

CASE NO.:
Appeal (civil) 15340 of 1996

PETITIONER:
Municipal Corporation, Ludhiana & Another

RESPONDENT:
Balinder Bachan Singh (D) by Lrs. & Others

DATE OF JUDGMENT: 28/04/2004

BENCH:
R.C. Lahoti & Ashok Bhan.

JUDGMENT:
J U D G M E N T

WITH
CIVIL APPEAL NO. 15341 OF 1996

BHAN, J.

These appeals are directed against the judgment and order of the High Court of Punjab and Haryana at Chandigarh dated 11th July, 1996 passed in R.S.A. No. 2315 of 1988 whereby the High Court has upheld the judgment of reversal of the Additional District & Sessions Judge thereby decreeing the suit filed by the plaintiffs-respondents Nos. 1 & 2 (hereinafter referred to as the 'respondents').

Civil Appeal No. 15340 of 1996 has been filed by the Municipal Corporation, Ludhiana and Civil Appeal No. 15341 of 1996 has been filed by the inhabitants of the area of the suit land. The facts are taken from Civil Appeal No. 15340 of 1996.

Municipal Corporation, Ludhiana, (hereinafter referred to as the 'appellant'), notified a Town Planning Scheme Area No.6 Part-IIIA, known as Sampuran Colony, Model Gram, Ludhiana, duly framed under Section 192(2) of the Punjab Municipal Act, 1911 (for short 'the Act'). Sampuran Singh is the father of Respondent Nos. 1 (D) through Lrs. and 2 and husband of Smt. Rajinder Kaur. In the Scheme, the land of Smt. Rajinder Kaur, (since deceased) respondent No.3 and mother of the respondents was also included. Notice was published in the newspapers inviting objections to the proposed scheme. Shrimati Rajinder Kaur raised certain objections in which she wanted certain changes and adjustments to be made in the scheme. Executive Officer of the appellant vide letter dated 29th June, 1968 called upon Smt. Rajinder Kaur to come to his office on 5th July, 1968 for considerations of the objections filed by her. Taking into consideration the objections filed and having heard the objector the Scheme was approved with certain modifications. She had agreed to leave 25 per cent of the land for common purposes such as roads and parks. She gave her own design for earmarking plots and shopping area. The Local Government Department, Punjab in exercise of its power under Section 192 of the Act accorded sanction to the Town Planning Scheme approved and submitted by the Municipal Corporation. After the Scheme was duly notified by the Government, the public land along with other land was developed by the appellant as per Scheme. Roads were carved out, sewage as well as water facilities were installed and the suit land i.e. 3 kanals 16 marlas which was to form a green park was also developed. The dispute in these appeals pertain to land measuring 3 kanals 16 marlas which was reserved under the Scheme as open space to develop a park to provide lung space to the inhabitants of the locality.

In the year 1976, when the Scheme had attained finality and steps in pursuance thereto had been completed, plaintiffs-respondents Nos. 1 & 2 who are none other than the sons of the Smt. Rajinder Kaur instituted the present suit claiming themselves to be in possession of the suit land measuring 3 kanals 16 marlas and alleging that the appellants were bent upon taking forcible possession of the suit land, filed the suit for perpetual injunction restraining the appellants from taking forcible possession of the same.

Appellants filed their written statement stating that the suit land had already been developed as a park as per the Town Planning Scheme and was being used as such by the inhabitants of the locality. It was asserted that before developing the area, statement of ownership was prepared according to which Rajinder Kaur, respondent No.3 was recorded as owner of the suit land. The cultivating possession of the plaintiffs over the suit land was denied. It was alleged that the Town Planning Scheme of the area was notified and the plaintiffs-respondents did not raise any objection and after the sanction of the Town Planning Scheme possession was taken by the Corporation of the common areas for development as per scheme. Roads and park were developed as per scheme which were being used as such by the inhabitants. On the pleadings of the parties the trial court framed the following issues:

- "1. Whether the plaintiff is entitled to the injunction as prayed for? OPP.
2. Whether the suit has become infurctuous as alleged? OPD.
3. Relief."

