

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

RSA No.1379 of 2000

Ishar Singh
(Deceased) through LRs

....Appellant

Versus

The Municipal Corporation, Ludhiana and Anr.

....Respondents

And

RSA No.1380 of 2000

Ishar Singh @ Sher Singh

....Appellant

Versus

Municipal Corporation, Ludhiana through its Commissioner

....Respondents

Date of Order: 04.5.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arihant Jain, Advocate and
Mr. N.K. Verma, Advocate for the appellant.

Mr. Arshdeep Bhullar, Advocate for
Mr. S.P.S Bhullar, Advocate for the respondents.

AMIT RAWAL, J (ORAL)

This common order of mine shall dispose of aforesaid two appeals arising out of two suits since common questions of law and facts are involved in the same.

Legal representatives of the plaintiff-appellant are in second appeal against the judgment and decree of reversal dated 28.2.2000 passed by learned Addl. District Judge, Ludhiana whereby the appeal filed by the respondents-defendants against the judgment and decree dated 10.3.1999 passed by Civil Judge (Sr. Divn.), Ludhiana, decreeing the suit of the

plaintiff, has been accepted.

Plaintiff-appellant instituted the suit for permanent injunction restraining the defendants from entering into their peaceful possession being owner of plot measuring 2641 sq yards as described in the plaint comprising of Khasra Nos.1002, 1005, 1006 and 1007 as per jamabandi for the year 1987-88 on the premise that the defendants-Municipal Corporation, Ludhiana (for short "MC") had no concern with the suit property and they wanted to take possession on the premise that they had acquired the land but no compensation had been paid.

The suit was contested by the defendants-Municipal Corporation on the ground of maintainability, want of notice under Section 396 of the Punjab Municipal Corporation Act. It was pleaded that the defendants-MC had taken possession of 24% of the land out of total area of 22498 sq yards, which was not in possession of the plaintiff and said area was known as Shinger Cinema Area as per the scheme framed by the Government.

From the pleadings of the parties, the following issues were framed:

- "1. Whether the plaintiff is entitled to the injunction, prayed for?OPP*
- 2. Whether the suit is not maintainable in the present form?OPD*
- 3. Whether notice under Section 396 of the Municipal Corporation Act has been served by the plaintiff before filing the suit?OPP*
- 4. Whether the suit is mis-conceived as alleged in the written statement?OPD*
- 5. Relief."*

Plaintiff in support of his evidence examined PW1 Gurcharan

Singh and PW2 Prem Singh besides tendering documents Ex.P.1 to P.3.

On the other hand, the defendants examined DW1 Pavittar Singh, Draftsman and closed the evidence.

The trial Court on the basis of preponderance of evidence particularly jamabandi decreed the suit holding the plaintiff-appellant to be owners in possession of the land in terms of jamabandi Ex.PW3/3, which carried presumption of truth. Said judgment and decree was challenged and the lower Appellate Court while reversing the findings accepted the appeal, hence the present appeal.

Learned counsel for the appellant submitted that the judgment and decree of the lower Appellate Court is not sustainable, for, the land which vests either in the M.C or shamlat cannot be acquired without compensation and the possession of the same cannot be taken. It was simpliciter suit for permanent injunction and the Scheme was never challenged by seeking any declaration as it would be in violation of Article 300-A of the Constitution. He relied upon a Full Bench judgment of this Court reported as **Suraj Bhan and Ors. Vs. State of Haryana and Anr 2017(2) PLR 605**. There is no limitation for claiming title and therefore the objection qua the suit being barred was not maintainable. All these factors were not taken into consideration by the Lower Appellate Court being the last court of law and facts.

On the other hand, learned counsel for the respondent submitted that the suit of the appellant-plaintiff was barred by law of limitation. Provisions of Section 275 of the Punjab Municipal Corporation Act empowers the Municipal Corporation to acquire 25% of land without payment of compensation. He submitted that the suit was filed after 16-17

years of the cause of action arose and that the plaintiff has failed to prove the possession qua specific khasra number and thus urged for dismissal of the appeal as injunction could not have been granted by the trial Court.

After hearing learned counsel for the parties and appraising the paper book, I find merit in the submissions made by learned counsel for the appellant. The question with regard to vesting of the land of sham lat in the Municipal Corporation without payment of compensation came to be debated upon by Full Bench of this Court in **Suraj Bhan's case (supra)**, paragraph 221 of which reads as under:

“221. With the answers to the questions posed for the Full Bench, the cases shall be listed before the appropriate Bench, as per the roster, for consideration of each case individually.

***Rekha Mittal, J-** I have perused the judgment recorded by my learned brother S.S Saron, J but respectfully express my inability to agree to the findings that compensation is to be awarded for land described as 'Shamlat Deh Hasab Rasad Zare Khewat', 'Hasab Rasad Paimana Malkiat', etc, upon their vesting in a Municipal Corporation.”*

DW1 candidly stated that the Municipal Corporation under the provisions of Punjab Municipal Corporation Act could acquire 25% of the land without compensation. Aforesaid Act was not in consonance with the provisions of Article 300-A of the Constitution, which reads as under:

“ 300-A. A Persons not to be deprived of property save by authority of law No person shall be deprived of his property save by authority of law”

After taking into account the contents of said Article, no statutory body of the Government can be permitted to take the possession without payment of compensation. In a welfare State, the act and intention

of the Government is to provide help to the sucker/affected party but not to cause harassment as has been done. The lower Appellate Court did not examine all the facts and has not assigned any cogent reason for setting aside the well reasoned judgment of the trial Court.

The argument of learned counsel for the respondent that the plaintiff had to prove his possession would not carry any weightage or strength, for, the jamabandi (Ex.PW3/3) brought on record showed that the plaintiff was owner to the extent of half share and similar benefit would enure to the other co-owners, who had not espoused their cause by filing cases in the competent court of law. The Rule of law and the observations of this Court shall apply to all the affected parties.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure and decision thereof could be without framing the substantial questions of law. The Constitutional Bench of Hon'ble Supreme Court held that the decision in Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262 on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of

five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)] cannot be sustained and is thus overruled.” [at paras 27 - 29]” “27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

Keeping in view the aforementioned, the judgment and decree passed by the lower Appellate Court is set aside and the judgment and

decree passed of the trial Court is restored. However, it is made clear that in case parties have already compromised the matter then nothing survives for execution. If otherwise, the natural consequences of the judgment and decree passed by the trial Court, confirmed by this Court, shall follow. The second appeal is allowed in the above terms.

However, it is made clear that the findings observed herein will not prevent the Municipal Corporation in taking the possession of the land in due process of law by paying the compensation.

May 04, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No