for built-areas, and a town planning scheme for unbuilt areas, which may among other things provide for the following matters, namely:

(a)

the restriction of the erection or-erect ion of buildings or any class or buildings in the whole of or any part of the municipality, and of the use to which they may be put;

(b)

the prescription of a building line on either side or both sides of any street existing of proposed;

(Substituted by Haryana Act 6 of 1993 and further substituted by Haryana Act 18 of 1998)

[(c) the amount of land in such unbuilt area shall be transferred to the committee for public purposes including use as public streets by owners of land on payment of compensation:

Provided that the total amount so transferred shall not exceed fifty per centum:

Provided further that where owners of land offer land willingly without payment of compensation to draw up a town planning scheme they shall not be entitled to any compensation;]

(d)

the determination of the size and shape of a reconstituted plot so as to render it suitable for building purposes and where the plot is already built upon, to ensure that the building, so far as possible, complies with the provisions of the scheme in respect of open spaces;

(e)

the formation of a reconstituted plot by the alteration of the boundaries of an original plot;

(f)

the formation of a reconstituted plot by the transfer wholly or partly of the adjoining lands;

(g)

the allotment of a plot to any owner dispossessed of land in furtherance of the scheme;

(h)

the transfer of ownership of a plot from one person to another; and

(i)

the details of the internal services, estimated cost for providing them, the extent of the liability of the owners of buildings and lands for the payment of the cost and the manner of payment of the same.

Explanation." For the purposes of this section,"

(1) the reconstituted plot shall mean a plot which is altered in ownership or other wise as a result of making of a town planning scheme;

(2) internal services shall mean," n

(i)

metalling of roads and paving of footpaths;

(ii)

turfing and plantation with trees of open spaces;

(iii) street lighting;

(iv) adequate and wholesome water-supply;

(v)

sewers and drains both for storm and sullage water and necessary provision for their treatment and disposal; and

(vi)

any other works that the committee may think necessary for the development of the area comprised in the scheme.

(2)

When a scheme has been drawn up under the provisions of sub-section (1), the committee shall give public notice of such schemes and shall at the same time intimate a date not less than thirty days from the date of such notice by which any person may submit to the committee in writing any objection or suggestion with regard to such scheme which he may wish to make.

(3)

The committee shall consider every objection or suggestion with regard to the scheme which may be received by the date intimated under the provisions of sub-section (2) and may modify the scheme in consequence of any such objection or suggestion and shall then

for ward such scheme as originally drawn up or as modified to the Deputy Commissioner, who may if he thinks fit, return it to the committee for reconsideration and re-submission by a specified date; and the Deputy Commissioner shall submit the plans as forwarded, or as re-submitted, as the case may be, with his opinion to the State Government, who may sanction such scheme or may refuse to sanction it, or may return it to the committee for reconsideration and re-submission by a specified date.

(4)

If a committee fails to submit a scheme within six months of being required to do so under sub-section (1) or fails to re-submit a scheme by a specified date, when required to do so under sub-section (3) or re-submits a scheme which is not approved by the State Government, the Deputy Commissioner may draw up a scheme of which public notice shall be given by notification and by publication with in the municipality together with an intimation of the date by which any person may submit in writing to the Deputy Commissioner any objection or suggestion which he may wish to make, and the Deputy Commissioner shall forward with his opinion any such objection or suggestion to the State Government, and the State Government may sanction such scheme as originally notified or modified in consequence of any such objection or suggestion, as the State Government may think fit; and the cost of such scheme or such portion of the cost as the State Government may deem fit shall be defrayed from the municipal fund.

(5)

When sanctioning a scheme the State Government may impose condition for the submission of periodical reports on the progress of the scheme to the Deputy Commissioner or to the State Government, and for the inspection and supervision of the scheme by the State Government.

(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.

(Inserted by Haryana Act 8 of 1985)

This Section is in parametria with Section 192 of Punjab

Municipal Act which remains under judicial review. Hon'ble Supreme Court

unconstitutional on account of compulsory transfer of the land without the payment of any compensation being violative of the provisions of the Constitution. Hon'ble Supreme Court observed in para 30 to 32 as under : -

“30. As held above, the provisions of Section 192(1)(c) of the Punjab Municipal Act, 1911 and of Section 203(1)(c) of the Haryana Municipal Act, 1973 are violative of [Article 14](#) of the Constitution. Hence the acquisitions of the appellants' land under the respective provisions were bad in law. The question still remains as to what relief the appellants can be granted. It is now well-settled by the decisions of this Court beginning with [I.C. Golak Nath and Ors. v. State of Punjab and Anr.](#) that the Court can mould the relief to meet the exigencies of the circumstances and also make the law down by it prospective in operation. We are informed that till date the Municipal Committees in both Punjab and Haryana States have similarly acquired lands for their respective town planning schemes and in many cases the schemes have also been completed. It is only some of the land-owners who had approached the courts and the decisions of the courts have become final in many of those cases. It would not, therefore, be in the public interest to unsettle the settled state of affairs. It would create total chaos and an unmanageable situation for the Municipal Committees if the said provisions of the respective statutes and the land acquisitions made thereunder are declared void with retrospective effect. We, therefore, propose to declare that the concerned provisions of the two enactments would be void from the date of this decision.

31. This judgment will not prevent the respondent-State Governments from suitably amending Section 192(1)(c) of the Punjab Municipal Act and Section 203(1)(c) of the Haryana Municipal Act as the case may be, and making appropriate provisions in the statutes on the lines of the enactments

prevailing in other States for making the town planning scheme such as the Bombay Town Planning Act, 1954.

32. Hence, while we hold that the provisions of Section 192(1)(c) of the Punjab Municipal Act, 1911 and of Section 203(1)(c) of the Haryana Municipal Act, 1973 being violative of [Article 14](#) of the Constitution are void with effect from the date of this judgment and set aside the impugned decision of the High Court, we for the reasons already stated, in the peculiar facts of these cases, dismiss the appeals and the writ petition.”

This Court in **Suraj Bhan v. State of Haryana, RSA No.814 of 2001** held that the property owned by private persons even if remains vacant or even if part of any scheme cannot be acquired without payment of compensation.

Apart from it, in the case in hand, nothing is produced on record if any Town Planning Scheme was ever came into existence. There is no document available on record if the Committee has submitted a building plan for the purpose of Town Planning to the Deputy Commissioner or Deputy Commissioner has ever approved the building scheme for built area or town planning scheme for inbuilt area. Mere production of the site plan does not establish if any town planning scheme was ever approved or came into force. Thus, Municipal Council is not owner of the property nor it has any concern, whatsoever.

Learned first appellate court failed to appreciate the facts and law. Rather its judgment is based on surmises and conjectures and sans reasoning. Thus, the same is not sustainable and is hereby set aside. As a result, this appeal is accepted and the judgment of the learned first appellate court in Civil Appeal No.47 of 2009 is hereby set aside with costs

throughout. However, the judgment of the learned trial court is restored and stands upheld.

December

Paritosh Kumar

22, 2017

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No