

IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

RSA No.2175 of 2002 (O&M)  
Date of Decision:29.01.2019

Joginder Singh

...Appellant(s)

**Versus**

Sohan Singh and others

...Respondent(s)

RSA No.2183 of 2002 (O&M)

Municipal Corporation, Amritsar through its Asstt. Commissioner

...Appellant(s)

**Versus**

Sohan Singh and others

...Respondent(s)

**CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL**

**Present:** Mr.V.K.Sandhir, Advocate for the appellant  
for the appellant in RSA No.2175 of 2002.

Mr.Yaseen Sethi, Advocate for respondent No.1 in  
both the cases.

Mr.Sanjeev Soni, Advocate for respondent No.2 in  
RSA No.2175 of 2002 and for the appellant in  
RSA No.2183 of 2002.

**ANIL KSHETARPAL, J.**

By this judgment, two appeals bearing RSA Nos.2175 and 2183  
of 2002 which arise from the suit shall stand disposed of.

Two defendants have filed separate appeals against the  
judgment passed by the learned first appellate court. At the outset, it must  
be noticed that a request for disposal of the appeals in terms of compromise

between Sohan Singh and Joginder Singh has been made. However, keeping in view the fact that the property in dispute was reserved for community use, prayer for settling the dispute through compromise is being rejected on the basis of the findings of the learned first appellate court which are being noticed hereinafter and upheld.

Three plaintiffs, who are plot holders in Nigam Colony filed a suit with prayer for issuance of mandatory and permanent injunction against Municipal Corporation, Amritsar-defendant No.1 and Joginder Singh-defendant No.2. Pleaded case of the plaintiffs which is undisputed by the Municipal Corporation is that in the year 1980 the Municipal Corporation prepared a lay out plan of open land and after carving out plots for residential purposes, the area in question was reserved for community use. Remaining plots were allotted/sold by the Municipal Corporation to its employees and some of the plots have been further re-sold. Now Municipal Corporation, i.e. defendant No.1, has carved out a residential plot in the area which was reserved for community uses and allotted to defendant No.2, forcing the plaintiffs who are residents of the same colony to file the suit.

The Municipal Corporation defended the suit by pleading that originally when the lay out plan was prepared and sanctioned, physical survey of the land was not carried out and after carving out 194 plots on the lay out plan, some land was left towards a drain which was kept for community uses including community hall. However, since no demand by the residents was received for construction of the community hall and some portion of the property had been used to install two power supply transformers, therefore, plots were carved out and one has been allotted and

remaining two are yet to be allotted. Defendant No.2 who has been allotted plot also contested the suit.

Learned trial court dismissed the suit, whereas the learned first appellate court has reversed the judgment passed by the learned trial court. The deed of compromise, which has been filed, is only between Joginder Singh and Sohan Singh, who was plaintiff No.1. There is no compromise between Harbans Singh and Jasbir Singh, who were co-plaintiffs, although not represented before this Court, because they are impleaded as proforma respondents.

Learned counsel for the parties have submitted that one of the appellant had withdrawn the suit in the trial court and after dismissal of the suit only Sohan Singh had filed first appeal and, therefore, the compromise is between the parties.

This Court has considered the submission, however, find no substance therein.

One of the plaintiff has filed the appeal. The remaining plaintiffs were not required to file independent appeal, because the cause for which they were collectively fighting for was common. Still further, once a decree has been passed in favour of plaintiffs, plaintiff No.1 alone has no right to enter into a compromise. Still further, the purpose for which this litigation was filed, is for the benefit of entire community of residents who are residing in that colony. Therefore, plaintiff No.1 now cannot be permitted to defeat their right by entering into a compromise.

The facts which have been noticed are undisputed.

Learned counsel for the Municipal Corporation and Joginder

Singh, appellant(s) in separate appeals, have submitted that originally it was thought that property in question would be utilised for community uses, however, over a period of more than 15 years, there was no demand for the residents for constructing any community centre or park. For the facility of the residents of the colony two transformers for supply of electricity were installed by the Power Supply Company and hence a part of area had been used whereas remaining land was lying unused and the residents had started encroaching thereupon. Hence, the purpose was changed and property was allotted. It was further submitted that the land is situated near the drain and therefore, it cannot be used for any common use of the community.

This Court has considered the submissions of learned counsel for the appellants and with their able assistance gone through the judgments passed by the courts below and the record.

The land or particular piece of plot was reserved for community uses, is undisputed. Still further, it is also not in dispute that approximately 160 plots have been allotted/sold by the Municipal Corporation. As per the findings of the learned first appellate court, land of 34 plots is under encroachment but Municipal Corporation is not taking any action against the encroachers. Still further, once a piece of land has been reserved for community uses (public purpose), Municipal Corporation had no authority to change the purpose unless there is some pressing requirement which makes the changed purpose to be more beneficial to the public at large.

It is not the case here. The case set up by the Municipal Corporation as well as Joginder Singh-defendant No.2 is that since neither any community centre has been constructed nor any park has been

developed and there is apprehension of encroachment of the area, therefore, the plots have been carved on that piece of land.

In the considered view of this Court, such change by the Municipal Corporation is clearly arbitrary exercise of power. The Municipal Corporations in the cities have been constituted to provide healthy living to the residents of the city. Such Municipal Corporations/Committees collect huge funds in the form of various taxes to provide better living conditions to the residents. In such circumstances, the Municipal Corporations or other local bodies should be alive to the need of the community. The cities are already choked. Such open spaces provide some space which can be used by the children for playing and for holding other social functions. The Municipal Committees/Corporations are also required to provide sufficient open space so that the residents live in a healthy environment. Such open spaces act as lungs of the cities. However, it appears that rather than thinking of the welfare of the residents, the Municipal Committees or such bodies are more concerned about filling their own coffers. In the present case, the learned first appellate court has found that allotment has been made at throw away price by the Municipal Corporation to its own employee i.e. defendant No.2.

Learned counsel for the appellants could not draw attention of the Court to any pressing requirement which is for the benefit of the public at large, compelling the Municipal Corporation to change the usage of the land differently than originally envisaged.

Keeping in view the aforesaid facts, there is no ground to interfere in the well reasoned judgment passed by the learned first appellate

court. Both these appeals are dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

**29.01.2019**  
**mks**

**(ANIL KSHETARPAL)**  
**JUDGE**

**Whether speaking/reasoned: Yes/No**

**Whether Reportable: Yes/No**