IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1046 of 1992 (O&M)
Date of Order: 09.08.2018

Mohinder Singh

..Appellant

Versus

Municipality, Yamuna Nagar

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. C.B.Goel, Advocate,
for the appellant.

Mr. Rajesh K.Sheoran, Advocate,
for the respondent.

ANIL KSHETARPAL, J(Oral)

Learned counsel for the parties admit that Town Planning Scheme prepared by the Municipal Committee, Yamuna Nagar (now Municipal Corporation) for unbuilt area around Mukand Lal Government Civil Hospital, Jagadhri and sanctioned by the State Government on 02.08.1983 has already lapsed and this court while deciding Civil Writ Petition No.9512 of 1996 have found that since the scheme has lapsed, therefore, no mandamus can be issued for implementation of the same. The relevant discussion by this Court while deciding the aforesaid Civil Writ Petition is extracted as under:-

> "*Section 203 of the Act empowers a Municipal Committee to draw up a building scheme for built areas and a Town Planning Scheme for unbuilt areas and on such a scheme being finally framed after following the procedure prescribed in sub-*

sections (2) and (3) of Section 203 of the Act, the same is sanctioned by the State Government. Sub-section (6) thereof provides that 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. The question that emerges for consideration is whether a scheme can be ordered to be implemented when the period of more than five years has lapsed from the date of its sanction. As already observed, the scheme in the instant case was sanctioned by the State Government on 02.08.1983 and as is clear from the averments made in the written statement the same had not been implemented till the year 1996 and that most of the land covered by the scheme remains unbuilt. The mandate of sub-section (6) is that after the scheme has been sanctioned, the committee must complete it within a period of five years from the date of its sanction. This means that after the period of five years is over the scheme would lapse and if necessary a fresh scheme shall have to be prepared in accordance with law. Thus, if the scheme is not implemented and completed within a period of five years from the date of its sanction, it lapses and it cannot be ordered to be completed or accomplished thereafter. A similar question arose before a Full Bench of this Court in ***Nawal Singh v. The Administrator, Municipal Committee, Charkhi Dadri****, 1984 P.L.R. 57 where the provisions of Section 44-A of the Punjab Town Improvement Act, 1922 came up for consideration. Section 44-A of that Act reads as under:-*

"Any scheme in respect of which a

> *notification has been published under Section 44 shall be executed by the Trust within a period of five years from the date of such notification.*
>
> *Provided that the Government may if it is satisfied that it is beyond the control of the Trust to execute the scheme within the said period, extend the same as it may deem fit."*

The provision is analogous to sub-section (6) of Section 203 of the Act except that sub-section (6) does not have the proviso which is there in Section 44-A of the Punjab Town Improvement Act. While interpreting this provision the Full Bench observed that a scheme had to be completed and accomplished within a period of five years from the date of tis notification unless extended by the State Government under the proviso. In the absence of the proviso in sub-section (6) of Section 203 of the Act, the obvious implication is that there is no power with any authority to extend that period. The scheme, therefore, must be held to have lapsed in August, 1988. The view that I have taken also finds support from a single Bench judgment of this Court in Indian Oil Corporation v. The Municipality, Thanesar, 1989 P.L.R., 424. It is petitioner's own case that the scheme has not been implemented so far and that is why a mandamus is being sought for a direction to the respondents to complete the implementation of the same. Since the period of five years from the date of its sanction is long over and the scheme having lapsed the mandamus sought for cannot be issued in this view of the matter, the writ petition has become infructuous and the same is accordingly *dismissed. There is no order as to costs."*

Learned counsel for the parties admit that the present litigation is also concerning the same Town Planning Scheme.

Plaintiff-appellant had filed a suit for permanent injunction claiming that defendant i.e. Municipal Committee, Yamuna Nagar has no right to take possession of the property which had been purchased by him through a sale deed. Plaintiff claims that he had purchased 528.31/36 sq. yds. plot vide sale deed dated 28/29.04.1976.

Defendant contested the suit and pleaded that it is part of the Town Planning Scheme prepared for unbuilt area around Mukand Lal Government Civil Hospital, which was sanctioned by the State Government on 14.10.1983. Defendant further pleaded that 30 ft. wide road has been encroached upon by the plaintiff, which was kept for common purpose i.e. carving out a road. However, ownership of the plaintiff was not disputed.

Learned trial court decreed the suit, however, learned first appellate court partly reversed the judgment on the ground that the Town Planning Scheme has been sanctioned and therefore, Municipal Committee had a right to take away property without payment of any compensation from an owner to the extent of 25% of owner's share.

It may be noticed that Hon'ble the Supreme Court in the case of ***Yogendra Pal v. Municipality, Bathinda, 1994 (3) Recent Revenue Reports, 118*** has already struck down Section 203 of the Haryana Municipal Act making a provision for taking away 25% land of the owner without payment of compensation. Hon'ble Supreme Court has held that the common use for which the property is taken away is for benefit of everybody and owner cannot be deprived of the property without any payment of appropriate compensation.

In any case, once this court has already held that the scheme has lapsed, therefore, no action can be taken by the Municipal Committee under the aforesaid scheme. It may be noted that learned counsel for the appellant has pointed out that the appellant was also party to the aforesaid writ petition and the Municipal Committee was respondent no.3.

Keeping in view the aforesaid facts, the judgment passed by the learned first appellate court is set aside and that of the trial court is restored.

The regular second appeal is allowed.

August 09, 2018 **(ANIL KSHETARPAL)**
nt **JUDGE**

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