

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

**RSA- 984-2016(O&M)
Date of decision : 14.11.2018**

Deva Singh and another

..... Appellants

versus

**The Executive Officer,M.C.Karnal
and others**

..... Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Abhinav Sood, Advocate and
Mr. Vikram Singh, Advocate
for the appellants.

AMIT RAWAL, J. (ORAL)

Appellant-plaintiffs have not been successful in claiming the decree of permanent injunction seeking a restraint against the defendants from forcible interference and construction over or disturbing park and roads as shown in green and red colours in the site plan which had been in their use for the last 30 years.

It was averred that the property of the plaintiffs and other persons was constructed under the Town Planning Scheme drawn and initiated under Section 203 of the Haryana Municipal Act. The aforementioned scheme was taken over by the Improvement Trust, Karnal as Municipal Corporation could not seek sanction from the State Government within specified time line. Necessary development charges at the time of the sanction of the site plan were deposited and since

then plaintiffs had been using the rights of the park after the construction of

their houses. Defendants No. 5 and 6 are none else but the land grabbers and thus in view of the aforementioned circumstances cause of action arose to the plaintiffs to file the suit.

Defendants No. 1 to 3 opposed the suit and stated that inhabitants of the village had been using the site in dispute as park, therefore, injunction as sought could not have been granted. Defendants No. 5 and 6 also independently contested the suit stating that the plaintiffs had been enjoying the privileges of the roads but there was no park in existence at the spot. In fact, defendant No.5, after purchase of the plot, had applied for sanction of the site plan but the same was rejected. Jurisdiction of this Court by way of Writ was invoked and the order declining the sanction of the building plan was quashed. Neither any proceedings under Section 203 of the Haryana Municipal Act were ever initiated nor such scheme was ever implemented. All open spaces could not become a park.

Mr.Vikram Singh and Mr.Abhinav Sood, learned counsel appearing for the appellants submitted that the park was mentioned in several sale deeds. The aforementioned scheme was taken over by the Improvement Trust when the Municipal council could not obtain sanction from the State Government. All the sale deeds reflect the existence of the park in centre. Defendants No. 1 to 3 by way of documentary and oral evidence endorsed the existence of the park. Thus, the admission of the officers of the Municipal Council would prevail upon the stand taken by the private defendants. The Courts below in such circumstances ought to have restrained them from converting the park to their private houses.

I am afraid the aforementioned argument of learned counsel is

passed the award in pursuance to the acquisition of the land vide notifications. Once the order of this Court in the writ petition had been implemented and attained finality, the plaintiff could not have filed the case seeking injunction and the remedy lied elsewhere. Under the garb of injunction it was being used as a park. The Courts are always circumspect in granting the injunction. Nomination of the gardener of the plaintiffs was nothing else but a testimony of interested witness. All these factors weighed in the mind of the Courts below while declining injunction.

Arguments of learned counsel have not been able to bring the case within the realm of illegality and perversity enabling this Court to form a different opinion other than the one arrived at by the Courts below. No ground for interference is made out.

Appeal is dismissed.

(AMIT RAWAL)
JUDGE

14.11.2018
sunita

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