

A JYOTI NAGAR WELFARE ASSOCIATION

v.

AMIR CHAND (DEAD) THROUGH LRS & ANR.

(Civil Appeal No. 5826 of 2022)

B SEPTEMBER 06, 2022

[M. R. SHAH AND B.V. NAGARATHNA, JJ.]

- Suit –Relief of permanent injunction sought – Non-entitlement to– Haryana Municipal Act, 1973 – s.203(6) – Suit land was reserved for a public park under the Town Planning Scheme under the Act– Respondent no.1-plaintiff filed suit for permanent injunction restraining the officers of Municipality from disturbing his possession of the suit land contending that it was not used for public park even after five years of sanctioning of the scheme and he continued to remain in possession thereof – Suit decreed in his favour*
- D – Decree set aside by First Appellate Court –High Court passed the decree of permanent injunction – Held: Plaintiff sought the relief of permanent injunction only – Neither he challenged the Scheme nor sought a declaration that it had lapsed and/or deemed to have lapsed as the same was not implemented within a period of five years from the date of its sanction – Further, in the communication addressed to the Municipality there is a categorical admission on the part of the plaintiff that the possession at least to the extent of 25% under the Town Planning Scheme was taken over, the only dispute raised was w.r.t the calculation mistake – Plaintiff is bound by such admission – Also, it was the specific case of the Municipality*
- F that he re-entered the suit land and again got the possession and started putting up fencing/wire poles– Thus, the Trial Court and High Court erred in passing the decree of permanent injunction – Once the land in question was reserved for a public park under the sanctioned Town Planning Scheme and its possession was taken over and the same has been developed as a public park, as such the land vests in the Municipal Committee – Plaintiff not entitled to the relief of permanent injunction – Impugned judgment and the judgment of Trial Court set aside – Order of the First Appellate Court restored – Suit filed by the plaintiff is dismissed.*

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Contempt – When not – Held: Order of status quo is required to be considered w.r.t the context in which it was passed – Dispute was w.r.t possession and even the Trial Court also granted the injunction w.r.t the possession – Therefore, the order of status quo granted by Supreme Court is required to be considered w.r.t the possession only – However, possession of the suit land in question was already taken over and had vested in Municipal Committee – Thereafter, if any improvement is made and/or construction is put up on suit land, it cannot be said that the same was in violation of order of status quo – The land is used by the Municipality for a public purpose i.e., for a public park and the local people are using the same – Therefore, on facts, the contempt proceedings initiated by the plaintiff are closed.

CIVIL APPELLATE JURISDICTION : Civil Appeal No.5826 of 2022

From the Judgment and Orders dated 06.01.2016 of the High Court of Punjab and Haryana at Chandigarh in RSA No.115 of 1994.

With

Civil Appeal No.5827 of 2022 With Contempt Petition (C) No.660 of 2017 In Civil Appeal No.5826 of 2022

Manoj Swarup, Neeraj Kumar Jain, Sr. Advs., Neelmani Pant, Mukul Kumar, Ms. Anubha Agrawal, Sachin Jain, Hardeep S. Sodhi, Rajiv Ranjan Dwivedi, Advs. for the appearing parties.

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with impugned judgment and order dated 06.01.2016 passed by the High Court of Punjab and Haryana at Chandigarh in Regular Second Appeal No. 115 of 1994 (O&M), by which, the High Court has disposed of the said appeal by observing that the suit land in question under possession of the original plaintiff be also acquired in accordance with law and compensation be paid to the original plaintiff in accordance with law, Jyoti Nagar Welfare Association and Municipality, Thanesar have preferred the present appeals.

