

owners of the premises namely, Inder Mohan Singh, Sandal Bir Kaur, Harminder Kaur and Paramjit Kaur but they challenged the said notice by way of civil suit. The said civil suit was decreed vide judgment and decree dated 23.12.2011 in favour of Inder Mohan Singh and others with regard to the permanent injunction and the Municipal Corporation was restrained from demolishing the existing construction over the property in dispute without following the due process under the law.

Thereafter, the respondents issued another notice to Inder Mohan Singh and others, which was final demolition notice/order. However, the same was challenged by way of appeal. The said appeal filed by Inder Mohan Singh and others, was dismissed vide judgment and order dated 13.09.2016 although on the ground that the same was not maintainable. Hence, another suit for permanent injunction filed by respondents Inder Mohan Singh and others too came to be decided on 29.11.2016 with the following directions:

“21. As a consequences of the aforesaid analysis and reasons recorded herein above, the suit of the plaintiffs succeeds and the same is decreed to the effect that defendant is restrained from dispossessing or causing interfering in the peaceful possession of the plaintiffs and from demolishing the building in view of notice bearing No.7021/ATP-D dated 30.10.14 with respect to the suit property. However, defendant is at liberty to proceed under law if at all, there is any encroachment made by the plaintiffs on the public road. Decree sheet be prepared, accordingly. File be consigned to the record room after due compliance.”

The Municipal Corporation, Ludhiana filed an appeal against the judgment and decree dated 29.11.2016 but the same too was dismissed upholding the issues framed by the lower Court. Therefore, as per learned counsel for the respondents and Municipal Corporation no contempt can be

said to be made out in view of the above orders and judgments passed by the Courts below.

The reply has also been filed by private respondent Nos.5 and 6 stating therein that the present petition has arisen out of the order dated 04.10.2008 passed in CWP No.4886 of 2003 in which liberty was granted to public spirited person to file contempt petition in case of any encroachment, whereas, the present petitioner was not a public spirit person because he himself had encroached huge property including the property adjacent to the property in question. Further, the property in question was purchased by the land owners in the year 1993 and since then they are absolute owners of the property and the answering respondents were licensee and tenants under them. Neither, the said property has been acquired till date and nor any compensation has been paid. Further, Municipal Corporation has also been restrained from dispossessing it and permanent injunction has been granted against the Municipal Corporation

Learned counsel for the petitioner however argued that the said judgments and orders do not stand in the way of the respondents to remove the encroachments as the very judgments and orders have specifically held that the same cannot be read as a blanket order and that the Municipal Corporation was at liberty to proceed under law in case there was any encroachment. Secondly, the petitioner had filed a suit for declaration as owner in possession but subsequently, he withdrew his prayer qua the declaration and only pursued his prayer with respect to permanent injunction.

Learned counsel for the parties have been heard at length.

The argument of learned counsel for the petitioner that there is

no bar in removing the encroachment as the private respondent had withdrawn his prayer with respect to the declaration as owner in possession cannot be sustained. It is evident from the order dated 23.12.2011 passed by the Civil Judge (Junior Division), Ludhiana that the said statement was suffered by the plaintiffs i.e. Inder Mohan Singh and others as the defendants in the said suit did not deny their title and the said statement was also suffered without prejudice to their rights.

Para 7 of the said judgment dated 23.12.2011 reads as under :-

“However, Ld. Counsel for the plaintiffs has suffered statement in the Court that as the defendants are not denying a title of the plaintiffs and without prejudice to the rights of the plaintiffs, he does not press the relief of declaration and injunction matter may be decided.”

Hence, in the absence of anyone challenging his title, there was assertion for Inder Mohan Singh and others to seek such a declaration.

The second argument that the order and judgment was not a blanket order and the Municipal Corporation could still remove any encroachment on public road also does not help in the facts of the present case. As per para 18 of the judgment dated 29.11.2016, passed by the Civil Judge (Junior Division), Ludhiana, it was specifically held that the defendant-Municipal Corporation had miserably failed to lead any evidence on the point of encroachment made by the plaintiffs i.e. Inder Mohan Singh and others on the road covered under the T.P. Scheme, Gurdev Nagar, Part-III, whereas, the plaintiffs i.e. Inder Mohan Singh and others were able to prove their case by preponderance of probabilities.

Para 18 of the said judgment dated 29.11.2016 reads as under:-

“In view of my above discussion and in light of the fact that defendant has miserably failed to lead any evidence on the point of encroachment made by the plaintiffs on the road covered under T.P. Scheme, Gurdev Nagar, Part-III, plaintiffs have been able to prove their case by preponderance of probabilities. Accordingly, defendant is restrained from dispossessing or causing interfering in the peaceful possession of the plaintiffs and from demolishing the building in view of notice bearing No.7021/ATP-D dated 30.10.2014 with respect to the suit property.”

The appeal against the said order was also dismissed on 12.11.2018. In these circumstances, the Municipal Corporation is not in a position to proceed with eviction on the premises in dispute.

Last but not the least, it is not disputed that the encroachment as alleged by the present petitioner was the very encroachment, which was the subject-matter of the civil suit, decided on 29.11.2016 in favour of Inder Mohan Singh and others, which has been upheld in appeal filed by the Municipal Corporation, vide order and judgment dated 12.11.2018 passed by the Additional District Judge, Ludhiana.

In view of the above, this Court was inclined to dismiss the contempt petition with costs for having wasted the precious time of the Court, taking into account that learned counsel for the petitioner proceeded to argue at length knowing fully well that the defendants/respondents have obtained the judgments and decrees of permanent injunction in their favour

qua the same land on the ground that encroachment could not be proved but restrains itself from doing so.

Dismissed accordingly.

Rule issued against the respondents stands discharged.

(NIRMALJIT KAUR)
JUDGE

06.05.2019
sandeep

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No