

**RSA No. 746 of 2012 (O&M) &
other connected appeals**

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

**RSA No. 746 of 2012 (O&M) &
other connected appeals
Date of Order:05.12.2018**

Rajinder Kumar and others

..Appellants

Versus

Labh Singh Gill,

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sunil Chadha, Senior Advocate, with
Mr. Chetan Bansal, Advocate, and
Mr. Divyanshu Jain, Advocate
for the appellants.

Mr. Arun Jain, Senior Advocate with
Mr. Amit Jain, Advocate, and
Mr. Abhishek Dhull, Advocate,
for the respondent.

ANIL KSHETARPAL, J(Oral)

By this judgment, Regular Second Appeal Nos.746, 772, 1340,
1348 and 1349 of 2012 shall stand disposed of.

Various applications have been filed for placing on record documents which are not permissible. In the appeal only an application under Order 41 Rule 27 of the Code of Civil Procedure can be filed. Keeping in view the technicalities apart, the documents attached with the applications have been taken into consideration.

The only issue which needs determination is

*“Whether the property in dispute is a part of the
urban area pursuant to a notification issued by the*

State of Punjab, dated 23.05.1975'

The bone of contention between the landlord and the tenants is interpretation of this notification. Tenants-appellants claim that the building in question is part of the urban area and therefore they are entitled to protection under the East Punjab Urban Rent Restriction Act, 1949. Whereas it is the case of the landlord that since the shops in dispute do not fall within the notified area, therefore, tenancy of the tenants have been terminated by a valid notice in each case and hence suit for possession is maintainable.

In the present cases, tenancy is not in dispute, so the question which has been posed above is the only question which requires determination.

Both the courts on appreciation have found from the material available on the record that the property is not part of the area covered by notification dated 23.5.1975, declaring it to be an urban area. Property is situated at village Sudhar Bazar. No evidence has been led that the entire area of village Sudhar Bazar has been included.

Learned trial court appointed a revenue official Sh. Rajinder Kumar, Kanungo, a sufficiently senior revenue official to go and inspect the site and after demarcation submit a report. Report dated 04.03.2010 has been submitted, wherein Kanungo has reported that it is part of the village. He has also appeared in evidence and stated on oath as under:-

*“Statement of Sh. Rajinderpal Singh/Rajinder Kumar,
Qanugo Additional area Sudhar, Circle Goindwal,
Tehsil Raikot.*

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In compliance of the order of the court after effecting demarcation of the spot in dispute, I found that the property falls within the khasra/revenue number and there is gram panchayat elected in the area concerned. This area does not falls within the notified area. I have submitted my report after the demarcation.

RO&AC

Ranjeev Kumar, CJJD, 6.3.2010.

(Signed in English)”

The appellants-defendants did not sought an opportunity to cross-examine this witness. Still further tenants-appellants have also examined Mohinder Singh, Patwari of the area. He also does not specifically says that the property in dispute is part of the land covered by notification. He goes on to admit that there is an elected panchayat in this area and concerned Sub Divisional Magistrate is issuing Rural Area Certificates to the residents of the area. He admitted that Kanungo, namely, Rajinder Kumar, who had been appointed by the court, had got the area demarcated. He, however, plead ignorance about the notification or its implementation.

The court has to decide the case on the basis of evidence which has come on record. Through the applications which have been noticed above, appellants have made an application for permission to place on record copy of notification, akshajras (lay out plans) and copies of various litigations apart from two judgments by the courts dated 27.03.2018. It is not disputed that aforesaid judgments are not part of the khasra number in which the property in dispute is situated. In such circumstances, these documents which have been placed on the file does not advance the case of

the tenants-appellants.

This court has heard learned senior counsels for the parties at length, spanning over 2 days, however, learned senior counsel appearing for the tenants-appellants, although, made a sincere attempt but could not draw attention of the court to any convincing evidence which prove that the property in dispute falls covered by the area mentioned in the notification issued by the State of Punjab. The notification was issued in the year 1975. It has been more than 40 years. No municipal official has been examined to prove that the shops in dispute are part of the urban area. Once the land or the property becomes part of the urban area than such property shall be regulated by the Municipal Committee, Raikot.

Learned senior counsel appearing for the tenants-appellants has stressed upon the point that the report of the Local Commissioner does not specifically report to the court that the property in dispute is not the part of the area covered by notification.

On careful reading of the report, it is apparent that the concerned official who was deputed to carry out the demarcation has reported that it is part of the village. Once, this report has been submitted, the only inference is that it is not part of the municipal area because it cannot be part of both. Still further, when he appeared in evidence, he has specifically stated that it is not a part of the area covered by the notification. Hence, the vagueness, if any, stood clarified by the statement of the Local Commissioner made while appearing in the court.

Learned counsel for the tenants-appellants further submitted that this court should appoint a Local Commissioner and get the disputed property re-demarcated in order to do substantive justice between the

parties.

No doubt, the argument of learned counsel for the tenants-appellants is attractive on first blush, however, keeping in view the fact that a Local Commissioner has already been pointed by the trial court who has given a detailed report, credibility whereof has not been impeached, therefore, this court find no reason to appoint an another official. Still further, it may be noticed that this litigation is pending for the last 11 years. The litigation has come to an end. It cannot be kept pending only because one party is praying for collecting evidence. Evidence has to be led by the parties and the court cannot call upon to collect evidence on behalf of the parties.

In view of the aforesaid, this court does not find any good ground to interfere.

All the five regular second appeals are dismissed.

The other miscellaneous applications, if any, are disposed of in view of the judgment passed above.

December 05, 2018
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(ANIL KSHETARPAL)
JUDGE

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