

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

1. RSA No.3151 of 2014 (O&M)
Date of decision : 27.11.2018

Gian Chand Gopal ...Appellant

Versus

Municipal Corporation Bhatinda through its Commissioner ...Respondent

2. RSA No.3152 of 2014 (O&M)
Date of decision : 27.11.2018

Gian Chand Gopal ...Appellant

Versus

Municipal Corporation Bhatinda through its Commissioner ...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. D.K. Gupta, Advocate for the appellant
(In both the appeals)

Mr. Sanjeev Soni, Advocate for the respondent
(In both the appeals)

ANIL KSHETARPAL, J.

Arguments were heard and the judgment was reserved on
15.11.2018. The judgment is being released.

By this judgment, RSA Nos.3151 and 3152 of 2014 shall stand
disposed of as both the appeals are arising out of a suit filed by the plaintiff-
appellant. The First Appellate Court also disposed of two appeals by a
common judgment.

In substance, the dispute between the parties is with respect to a
street which was carved out at the time when town planning scheme No.3,

Part-II was finalized and sanctioned by the Municipal Corporation Bathinda. It may be noted that on 02.09.1973, the area was declared as unbuild area and after inviting objections and considering them, a revised lay out plan was published on 15.06.1977. Even thereafter objections received were heard and revised lay out plan was sent by the Administrator-cum-Deputy Commissioner Bathinda to District Town Planner. Further revised lay out plan was published and objections received thereupon were also considered and final lay out plan was prepared on 12.09.1979 resulting in final notification issued by the Town Planning dated 09.09.1983/31.08.1983. It may further be noted that challenge to the aforesaid town planning scheme on various grounds has been finally dismissed by this Court while deciding LPA No.121 of 2008 and other connected appeals vide judgment dated 26.11.2014 while reversing the judgment passed by the learned Single Judge. Special Leave Petitions against the judgment passed on 26.11.2014 have been dismissed by Hon'ble the Supreme Court on 20.03.2015 i.e. in SLP (Civil) No.7688 of 2015 and other connected Special Leave Petitions.

The plaintiff claims that he has purchased a plot in the year 1974 and some area of the aforesaid plot has been included in the street under a town planning scheme without payment of compensation. Plaintiff-appellant has claimed the relief of declaration to the effect that Resolution No.139 dated 05.09.2002 taking away 25% of the area of the residential plot is illegal, arbitrary and consequently the defendant be restrained from further demolishing his remaining structure and the Municipal Corporation should be directed to pay ₹75,000/- as compensation.

Learned trial Court partly decreed the suit by declaring that Resolution referred to above and the notices issued are illegal, null and void and, therefore, set aside. Decree was also passed restraining the defendant from demolishing remaining construction or from interfering in the subsequently build up structure of the plot in dispute, however, relief of recovery of ₹75,000/- as compensation was declined.

Learned trial Court based its decision on the basis of previous judgment passed by the Court while deciding two suits, one filed by Kartar Singh seeking decree of permanent injunction so as restraining the plaintiff-appellant from digging a drain in the street whereas second suit was filed by the plaintiff-appellant in which Municipal Corporation was also impleaded as party. The plaintiff had also prayed that the defendant in the aforesaid suit be restrained from digging drain in the alleged street.

Two appeals were preferred, one by the plaintiff and second by the defendant and the learned First Appellate Court after re-appreciating the evidence available on the file reversed the judgment of the trial Court resulting in dismissal of the suit filed by the plaintiff.