After taking into consideration the evidence produced by the parties, the trial Court concluded that the suit land was left as a park in the Scheme which was duly developed and was being used as such by the inhabitants of the locality. It was held that the respondents were not in possession of the suit land. Accordingly, the suit filed by the plaintiffs-respondents was dismissed.

Aggrieved against the order of the trial court, respondents filed an appeal which came up for hearing before the Additional District & Sessions Judge, Ludhiana, and was accepted. It was held that the respondents were owners in possession of the suit land and, therefore, they were entitled to the injunction, prayed for.

Aggrieved against the aforesaid order, the Municipal Corporation filed an appeal in the High Court being Regular Second Appeal No. 2315 of 1988. The inhabitants of the locality, who are the appellants in Civil Appeal No. 15341 of 1996, filed an application under Order 1 Rule 10 seeking impleadment which was rejected. Learned Single Judge affirmed the finding of the first appellate court. It was held that the finding recorded by the first appellate court regarding possession was a finding of fact which could not be interfered with in the second appeal. One of the reasons which persuaded the learned Single Judge to come to this conclusion was that the sanctioned scheme and the site plan attached to the sanctioned scheme were not brought on record.

Aggrieved against the aforesaid order of the learned Single Judge, the present appeals have been filed.

Plaintiffs-respondents produced six witnesses including Shri H.L. Sethi, PW2 who was appointed as Local Commissioner to inspect the premises. He inspected the premises and reported that there is no park in

the property in dispute . Other five witnesses i.e. PW1 and PW3 to PW6 supported the allegations made by the plaintiffs-respondents. In rebuttal the appellant also produced six witnesses and documents D1 to D38 showing that the town planning scheme was prepared at the behest of Rajinder Kaur, mother of the plaintiffs-respondents and was developed as per scheme, but, the sanctioned scheme or its site plan were not brought on record.

This Court on 18th November, 2003 being of the opinion that the controversy could not be effectively adjudicated without the scheme, directed the learned counsel for the appellants to make available the original records containing the scheme for the perusal of the Court. In the interest of justice and for an effective decision of the case, the Court also directed the Deputy Commissioner, Ludhiana to carry out an inspection of the land covered by the Scheme known as Sampuran Colony, Model Gram, Ludhiana, {Planning Scheme Area No.6 Part-IIIA} and submit a report as to the status of occupancy of the plots carved out in the sanctioned scheme and also the status of land admeasuring 3.16 Kanals left in the scheme as open space.

In compliance with the above-said directions of this Court, the Deputy Commissioner personally went to the spot and inspected the same on 31st December, 2003 in the presence of the appellant-corporation, represented by Shri Harjinder Singh, PCS, Joint Commissioner, Municipal Corporation, Ludhiana and Shri P.K. Garg, Municipal Town Planner, Ludhiana and respondents represented through S/Shri Jatinder Bachan Singh Grewal and Satinder Sampuran Singh Grewal. Apart from these Shri Kuldeep Singh, PCS, Sub Divisional Magistrate, Ludhiana (West), Shri Harnek Singh, Divisional Town Planner, Ludhiana, Shri Ajay Kumar, Tehsildar Ludhiana (West) and some other prominent persons of the area were also present at the time of the inspection. Deputy Commissioner sent his report to this Court vide communication No. 470/DCR dated 9.1.2004. He attached a plan of the Sampuran Colony along with his report. In all there are 39 plots. Except three plots which are vacant, construction has been put up on all other plots. As per report and the attached plan the suit land is an open space lying in the centre of the scheme without any sort of structure on it. Few photographs showing that the suit land was vacant were also attached. A copy of the report was supplied to the learned counsel for both the parties. Learned counsel for the respondents filed his objection to the report.

Learned counsel for the parties have been heard at length.

