

Sr. No.102

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

**RSA No. 3273 of 2012(O&M)
Date of decision: 01.11.2017**

**Municipal Corporation, Bathinda through its Commissioner
..... Appellant**

versus

**Sarabjit Singh and others
.....Respondents**

Coram: Hon'ble Mr. Justice Rajbir Sehrawat

**Present: Mr. Khusdeep S.Maan, Advocate
for the appellant.**

Mr. Sohoaib Khan, Advocate
for the respondents.

Rajbir Sehrawat, J.(Oral)

This is second appeal filed by defendant No. 1 in the suit, Municipal Corporation, Bathinda, challenging the concurrent judgments and decrees passed by the Courts below.

For convenience, the parties would be referred herein as plaintiff and the defendant, as they were described in the original suit.

The brief facts of the case are that the plaintiffs filed a suit against the defendant corporation praying for restraining it from interfering in the peaceful possession and user of the land measuring 62 kanals 3 marlas, as fully detailed in the head note of the plaint, and further for restraining defendant No. 1 from taking illegal and forcible possession of the suit land or throwing sewerage and contaminated water in the suit land or to change the nature of the suit property in any manner. The claim of the plaintiffs was that they are in possession of the suit property, as lessee from defendant No.2 i.e. the Punjab Wakf Board. The suit property has been leased out by the Punjab Wakf Board to the plaintiffs on a rent of

₹ 42,000/- per annum and proper lease deed to this effect has been duly executed by it. It was further claimed that the rent has now been enhanced to ₹ 45,000/- per annum. Since the date of execution of lease deed in favour of the plaintiffs, they are in continuous possession of the property and has been regularly paying rent to the lesser. Accordingly, they are in possession of the land and using it. Plaintiff further claimed that defendant No. 2 granted them the permission for construction of the residential house on the ground floor of the said property after due approval. The requisite fees so demanded by defendant No. 2 has already been paid. It was further pleaded that defendant No. 1; the Municipal Corporation, Bathinda has no right, title or interest in the property. However, they were threatening to interfere in the user and enjoyment of the said property. Hence, the suit was filed.

After notice, defendant No. 1; Municipal Corporation, Bathinda contested the suit. Besides taking the routine preliminary objections, on merits the defendant No.1; Municipal Corporation, Bathinda claimed that the plaintiffs were neither competent nor authorised to raise construction on any piece of land which is within municipal limits, Bathinda, without getting a site plan approved from defendant No. 1. The construction if any raised within municipal limits without prior permission/sanction of a site plan is illegal and therefore, defendant No. 1 is competent to demolish the same under the relevant provisions of the law. Still further it was pleaded that defendant No. 1 never tried to interfere in the possession of the plaintiffs. However, it was further pleaded that the suit property is a low lying area surrounded by residential area of Hazi Rattan and the flow of

waste water of houses of that area is, naturally, towards the land in question. It was further stated that defendant No. 1 has never thrown any dirty water in the land of the plaintiffs.

Defendant No. 2; the Punjab Wakf Board filed a separate written statement. In the written statement it was admitted by the Punjab Wakf Board that its the owner of the suit property. However, the remaining averments were denied by the Punjab Wakf Board.

Parties led their evidence.

After hearing the parties, the Trial Court decreed the suit filed by the plaintiffs. While decreeing the suit, the Trial Court recorded a finding that admittedly the plaintiffs were lessee under defendant No. 2. It was further recorded by the Trial Court that the defendant No. 1 is neither the owner nor it has any right, title or interest over the suit property. Therefore, it has not right to interfere into the peaceful usage and possession of the same by the plaintiffs. However, the Trial Court also recorded a finding that since the property lies within the municipal limit of Municipal Corporation, Bathinda, therefore, the plaintiffs could not raise any construction without seeking prior approval of the site building plan. Resultantly, though the suit was decreed, however, the condition was stipulated in the decree that the injunction would not apply to any construction raised by the plaintiffs without getting prior sanction of the building plan.

Aggrieved against the judgment and decree, the Municipal Corporation filed appeal before the lower Appellate Court. However, the lower Appellate Court also dismissed the appeal filed by defendant No. 1;

Municipal Corporation, Bathinda. While dismissing the appeal, the lower Appellate Court recorded that the plaintiff has produced on record lease deed Ex:P-1, Khasra girdawari Ex:P-2, receipts of payment of rent Ex:P-3 and renewal of Pattanama and permission for construction Ex:P-4. Besides this the oral evidence has been led by the plaintiff to show their possession over the suit property. Therefore, according to the lower Appellate Court, lease in favour of the plaintiff has been proved. It was held that the plaintiff is in legal possession of the suit property. Hence, the lower Appellate Court held that the Trial Court has rightly restrained the municipal corporation from interfering into the peaceful possession of the plaintiffs. Therefore, the judgment and decree passed by the Trial Court was upheld by the lower Appellate Court.

While arguing the present appeal, learned counsel for the appellants has submitted that the land is low lying area and the waste water of the surrounding houses, naturally, goes to the suit land. It was further argued by him that the suit land is shown to be a pond in the revenue record, therefore, it could not be put to any other use. Hence the counsel submits that the findings of the Courts below are perverse and the suit deserves to be dismissed.

On the other hand, learned counsel for respondent No.3 the Punjab Wakf Board submits that the suit property is the property of the Wakf Board and they have every right to lease it out and to use the same for any purpose as per their requirement or suitability. Therefore, learned counsel submits that the Board had every right to lease it out at that point of time to the plaintiff, therefore, it was rightly leased out to him. Although it

is claimed that he has not paid the lease amount upto date.

After hearing learned counsel for the parties and perusing the record; with the able assistance of the counsel for the parties, this Court is of the considered view that the argument of learned counsel for the appellants do not deserve to be accepted. It has been duly proved on record of the case by leading positive evidence that the plaintiffs are in lawful possession of the suit land. The Municipal Corporation, Bathinda has not been able to show any right, title or interest qua the suit property. Hence, the Courts below have not committed any illegality or perversity in passing the impugned judgment and decree. So far as the second argument raised by learned counsel for the appellant, that the suit property is recorded as a pond and therefore it could not be used for any other purpose, also do not deserve to be accepted. It is not disputed by either side that the property is recorded as a Wakf property. That means that the property has come to the Wakf Board from some person/entity who was the owner of the property. Merely because a land is low lying area, does not mean that it has to be converted into a pond, necessarily, and without permission of the actual owner. Otherwise, also the jamabandi placed on record by the plaintiff shows that he has been in possession of the suit property since long. Therefore, this also testify the fact that although the suit property may be recorded as a pond in the sense of low lying area, however, it is being owned and possessed by particular persons. Hence, it is not a common area. The Wakf board is right in submitting that being owner it can put the land to use as per its suitability and requirement.

No other arguments was raised by learned counsel for the

parties.

In view of the above, the present appeal fails and the same is
dismissed being devoid of any merits.

1st November, 2017

Shivani Kaushik

**[Rajbir Sehrawat]
Judge**