2. The facts leading to the present appeals in a nutshell are as under: -

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- A 2.1 That after following the due procedure as required under the provisions of the Haryana Municipal Act, 1973 (hereinafter referred to as the Act, 1973) the State of Haryana sanctioned Town Planning Scheme No. 5 (unbuilt area) on 29.10.1975. Under the said Scheme, the suit land in question was reserved for public park. That respondent No. 1 herein – original plaintiff instituted the present suit being Civil Suit No. 29/1987
- B for permanent injunction only with respect to the land admeasuring 5 kanals and 12 marlas which was reserved for public park, contending, inter-alia, that though the Scheme was sanctioned in the year 1975, the same has not been used for a public park even after a period of five years and that the plaintiff continued to remain in possession. Therefore,
- C the aforesaid suit was filed only to protect the possession and for permanent injunction. The said suit was filed on 26.12.1986. It was averred in the plaint that respondent No. 2 – Administrator, Municipality, Thanesar threatened to take possession and thereby disturb the possession of the plaintiff a week prior to the filing of the suit. It was submitted by the defendant in the written statement that as per Town Planning Scheme
- D No. 5, the land has been reserved for a park and therefore, the Municipal Committee, Thanesar is the owner and in possession of the land in dispute as the same is reserved for a park. Therefore, the possession of the plaintiff to the extent of 5 kanals was denied. Both the parties led their evidence. On behalf of the defendant one Sher Singh, officer of the Municipal Committee came to be examined as DW-1. Before the learned Trial Court a communication dated 13.12.1983 addressed by the plaintiff to the Administrator was brought on record as exhibit D5 (the same shall be discussed hereinbelow). The learned Trial Court decreed the suit in favour of the plaintiff and granted permanent injunction observing that the plaintiff is in possession of the suit land. The First Appellate
- E Court allowed the appeal and quashed and set aside the judgment and decree passed by the learned Trial Court granting permanent injunction and consequently, dismissed the suit. In second appeal, by the impugned judgment and order the High Court has disposed of the appeal by observing that respondent No. 1 – original plaintiff is in possession and even if the scheme is implemented, the same may be acquired in accordance with law and to pay the compensation to the plaintiff. The High Court has disposed of the second appeal in terms of the above.
- F 2.2 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, Jyoti Nagar Welfare Association as well as the Municipality, Thanesar, through its Administrator have preferred the present appeals.

3. It is the case on behalf of the appellants herein that in fact Town Planning Scheme No. 5 (unbuilt area) was implemented within a period of five years i.e., in the year 1980 itself. It is the case on behalf of the appellants that as such the possession of the land reserved for public park to the extent of 5 kanals was already taken over by the Municipal Committee. It is the further case on behalf of the appellants that as such the original plaintiff admitted in his communication i.e., exhibit D5 that the possession of the land reserved for the park had been taken over. It is submitted that the only grievance raised by the plaintiff in communication dated 13.12.1983 was with respect to the mistake in calculation of the area and it was the case on behalf of the plaintiff that though the land shown as taken under open area is 25% under Town Planning Scheme but in fact, considering the calculation mistake the area is more, if calculated on percentage basis. Therefore, it is the case on behalf of the appellants that the plaintiff never disputed the taking over of the possession earlier and the only dispute was with respect to the mistake in calculation of the area on per centage basis.

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4. Relying upon the aforesaid communication, Shri Manoj Swarup, learned Senior Advocate appearing on behalf of the appellant in the appeal filed by the Jyoti Nagar Welfare Association and Ms. Anubha Agrawal, learned counsel appearing on behalf of the appellant in the appeal filed by the Municipality, Thanesar, have vehemently submitted that both, learned Trial Court as well as the High Court have committed a grave error in holding that the plaintiff was in possession of the suit land, which was reserved for public park.

