



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-402-1993 (O&M)

Reserved on: 31.01.2025

Date of decision: 11.02.2025

HUKAM CHAND (DECEASED) THROUGH LRS.

..Appellant

Versus

M.C. BATHINDA

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. M.L. Sarin, Sr. Advocate
with Ms. Hemani Sarin, Advocate
for the appellant.

Ms. Kavita Arora, Advocate
for respondent.

ANIL KSHETARPAL, J.

1. This regular second appeal has been filed challenging the correctness of concurrent findings of fact arrived at by the Courts below while dismissing appellant's suit for grant of decree of permanent injunction.

2. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.

3. The appellant (plaintiff before the trial Court) sought decree of permanent injunction on the ground that he is the owner of the plot in question by virtue of sale deed executed by Sh. Babu Ram on 22.02.1973, on which he has constructed a factory building for installing *Atta Chakki* (flour mill), 'Dal' plant and oil expeller. The defendant-Municipal committee contested the suit while alleging that the plaintiff illegally and



on 02.03.1988, which was reported by the Building Inspector, when he visited the site on 02.03.1988. It was claimed that the suit property was part of the road as per the Town Planning Scheme No.3, Part II, which was duly sanctioned by the Punjab Government and is still in force in the area concerned. Moreover, the plaintiff has raised construction without seeking permission of the Municipal Committee.

4. Both the Courts upon reappreciation of evidence came to the conclusion that the plot of the plaintiff is part of the road carved out in a duly sanctioned Town Planning Scheme No.3, Part II. Hence, the plaintiff is not entitled to injunction decree.

5. This regular second appeal was admitted for regular hearing in the year 1996 and an interim order was passed restraining the defendants from demolishing the building.

6. This Bench has heard the learned counsel representing the parties and with their able assistance perused the paperbook.

7. On 24.01.2024, the following order was passed:-

“The learned counsel representing the Municipal Corporation submits that the Town Planning Scheme No.03, was finally notified on 09.09.1983, which was upheld by the Division Bench in Municipal Committee (now Municipal Corporation), Bathinda vs. Partap Singh and another (LPA No.121 of 2008, decided on 26.11.2014) and Municipal Committee (Now Municipal Corporation), Bathinda vs. Bachan Singh through His LRs and another (LPA No.1461 of 2016, decided on 14.05.2024). She submits that the judgment passed by the Supreme Court in Yogendra Pal and others vs. Municipality Bathinda and another, 1994 SC 2550, was specifically held applicable prospectively.

The learned senior counsel representing the appellant prays for some time to examine the judgment passed by the Division Bench before assisting the court.

Adjourned to 31.01.2025.

To be listed in the urgent list.”

8. Learned Senior counsel representing the appellant contends that



sanctioning of Town Planning Scheme by the Government on 09.09.1993 and issuance of final notification 09.09.1983 does not amount to completion of scheme. He further submits that no notice has been issued to the appellant before sanctioning the scheme and his right to property cannot be taken away in such manner.

9. Per contra, learned counsel representing the respondent submits that Hon'ble Supreme Court in **Yogendra Pal and others Vs. Municipality, Bhatinda and others, AIR 1994 (Supreme Court), 2550**, has held that the judgment will operate prospectively and the town planning scheme, which have already been completed shall not be disturbed. She submits that the town planning scheme was sanctioned by the State Government on 09.09.1983, whereas, the date of decision of the Supreme Court in 15.07.1994.

10. This Court has considered the submissions of learned counsel representing the parties.

11. In **Yogendra Pal (supra)**, the Supreme Court has held that the provisions of Section 192(1)(c) of Punjab Municipal Act, 1911 and the corresponding provision of Section 203(1)(c) of Haryana Municipal Act, 1973, providing for compulsory transfer of land to Municipal Committees without payment of compensation are violative of Article 14 of the Constitution of India. Section 192(1)(c) enables the Municipal Committees to reserve 25% of the total land holding of the landowner for common purposes like streets, parks, roads etc. without payment of compensation. The provision for payment of compensation was only with respect to land, which was in excess of 25% of the total land holding of the landowner.

12. Para 13 of the judgment passed in **Yogendra Pal (supra)**, reads as under:-



“13. As held above, the provisions of Section 192(1)(c) of the Punjab Municipal Act, 1911 and of Section 203(1)(c) of the Haryana Municipal Act, 1973 are violative of Article 14 of the Constitution. Hence the acquisitions of the appellants' land under the respective provisions were bad in law. The question still remains as to what relief the appellants can be granted. It is now well-settled by the decisions of this Court beginning with I.C. Golak Nath and Ors. v. State of Punjab and Anr. that the Court can mould the relief to meet the exigencies of the circumstances and also make the law down by it prospective in operation. We are informed that till date the Municipal Committees in both Punjab and Haryana States have similarly acquired lands for their respective town planning schemes and in many cases the schemes have also been completed. It is only some of the land-owners who had approached the courts and the decisions of the courts have become final in many of those cases. It would not, therefore, be in the public interest to unsettle the settled state of affairs. It would create total chaos and an unmanageable situation for the Municipal Committees if the said provisions of the respective statutes and the land acquisitions made thereunder are declared void with retrospective effect. We, therefore, propose to declare that the concerned provisions of the two enactments would be void from the date of this decision.”

13. Learned Senior counsel representing the appellant does not dispute that the scheme was sanctioned by the Government vide final notification dated 09.09.1983, hence, Town Planning Scheme No.3, Part II, would stand saved. It is not the case of the appellant that more than 25% of his land has been taken away.

14. The distinction sought to be made by learned Senior counsel representing the appellant between completed and sanction of the town planning scheme does not exist. Once, a town planning scheme is finally sanctioned by the Government, it is concluded for all intents and purposes. The actual implementation of the Scheme at the ground level is not relevant for the purpose of applicability of law declared by the Supreme Court.

15. In this case, the area was declared as unbuilt on 02.09.1973. On 06.10.1975, objections were invited issuing public notices. The appellants



never filed any objection. Revised layout plan was published on 02/07.05.1079. Once again, the objections were invited. Ultimately, the final notification was issued on 09.09.1983, hence, the Town Planning Scheme is complete for the purpose of sanctioning in September, 1983.

16. The attention of the Court has not been drawn to the provision of law, which provide for issuance of notice to the individuals. Public notices were given twice to invite objection, firstly on 06.10.1975 and then on 07.05.1079.

17. With regard to last submission of appellant's counsel, it may be noted that the Supreme Court took into consideration this aspect while ordering that law declared in Yogendra Pal (supra) would operate prospectively.

18. The learned Senior counsel for the appellant further submitted that the word 'prospectively' will have to be interpreted with reference to date when Scheme is complete in all respect.

19. This Court has considered the submission, however, finds no merit therein. Once, the Scheme has been finally sanctioned by the Government, the Scheme is complete, however, its implementation and execution may take some time.

20. Hence, no ground to interfere is made out.

21. Dismissed accordingly.

22. All the pending miscellaneous applications, if any, are also disposed of.

11th February, 2025

Ay

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No