We have perused the oral testimony of the witnesses produced by the respective parties. We have also perused the scheme which was finally approved by the State of Punjab under Section 192 of the Act as well as the other attending documents {Ex. D-1 to D-38} pertaining to the submission of the scheme, objections filed by Rajinder Kaur and her statement agreeing to leave 25 per cent of the area for common purposes. We have also seen the plan which was prepared at the time of the approval of the scheme as well as the report of the Deputy Commissioner along with the site plan attached with it.

The Municipal Corporation, as noted earlier, had notified the Town Planning Scheme duly framed under Section 192(2) of the Act. To the said scheme Rajinder Kaur, mother of the plaintiffs-respondents No.s 1 & 2 filed her objections. She had appeared personally before the Building Superintendent, Municipal Corporation on 5th July, 1968. She projected herself to be the owner of the land. The objections filed by her were partly accepted and the scheme was modified as per her desire. She had agreed to leave 25 per cent of the land for certain common purposes like roads and park etc.. After due consideration the Local Government Department, Punjab approved the town planning scheme and accorded sanction to it under Section 192 of the Act. The scheme was notified. Public land along with other land was developed as per scheme. Roads were carved out, sewage as well as other facilities were installed and the suit land was left as a park for the use of the inhabitants of that colony. After the scheme had

attained finality in the year 1976, the present suit was filed by the sons of Rajinder Kaur stating that Rajinder Kaur had no interest or right in the property and they were the owners in possession of the land measuring 3 kanals 16 marlas and sought for perpetual injunction restraining the appellant from taking forcible possession.

Under Section 192 of the Act the Municipal Corporation is entitled to draw up a building scheme for the built area and the town planning scheme for un-built area which may among other things provide for the restriction of the erection or re-erection of buildings, the prescription of a building line on either side or both sides of any street existing or proposed, and the amount of land in such unbuilt area which is to be utilised for public purposes including the use as public streets.

For every locality green spaces and green belts have to be provided to provide lung space to the residents of the locality. A provision for green park was made by the Municipal Corporation keeping in view the minimum requirement to provide open/green space to the residents of the locality. Rajinder Kaur, mother of the plaintiffs-respondents herself had submitted a lay out plan which comprised the present suit land. She had herself agreed to leave 25 per cent of the area under the scheme to be used by the inhabitants of the locality for common purposes including the open space area which is in dispute. The documentary evidence which has come on record in the form of the original scheme as well as the documents D1 to D38 and the report submitted by the Deputy Commissioner conclusively shows that the suit land measuring 3.16 kanals was left in the scheme to be used as open space for the use of the residents of the locality.

Map attached with the report of the Deputy Commissioner and the site plan attached with the scheme completely tally with each other. In the scheme 3.16 kanals of land was left as open space in the centre surrounded by houses on three sides. The photographs produced also show that the land is lying vacant and is being used by the inhabitants for common purposes. It may be noted that the plots carved out in the scheme were sold by Rajinder Kaur as well as her sons including the plaintiffs-respondents. Rajinder Kaur and plaintiffs/respondents could not have sold the land without getting the scheme sanctioned as plots. It is well-known and judicial notice can be taken of the fact that residential plots sell at a much higher price than the agricultural land. To sell the land as plots, a part of the land has to be left to provide for common purposes such as roads, community centre, schools and parks. Having taken advantage of selling the plots in a developed colony and charging a higher price, which were purchased by the inhabitants with the understanding that civic amenities including the park were well provided for, the plaintiffs/respondents cannot be permitted to turn around to claim the land left in the scheme for being used as a park as their personal property.

In view of the documentary evidence, reliance cannot be placed upon the oral testimony of the witnesses who were produced by the plaintiffs-respondents. In our considered view, the land measuring 3.16 kanals was left in the scheme for the use of the residents of the locality. Contentions raised by the learned counsel for the plaintiffs-respondents that the suit land did not form part of the town planning scheme or the land continued to be owned by the plaintiffs-respondents and that they were in exclusive possession thereof cannot be accepted.

For the reasons stated above, the appeals are allowed. The judgment and order of the learned Single Judge of the High Court and that of the first appellate Court are set aside. The order of the trial court is restored and the suit filed by the plaintiffs-respondents is dismissed with costs throughout.