

RSA No.6231 of 2017 (O&M)

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

RSA No.6231 of 2017 (O&M)
Date of decision: 09.01.2018

Khem Chand and others

.....Appellants

versus

The Municipal Council, Thanesar and others

.....Respondents

RSA No.6234 of 2017 (O&M)

Khem Chand and others

.....Appellants

versus

Vishan Dass alias Bishan Dass and others

.....Respondents

RSA No.6235 of 2017 (O&M)

Khem Chand and others

.....Appellants

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Vikas Bali, Advocate, for the appellant(s).

RAMENDRA JAIN, J.

This common order shall dispose of above titled three Regular
Second Appeals arising out of the common judgment and decree dated
05.12.2017 of the First Appellate Court, reversing the judgment and decree

dated 12.05.2011 of the trial Court, Kurukshetra.

RSA No.6231 of 2017 (O&M)

Put pithily, a town planning scheme (in short the 'scheme') of unbuilt area No.1 Part-II situated opposite Rudra Cinema, Kurukshetra, was notified/sanctioned under Section 203 of the Haryana Municipal Act, in which a public park was earmarked in khasra No.222/57 measuring 150'x47' having 16'x12' wide road on its Northern and Southern sides. The appellants, claiming themselves philanthropists carrying out social activities and also residents of Thanesar, District Kurukshetra, filed a suit in a representative capacity under Order 1 Rule 8 CPC in public interest at large, including their personal interest for declaration to the effect that the land shown in red and blue colours in the annexed site plan was a public park and road and thus was liable to be developed by respondents No.1 and 5 to 7. Direction was also sought against defendants No.5 to 7, their family members, servants and agents to restore the possession of the land earmarked for park and roads to defendants No.1 to 4 for development of the same as such. Further relief of permanent injunction was sought against defendants No.5 to 7 for restraining them from raising any construction over the alleged park or roads or alienating the same to third party and restraining defendants No.1 to 4 from sanctioning any building plan over the area left out for public use as park and roads.

It was alleged that as soon as the aforesaid scheme was notified, it was the bounden duty of defendants No.1 to 4 to develop parks, open spaces as well as roads in accordance with the scheme, but instead of performing their statutory duty honestly and diligently, officials of the Municipal Council acted in a partisan manner and permitted illegal encroachments over the public parks being used by public at large for

different purposes like gathering, walking, public functions on public holidays, marriages and other festival days etc.

RSA No.6231 of 2017 (O&M)

Defendants contested the suit by filing their separate written statements.

Defendants No.1, 3 and 4 (respondents No.1, 3 and 4 herein) in their written statement while admitting the sanctioning of the aforesaid scheme by the Government, pleaded that appropriate action had already been initiated against the unauthorised encroachers on the public parks, roads and open spaces etc. and civil as well as criminal action was also initiated against them by issuing notice under Section 181 of the Municipal Act and under other penal provisions of law. The scheme was sanctioned vide order dated 04.09.1972.

Respondent No.2-defendant in his separate written statement challenged the maintainability of the suit of the appellants on the ground that neither the appellants-plaintiff were co-sharers nor proprietors of the suit land, therefore, they had no right to file any suit and the civil Court had no jurisdiction under Section 15 of the Haryana Development and Regulation of Urban Area Act, 1975 to entertain the same.

Defendants No.5 to 7 (respondents No.2 to 4 herein) while denying the contents of the plaint, pleaded that the alleged scheme was never sanctioned by the Government. Even otherwise their land could not have been included in the scheme being built up area on which construction was raised after getting sanctioned the site plan from the Municipal Council, Thanesar (defendant No.3). Their whole property was in the shape of commercial property and they were regularly paying the house tax and municipal charges for the same. The town planning scheme, if any, was ever framed and notified, the same was liable to be quashed being in

contravention of the legal provisions. No road or park could be earmarked on their land comprising khasra No.222 rectangle No.57 of Village Darra

RSA No.6231 of 2017 (O&M)

Kalan, Thanesar.

After framing necessary issues, both the parties led evidence to their satisfaction.

It is worth mentioning here that during the pendency of the suit, the State Government denotified the scheme in question vide order dated 11.11.2004 (Ex.D12) on the basis of the report (Ex.D13) of Senior Town Planner. Despite that the trial Court after hearing both the sides, decreed the suit of the appellants vide judgment and decree dated 12.05.2011 to the effect that they being the inhabitants of the area were having every right to use the land in question as park and road according to the scheme being sanctioned by the Government in the year 1972. Respondents No.1 and 5 to 7 (herein) were restrained from changing the nature of the land of park and road on the basis of subsequent order dated 11.11.2004 (wrongly typed as 24.11.2004) passed by the Government de-notifying the scheme. Respondent No.1 was further directed to remove the encroachment of defendants No.5 to 7 (respondents No.2 to 4 herein) from the spot.

