

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No. 3592 of 2005 (O&M)
Date of decision: 31.10.2019

Municipal Corporation, Patiala

...Appellant

V/s.

Gurcharan Singh and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Kanwalvir Singh Kang, Advocate
for the appellant.

Ms. Rita Kohli, Sr. Advocate with
Mr. Rahul K. Sharma, Advocate
for the respondents.

RITU BAHRI, J. (Oral).

The Municipal Corporation, Patiala has come up in appeal against the judgment dated 26.07.2005 whereby the lower appellate court has decreed the suit of the plaintiffs for permanent injunction and the appellant/defendant has been restrained from interfering into the peaceful possession of the plaintiffs over the plot situated in Nihal Bagh, Patiala and from taking forcible possession thereof.

The brief facts of the case are that mother of the plaintiffs Smt. Roop Kaur wife of S. Kartar Singh purchased plot No.2 measuring 1729 sq. meters situated in Nihal Bagh, Patiala vide registered sale deed dated 22.04.1976 from Smt. Rani Gursarkash Kaur widow of Sh.Maheshinder Singh, resident of Patiala. Smt. Roop Kaur took physical possession of that plot and mutation No. 20515 was sanctioned in her favour regarding the said plot and an entry in this respect was made in the jamabandi for the year

1991-92. From the above said land, Smt. Roop Kaur sold some land to some other persons and remaining suit land remained in her possession. After the death of Smt. Roop Kaur, mutation of inheritance bearing No.20685 was sanctioned in favour of the plaintiffs. The plot is surrounded by the houses on three sides. The defendant through its employees tried to interfere in peaceful possession of the plaintiffs and also demolished the boundary wall and removed the bricks. Hence, the suit was filed.

After notice of the suit, the stand taken by the defendant was that the suit land belongs to the State of Pepsu and State of Punjab is its successor. Sh. Maheshinder Singh was granted right of residence only. He was not given right to sell the land. The control and management of the suit land vests in the Municipal Council, Patiala. Smt. Rani Gurparkash Kaur had no right to sell the plot to the mother of the plaintiffs and the mutation does not confer any title. The land vests in the Municipal Council, Patiala under the Town Planning Scheme of Nihal Bagh vide Govt. Letter No.255-45L 1394/76 dated 26.6.1976.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. “Whether the plaintiff is entitled to declaration, as prayed for?
OPP
2. Whether the plaintiff is entitled to permanent injunction, as prayed for?OPP
3. Whether this court has no jurisdiction to try the present suit?OPD
4. Whether the suit has not been properly valued for the purposes of court fees and jurisdiction?OPD
5. Whether notice under Section 49 of the Punjab Municipal Act has not been served before filing the suit. If so its effect?OPD
6. Relief.”

The trial court dismissed the suit of the plaintiffs by returning findings on issues No. 1 and 2 against the plaintiffs and held that as per the the description of the sold properties given in the sale deed(Ex.P2) produced on record by the plaintiffs, there is othi of Kesho Ram on the Northern side and on the Southern side, there is 20 feet road. Both sides measure 90 feet each. But in the site plan (Ex.P3) produced on record by the plaintiffs, sides are shown as 85 feet on either side. Similary the Eastern and Western sides are mentioned as 215 feet and 200 feet each. But in the site plan, these sides are mentioned as 100 feet and 86 feet. Hence the sale deed (Ex.P2) did not connect with the land shown in the site plan (Ex.P3). Moreover in the sale deed, there is no reference of any killa No. or khasra No. and therefore it cannot be presumed that the entries of mutation is based on the sale deed (Ex.P2).

Vide letter (Ex.D4) which is order of the Governor of Punjab, vide which the Town Planning Scheme of Nihal Bagh Patiala was sanctioned on 06.03.1978, the plaintiffs did not challenge the legality and validity of this order of sanctioning the Town Planning Scheme. Further as per the jambandis relied upon by the plaintiffs, the suit land is part of khasra No. 164 and as per the letter (Ex.D7), the suit land has been transferred to Municipal Corporation Patiala for the purpose of Town Planning Scheme of Nihal Bagh area, Patiala. Hence, the plaintiffs are not entitled for declaration as prayed for. The suit land is public property and such possession cannot be protect by orders of the courts. Hence, the suit was dismissed.