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4.1 Learned counsel appearing on behalf of the respective appellants have further submitted that the suit was only for permanent injunction. No declaration was sought to declare the Scheme as lapsed on the ground that the land was not used for the purpose for which it was reserved within a period of five years. It is submitted that the entire case on behalf of the plaintiff was that the land in question reserved for public park was not used within a period of five years and the Scheme was not implemented despite five years having lapsed and therefore there shall be a deemed lapse. It is submitted that however neither such a declaration was sought nor the Scheme had been challenged. It is submitted that once the land in question reserved for public park was included in the sanctioned Town Planning Scheme, the land so reserved to the extent of 25% of the total holding shall vest in the Municipal

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- A Committee and the Municipal Committee becomes the absolute owner and in possession. It is contended that the fact that possession of the land reserved for public park was taken over was in fact admitted by the plaintiff by communication dated 13.12.1983 and hence, the learned Trial Court erred in granting the relief of permanent injunction in favour of the plaintiff, and the same was rightly set aside by the First Appellate Court.
- B 4.2 It is further submitted by learned counsel appearing on behalf of the respective appellants that as such the land in question is already put to use as a public park as the possession was already taken over, the plaintiff shall hence not be entitled for any decree for permanent injunction.
- C 4.3 It is submitted that both, learned Trial Court as well as the High Court have mis-interpreted and/or mis-read the deposition of DW-5 – Sher Singh, Officer of the Municipal Committee. That if the deposition of Sher Singh is read it was the case on behalf of the Municipality that in the year 1985, the plaintiff again got possession of the land and thereafter the plaintiff installed wire poles on the side of the way. In that view of the matter, the learned Trial Court as well as the High Court are not justified in holding that the plaintiff was in possession and was entitled to permanent injunction.
- E 5. Shri Neeraj Kumar Jain, learned Senior Advocate appearing on behalf of the original plaintiff in respective appeals has candidly admitted that the suit was only for the relief of permanent injunction. He has candidly admitted that no declaration to declare that the Town Planning Scheme No. 5 had lapsed and/or deemed to have lapsed was sought and/or is sought. He has candidly admitted that the plaintiff is not praying and/or submitting that the Town Planning Scheme has lapsed. However, he has vehemently submitted that the plaintiff continued to be in possession of the suit land in question, therefore, the learned Trial Court rightly passed the decree for permanent injunction. That the findings recorded by the learned Trial Court and recorded by the High Court on possession is on appreciation of evidence, more particularly, the deposition of DW-5 – Sher Singh, officer of the Municipal Committee, who has specifically admitted the possession of the plaintiff. Therefore, it is requested to dismiss the present appeals.
- H 6. Shri Sachin Jain, learned counsel appearing on behalf of the petitioner in Contempt Petition (C) No. 660/2017 has vehemently submitted that despite the order of status quo granted by this Court the

respondents – officers of the Municipality have constructed a road and/or made construction and therefore, the officers of the Municipality have rendered themselves liable for suitable action under the provisions of the Contempt of Courts Act. It is vehemently submitted by Shri Sachin Jain, learned counsel appearing on behalf of the petitioner – applicant - original plaintiff in contempt petition that the learned Trial Court granted interim injunction during the pendency of the suit in favour of the applicant – original plaintiff. That therefore the possession of the petitioner was protected. It is submitted therefore that once the original plaintiff – applicant was found to be in possession and there was an order of status quo granted by this Court, the officers of the Municipality ought not to have put up any further construction.

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7. We have heard learned counsel appearing on behalf of the respective parties at length. We have gone through the averments made in the plaint and also the reliefs sought in the suit.

7.1 At the outset, it is required to be noted that the original plaintiff instituted the suit and sought the relief of permanent injunction only. It is an admitted position that neither the plaintiff challenged the Scheme nor sought a declaration that the Town Planning Scheme No. 5 (unbuilt area) had lapsed and/or deemed to have lapsed as the same was not implemented within a period of five years from the date of its sanction. Therefore, Shri Neeraj Kumar Jain, learned Senior Advocate appearing on behalf of the original plaintiff has also fairly conceded that the original plaintiff has never sought any declaration declaring the Town Planning Scheme No. 5 (unbuilt area) had lapsed and/or deemed to have lapsed in view of Section 203(6) of the Act, 1973. He has also stated at the Bar that the plaintiff is not challenging the sanctioned Scheme nor is submitting that the Town Planning Scheme No. 5 had lapsed and/or deemed to have lapsed. However, it is the case on behalf of the original plaintiff that he remained in possession of the suit land and therefore, the plaintiff is entitled to the permanent injunction restraining the defendants – officers of the Municipality from disturbing his possession. Shri Neeraj Kumar Jain, learned Senior Advocate appearing on behalf of the plaintiff has also relied upon the deposition of DW-1 – Sher Singh in support of the case on behalf of the plaintiff that the plaintiff was in possession since 1985 also.

