

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

RSA-375-1989(O&M)

Reserved on:-24.4.2023

Date of decision:-3.5.2023

Bhag Singh (since deceased) now represented through his legal representative

...Appellant

Versus

Municipal Corporation, Amritsar and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Ritesh Aggarwal, Advocate
for the appellant.

Mr.R.D. Bawa, Advocate with
Mr.Randhir Bawa, Advocate for respondent No.1.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Bhag Singh had brought a suit against defendants i.e. Municipal Corporation Amritsar as well as Naranjan Singh son of Partap Singh, resident of Abadi Chah Nihangan, near Railway Crossing No.22, Putlighar, Amritsar, seeking possession of land measuring 1125 square yards comprised in Khasra No.276/1 as per jamabandi for the year 1970-71 situated in Chah Nihangan, Putlighar, Amritsar.

2. As per the version of the plaintiff, he was owner of the suit land besides some other land; the Municipal Committee, Amritsar, which

was predecessor-in-interest of Municipal Committee, Amritsar had framed a town planning scheme under Section 192 of the Punjab Municipal Act, 1911 for an unbuilt area described as 'B' shown in the scheme; a statement of ownership had been drawn in which the plaintiff was shown as owner of 30 kanals 19 marlas and 12 square feet which was equal to 15487 square yards comprised in Khasra Nos.276/1, 250/3, 259, 273/2, 284, 296, 250/2, 274/2, 284/2; it was shown in the ownership statement that 283 square yards had been transferred towards open space while 3567 square yards towards streets, which was to the tune of 25% in terms of Section 192 of Municipal Act, 1911.

The plaintiff further pleaded that in the scheme plot no.3-A was shown as open space and was included by mistake as having been transferred out of area of Naranjan Singh and in the drawing plot no.3-B has been shown as belonging to the plaintiff, which is factually wrong because plot no.3-A falls in khasra no.276/1 when as per the plan and statement, it was shown to have fallen in khasra no.276/2 belonging to defendant no.2. According to the plaintiff if this mistake is corrected then his area acquired by the Municipal Committee exceeds 25% of the total area and then he is either entitled the compensation for this area or to get his possession back; he had filed a suit earlier in the year 1978, which was withdrawn with permission to file a fresh one as at that time, the plaintiff had not served a notice under Section 396 of the Punjab Municipal Corporation Act, 1976 before filing of the suit; since the right of the plaintiff was not considered by the defendants, he had filed the second suit.

3. On being put to notice, both the defendants appeared and contested the suit filing separate written statements.

In the written statement filed by defendant No.1, it was contended that there is mistake in the scheme and in total 25% of the total unbuilt area was taken by Municipal Committee in terms of Section 192 of the Punjab Municipal Act and the area in which the disputed land is situated was declared to be unbuilt area vide committee's resolution no.195 dated 2.9.1953 and at that time khasra number of disputed land was 276; the objections were called from the general public vide resolution no.682 dated 7.8.1958 but no objection was filed by the plaintiff; a notice under Section 49 dated 11.5.1962 under the Punjab Municipal Act, 1911 was received by defendant No.1 from plaintiff Bhag Singh in which he had submitted that he was owner of khasra no.276/1 along with some other khasra numbers and the committee had illegally taken 75% of the land for public purposes out of his total area instead of 25%; the erstwhile Municipal Committee vide its resolution no.18 dated 6.4.62 referred the scheme back for reconsideration in light of the notice sent by Bhag Singh; the scheme was redrafted and was approved vide resolution no.1344-M dated 10.3.1965; the Municipal Committee then decided to publish the scheme again for public objections vide resolution no.1227/Z-6 dated 22.2.1966, however no objection was received, it was finalized vide resolution no.49 dated 20.10.1966; it was then forwarded to the State Government for its approval and the State Government approved it on 21.11.1967; the scheme was then implemented and streets and parks were demarcated according to the

scheme plan; the park is existing for the several years and the plaintiff has never objected to it. Such defendant further stated that the suit is barred by time and is not properly valued for the purpose of Court fee and jurisdiction; further the plaintiff is estopped by his acts and conduct from filing the suit; the previously sanctioned scheme on 21.11.1967 was amended by the State Government vide notification dated 2.11.1981, therefore the suit has become infructuous.

In the written statement filed by defendant No.2, he had denied the allegations as levelled in the plaint asserting that he is owner in possession of khasra no.276/2 and a portion of that has also been sold by him to various persons namely Amolakh Ram, Pritam Singh, Ajit Kaur and others, who are necessary parties.

Both the defendants prayed for dismissal of the suit.

4. The plaintiff had filed replications controverting the allegations in the written statements whereas reiterating the averments in the plaint. On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is owner of khasra no.276/1 now comprised in plot no.3B? OPP.
2. If issue No.1 is proved whether the acquired area out of the area belonging to the plaintiff comes more than 25% If so its effect? OPP.
3. Whether the plaintiff is estopped by his own act and conduct for filing the suit? OPD.
4. Whether the suit is within limitation? OPP.
5. Whether the suit is not properly valued for the purpose of Court fee

and jurisdiction? OPD.