On appeal, finding on issue Nos. 1 and 2 has been reversed as lower appellate court has observed that in the written statement, the identity

of the suit property was not denied as being part of plot No.2 measuring 1729 sq.meters and only the ownership of the original owner was denied and it was stated that Maheshinder Singh had been given right of residence only. Once the identity of the property is admitted in the pleadings, the sale made by Rani Gurparkash Kaur in favour of Smt. Roop Kaur, mother of the plaintiffs vide sale deed dated 22.04.1976, is not disputed. The admission was the best evidence and hence the sale deed was not required to be proved by examining the marginal witnesses. The lower appellate court further proceeded to examine the sale deed dated 22.04.1976 (Ex.P2). The question is whether Rani Gurparkash Kaur who was successor of Raja Maheshinder Singh had any right of ownership in the disputed property? The possession of Raja Maheshinder Singh was admitted. No evidence was produced by the defendant with regard to ownership regarding the disputed khasra number to show that Raja Maheshinder singh was given right of residence only and not the title over the said property. During the evidence, the witnesses of the defendant admitted that record of ownership of the municipal land is maintained. However, no such evidence was led before the trial court. DW2 Tarlochan Singh, a Draftsman of Municipal Corporation appeared to prove the site plans Exs.D2 and D4 and admitted in cross-examination about the existence of register of municipal properties maintained by Municipal Corporation, Patiala. The non-production of said register draws adverse inference against the defendant. Keeping in view that no evidence was led by the Municipal Corporation, the entries in the jamabandies were presumed to be correct regarding ownership of Roop Kaur wife of Kartar Singh and finally with regard to identity of the property, the lower appellate court held that there was no dispute about the

two sides i.e. the Northern and Southern sides and as per the site plan (Ex.P3), the area towards the East is 100 feet and towards West as 86 feet and no sale is made from Northern and Southern sides, even if the plaintiffs failed to prove the existence of the entire area, they were able to prove the existence of lesser area than mentioned in the sale deed and hence their title over the said plot, cannot be discarded on this ground. The lower appellate court finally proceeded to examine the Town Planning Scheme as claimed by the defendant under Section 192 of the Punjab Municipal Act, 1911. As per Section 192 of the said Act, no notice was issued to the owners recorded in the jambandi for inviting objections or any evidence to show that such objections were decided. Jagjit Singh, Junior Engineer of office of District Town Planner, Patiala (DW) showed ignorance whether any notice was issued for inviting objections to Rani Gurparkash Kaur. He also did not know whether any compensation was paid to them or not. Similary Tarlochan Singh (DW2) who prepared the blue print of the map (Ex.D2), neither proved the formalities required under Section 192 of the Punjab Municipal Act nor he produced any order transferring the area from ownership of the plaintiffs or their predecessors in favour of Municipal Corporation. Further Pawan Kumar Jindal, Assistant Town Planner (DW4) stated in the examination-in-chief itself that he does not whether said scheme was ever implemented or not but he only claimed that the scheme has been sanctioned by the Government. Hence, the Municipal Corporation, Patiala has miserably failed to show that Town Planning Scheme of Nihal Bagh vide Govt. letter No. 255-45L 1394/76 dated 26.06.1976 was ever implemented by inviting objections. The lower appellate court finally accepted the appeal and decreed the suit of the

plaintiffs for permanent injunction and the defendant was restrained from interfering into the peaceful possession of the plaintiffs over the plot situated in Nihal Bagh, Patiala and from taking forcible possession thereof.

Before this Court, when the appeal was admitted on 09.03.2006, interim stay was granted to the effect that none of the parties to appeal shall alienate the suit property in any manner, without the prior permission of the Court, nor shall raise any construction thereupon and the Corporation was restrained from using this site as a park.

An affidavit of Joint Commissioner, Municipal Corporation, Patiala has been filed on 23.01.2018, explaining the status and implementation of the Town Planning Scheme Nihal Bagh. As per para 3 of this affidavit, this scheme envisages an area as open space measuring 1133 sq.yds. approximately and there is a built up kothi in the site measuring 45 ft in width from point F to B and 36ft from B to E and the remaining part measuring 812 sq. yds as per part plan Ex.D5 is lying vacant and is surrounded by residential houses on three sides and this open area could not be developed as park due to the pendency of the present litigation. Copies of the statement of DW-3 and the part plan Ex.D5 are also attached as Annexures D-1 and D-2 with this affidavit.

After going through the statement made by DW-3 Naresh Kumar in examination-in-chief this witness had stated that the town planning scheme has been implemented and MC is sanctioning the building map in according to the sanctioned scheme known as Nihal Bagh Scheme. In cross-examination he has stated that at the time of making the site plan, he did not verify any record maintained by the Municipal Corporation and admitted that the plot in question is surrounded by residential houses on

three sides. Hence, this witness had nowhere stated that the town planning scheme had been implemented qua the other areas. An attempt is being made to implement the scheme only qua the plot of the plaintiffs as specifically stated that the plot is surrounded by the residential houses on the three sides. Lower appellate court has rightly decreed the suit of the plaintiffs by giving a finding that the Town Planning Scheme had never been implemented following the procedure of Section 192 by the Municipal Corporation by not inviting the objections. No substantial question of law arises for consideration. The Regular Second Appeal is hereby dismissed. Pending applications also stand dismissed.

(RITU BAHRI)
JUDGE

31.10.2019
Divyanshi

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No