Being aggrieved, defendant No.3 (respondent No.1 herein), defendants No.5 to 7 (respondents No.2 to 4 herein) and defendants No.1, 2 and 4 (respondents No.5 to 7 herein) filed their respective appeals challenging the judgment and decree dated 12.05.2011 of the trial Court, which were accepted by the First Appellate Court vide impugned judgment and decree dated 05.12.2017.

Learned counsel for the appellants contends that the First Appellate Court failed to appreciate that respondents No.5 to 7 herein have categorically admitted in their written statement about the notification of the

scheme and encroachment by respondents No.2 to 4 over the public park and roads carved out on rectangle No.57 khasra No.222, therefore, the First

RSA No.6231 of 2017 (O&M)

Appellate Court ought to have upheld the judgment of the trial Court. The First Appellate Court failed to appreciate that after notification of the scheme on 04.09.1972 all the public parks and roads carved out therein had become the public property for the use of general public at large and, therefore, could not have been denotified. The First Appellate Court failed to appreciate the fact that the State machinery and local bodies in connivance with the landowners/illegal encroachers denotified the scheme in the year 2004 to the detriment of the public at large. The First Appellate Court ought not to have set aside the well-reasoned judgment of the trial Court, while appreciating that the scheme sanctioned in the year 1972 was never altered and that once the property vested in the Municipal Council in the shape of park and roads, its nature could not have been changed in any manner.

I have given anxious consideration to the submissions made by learned counsel for the appellants.

In the instant case Sub-section (6) of Section 203 of the Haryana Municipal Act is very much relevant and, therefore, is reproduced as under: -

“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.”

Undisputedly, in the instant case, the alleged town planning scheme was sanctioned in the year 1972, therefore, in view of provision referred above, it was mandatory for the Government or the Municipal Council, Thanesar, to implement the same within five years i.e. by the year

RSA No.6231 of 2017 (O&M)

required to implement the scheme in its true letter and spirit by developing the roads and parks shown therein within a mandatory period of five years. The appellants did not lead any iota of evidence that the scheme in question was ever implemented fully in its letter and spirit by the year 1977 by the Government or the Municipal Council, Thanesar by incurring huge expenses.

It is pertinent to mention here that as soon as the statutory period of five years expired in the year 1977, the scheme in question stood automatically lapsed and the land allegedly left out for the public purposes reverted back to the landowners or in other words re-vested in them as no compensation was ever paid by the State Government or the Municipal Council, Thanesar to them for their area, which was notified by the Government. No contrary law has been shown by learned counsel for the appellants in this respect.

More-so, on the recommendation of the Senior Town Planner, the Government, considering that the scheme has automatically lapsed long ago in the year 1977, de-notified the same in the year 2004 and, therefore, by any stretch of imagination it cannot be said that the road and park shown in the scheme would remain in existence inasmuch as the scheme in question was never implemented or completed within statutory period.

Perusal of the impugned judgment of the First Appellate Court shows that the area comprising rectangle No.57 khasra No.222 claimed to be public park and road, on re-assessment, was exempted and excluded to be covered under the scheme by making amendment in the scheme in question by the State Government. Therefore, the Municipal Council,

Thanesar, had no choice or authority to treat the alleged park and roads claimed by the appellants as such.

RSA No.6231 of 2017 (O&M)

It is also worth-mentioning that earlier the wife of appellant No.1 along with some other persons filed a suit against respondents No.5 to 7 herein laying challenge to the purchase of land by them underneath the alleged park and roads, but remained unsuccessful upto the Hon'ble Supreme Court. Since the wife of appellant No.1 could not succeed and lost battle upto the Hon'ble Supreme Court. Consequently, the appellants filed a fresh suit on the same cause of action giving it a colour of public interest litigation, which, in the considered opinion of this Court, is a clever attempt to camouflage the doctrine of "*res judicata*" as the subsequent present suit on the same cause of action was not maintainable being hit by the above doctrine.

I have gone through the impugned judgment of the First Appellate Court and find no ambiguity or illegality in the same. No question of law muchless substantial question of law arises for consideration in these appeals.

Resultantly, these appeals being devoid of any merit, are hereby dismissed.

(Ramendra Jain)
Judge

January 09, 2018

R.S.

Whether speaking/reasoned Yes/No

Whether reportable Yes/No