6. Whether the entire scheme plan and statement of ownership need reactification as alleged in para no.1 of the plaint? OPP.

7. Whether the suit is not maintainable in the present form? OPD.

8. Whether the suit is bad on account of non-joinder of necessary parties? OPD.

9. Relief.

5. The parties led evidence in support of their respective claims.

6. After hearing learned counsel for the parties, the trial Court of Sub Judge Ist Class, Amritsar decided issues No.1 and 2 in favour of defendant No.1 holding that defendant No.1 had acquired the land within the prescribed limit as contained in section 192 of the Punjab Municipal Act read with Section 275 of the Punjab Municipal Corporation Act, 1976 and there was no illegality in that; the claim of the plaintiff that he is owner of khasra no.276/1 now comprised in plot no.3B and the acquired area out of the area belonging to the plaintiff comes out to be more than 25% was not found to be established. Issues No.3 and 4 were decided holding that the original scheme was sanctioned in November, 1967 and till filing of the suit on 7.11.1979 the plaintiff did not file any objection. Under the circumstances, the plaintiff is estopped to challenge the scheme, which was sanctioned and finally approved in November, 1967; nevertheless since defendant No.1 had slightly modified the scheme during the pendency of the suit that gave a fresh cause of action to the plaintiff to challenge the same, therefore, he was not estopped by his act and conduct from filing the suit and suit could not be taken to be time

barred. Issue No.5 was decided against the defendant in favour of the plaintiff holding that suit was properly valued for the purposes of Court fees and jurisdiction. Issue No.6 was taken to have become redundant; Issue No.7 was decided in favour of the plaintiff holding the suit was maintainable. Issue No.8 was decided in favour of the plaintiff holding that the suit was not bad on account of non-joinder of necessary parties. As a result of findings on all the issues, suit of the plaintiff was dismissed with costs vide judgment and decree dated 7.11.1984.

7. Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in the Court of District Judge, Amritsar, which was assigned to Additional District Judge, Amritsar, who vide judgment and decree dated 17.9.1988 dismissed the same upholding the judgment and decree passed by the trial Court.

8. Still feeling dissatisfied, the plaintiff has knocked at the door of this Court by way of filing a regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and his suit be decreed.

9. Notice of the appeal was given to the respondents and respondent No.1 has put in appearance through counsel.

10. I have heard learned counsel for the parties besides going through the record.

11. Here the trial Court by proper appraisal and appreciation of evidence and correct interpretation of law had dealt with all the contentions put forward on behalf of the plaintiff in his pleadings and rejected those by giving sound reasoning not finding any merit in the case

of the plaintiff. The First Appellate Court of Additional District Judge, Amritsar found itself in agreement with the trial Court with regard to the conclusion reached that the suit of the plaintiff lacked merit and deserved dismissal.

12. The First Appellate Court had noticed that an additional issue had been framed by the trial Court on 20.4.1982, which was as follows:

“Whether the suit has become infructuous in view of the amendment of the scheme in question?”OPD

13. Then the First Appellate Court observed that once it is proved that defendant No.1 has acquired the land within the prescribed limit as contained in Section 192 of the Punjab Municipal Corporation Act, 1976 read with Section 275 of the Act, there is no illegality in the same, therefore, it would be immaterial in sending the case to the trial Court for giving finding in that regard.

As regards the findings on other issues, the First Appellate Court had put seal of approval on the verdict on the issues given by the trial Court drawing a conclusion that according to the ownership statement area of 3850 square yards had been bifurcated as 283 square yards for open space and 3567 square yards for streets, in that way the Municipal Committee had taken only 24.86% of the total unbuilt area which was within the prescribed limit as provided under Section 192 of the Act; again the scheme was amended which was laid before the Corporation vide Ex.DW1/2 and it was approved; the objections were invited on 10.1.1978; the Municipal Corporation finally approved the scheme; the approval was also accorded by the State Government vide

order dated 2.11.1981 Ex.DW1/8. Furthermore, the area of 3837 square yards as against 3850 square yards was bifurcated as 1187 square yards for open space and 2650 square yards for streets. The area under the park was refused by the defendant No.1 in the amended ownership statement Ex.DW1/5 and from 283 square yards, it was raised to 1187 square yards, therefore, it cannot be said that the defendant has taken excess area more than 25% of the total unbuilt area of the plaintiff. Therefore, while upholding the judgment and decree passed by the trial Court, the appeal of the plaintiff was dismissed.

14. I find that the verdict given by the Courts below are based upon proper appreciation and correct interpretation of law. Both the Courts had rejected the claim of the plaintiff. I do not see any reason to disagree with the Courts below and take a different view and further to interfere with the impugned judgments and decrees. Those judgments and decrees are upheld.

15. No substantial question of law or fact arises in this appeal.

16. The appeal stands dismissed accordingly.

Since the main appeal stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

3.5.2023
Brij

(H.S.MADAAN)
JUDGE

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

Whether reportable : **Yes/No**