The question which arises for consideration is whether the previous judgment operates as res judicata, however, before the aforesaid issue is examined, it would be more appropriate to notice that Hon'ble the Supreme Court while considering pari-materia provisions of Punjab Municipal Act, 1911 and Haryana Municipal Act, 1973 has held that in the case of *Yogendra Pal and others Vs. Municipality, Bhatinda and another*, *1994 (4) Shimla Law Journal 3091, (1994) 6 SCC 709*, compulsorily

transfer of the land without payment of compensation is violative of Article 14 of the Constitution of India and, therefore, ultra vires, however, it was specifically declared that this declaration would operate only prospectively and would not therefore unsettle the settled affairs. The operative part of the judgment passed by Hon'ble the Supreme Court is extracted as under:-

*“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 other vs. State of Punjab and another, (1967) 2 SCR 762 that the Court can mould the relief to meet the exigencies of the circumstances and also make the law laid 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.”*

In the present case as noticed above, the final Notification notifying town planning scheme was published in the year 1983 whereas Hon'ble the Supreme Court decided the case on 15.07.1994.

Hence as far as town planning scheme which results in taking away 25% of the plot owned by the plaintiff has become final and there cannot be any challenge to the validity thereof particularly in view of the judgment passed in LPA No.121 of 2008 and others, decided on 26.11.2014 upheld by Hon'ble the Supreme Court.

Now let us see, whether the previous judgment passed while deciding two suits for permanent injunction operate as res judicata or not?

It may be noted that in the aforesaid judgment, validity of the town planning scheme which had been finally approved was not the issue arising between the parties and there was neither any adjudication by the Court with respect to the validity of the town planning scheme as noted above. While deciding, the Civil Court as rightly noticed by the First Appellate Court did not finally adjudicate upon the dispute. Relevant portion of the judgment passed by the Civil Court in the previous suits which came to be decided by the Court on 10.09.1997 is extracted as under:-

“The consolidated suit No.69 dated 21.01.1995 filed by Gian Chand is decreed to the effect that the defendants of consolidated suit are hereby restrained from constructing a drain through the plot of Gian Chand pertaining to Khasra No.2451 fully detailed in the head note of the plaint of consolidated suit, illegally and forcibly except in due course of law.”

Principle of Res judicata is provided in Section 11 of the Code

of Civil Procedure. It is to be seen that in the previous suit, the issue should be directly and substantially in issue in the previous suit as well as in the subsequent suit between the same parties or between the parties under whom they or any of them claim litigating under the same title and the matter has been heard and finally decided by such Court in the former/previous suit. In the present case as noticed the validity of the scheme as also correctness of transfer of 25% of the land from the plot of the plaintiff was neither directly or substantially in issue nor it was finally heard and decided. The Resolution as passed by the Municipal Corporation in the year 2002 is only cancelling the building plan sanction, consequent upon the final sanction of the town planning scheme which was approved and notified in the year 1983. Still further, it is to be kept in mind that the validity of the aforesaid scheme has already been upheld by this Court in LPA No.121 of 2008 decided on 26.11.2014.

Learned counsel appearing on behalf of the appellant while relying upon a judgment passed by Hon'ble the Supreme Court in the case of *Sri Gangai Vinayagar Temple and another Vs. Meenakshi Ammal and others, (2015) 3 SCC 624* has contended that the issue with regard to ownership of the plaintiff has been finally decided and, therefore, it must be held that without paying compensation, Municipal Committee cannot take away 25% of his land.

Judgment passed in Sri Gangai Vinayagar Temple's case (Supra) is basically dealing with ambit and sweep of principle of res judicata vis-a-vis Order 2 Rule 2 CPC. The aforesaid judgment is not

applicable to the facts of the present case. The judgment passed by Hon'ble the Supreme Court which of course is binding on all Courts in India has to be read in the context it has been delivered and every sentence in the judgment cannot be read as a statute. Hence, this Court does not find substance in the arguments of the learned counsel for the appellant.

As regards ownership of the plaintiff, there is no dispute, however, dispute in the present case is whether the Municipal Committee now Municipal Corporation was correct in notifying the town planning scheme resulting in transfer of 25% of land from his plot. Hon'ble the Supreme Court while deciding the case of Yogendra Pal (Supra) has clearly held that the judgment would only operate prospectively and settled issues would not be unsettled as it would create total chaos and would be against the public interest.

In view of the discussions made above, this Court does not find any substance in both the appeals filed by the plaintiff. Hence, both the appeals are dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

27.11.2018

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No