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7.2 However, the deposition of DW-1 – Sher Singh, officer of the Municipal Committee is required to be read as a whole. If the deposition

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- A of DW-1 is read as a whole, in the cross- examination, he specifically stated that the development work of the area has been completed. He has also stated in the cross- examination that the plaintiff has again got possession and now the plaintiff has installed wire poles on the side of the way. Therefore, it was the specific case on behalf of the Municipality
- B that the plaintiff re-entered the suit land and again got the possession. It is to be noted that the same is borne out of the cross-examination of DW-1. At this stage, document i.e., exhibit D-5 dated 13.12.1983 addressed by the original plaintiff to the Administrator Municipality is required to be referred to. In the said communication, it was stated by original plaintiff that though the land shown as taken under open space
- C etc. is 25% under T.P. Scheme, but in fact there is a calculation mistake and this area is more if calculated on percentage basis. Therefore, in fact there is a categorical admission on the part of the plaintiff that the possession at least to the extent of 25% under the Town Planning Scheme was taken over. The only dispute raised was with respect to the calculation mistake. The plaintiff is bound by such admission. Therefore, even from
- D communication dated 13.12.1983, it can be seen that possession of the suit land reserved for public park under the sanctioned Town Planning Scheme was already taken over. The aforesaid is now required to be considered along with the statement of DW-1 that the plaintiff re-entered the plot/land and again got the possession and started putting up fencing/
- E wire poles. Therefore, the learned Trial Court as well as the High Court have materially erred in passing the decree of permanent injunction restraining defendants from disturbing the possession of the plaintiff.

8. At the cost of repetition, it is observed that the suit land in question is reserved for a public park under the Town Planning Scheme

- F sanctioned under the provisions of the Act, 1973. No declaration is sought that the Scheme has lapsed under Section 203(6) of the Act, 1973 and/or no declaration is sought as lapse and/or deemed to have lapsed under Section 203(6) of the Act, 1973. Therefore, we refrain from making any observations that the Town Planning Scheme under Section 203, more particularly, under Section 203(6) of the Act, 1973 has lapsed and/or deemed to have lapsed. Therefore, the question, namely, whether on non-compliance of Section 203(6) of the Act, 1973, the Scheme shall lapse and/or deemed to have lapsed is kept open.

9. In view of the above and once the suit land in question is reserved for a public park under the sanctioned Town Planning Scheme and as

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observed hereinabove, the possession of land in question was taken over and the same has been developed as a public park, as such the land vests in the Municipal Committee and therefore, the plaintiff shall not be entitled to the decree/relief of permanent injunction. In any case as observed hereinabove the possession of the suit land was already taken over for the public purpose for which the same was reserved under the Town Planning Scheme. Both, the learned Trial Court as well as the High Court have committed a serious error in passing the decree of permanent injunction calling for interference in these appeals.

10. Now so far as the contempt proceedings initiated by the plaintiff is concerned, at the outset it is required to be noted that the order of status quo is required to be considered with respect to the context in which it was passed. The dispute was with respect to the possession and even the learned Trial Court also granted the injunction with respect to the possession. Therefore, the order of status quo granted by this Court is required to be considered with respect to the possession only. Once as observed hereinabove, the possession of the suit land in question was already taken over and the suit land vested in Municipal Committee and thereafter, if any improvement has made and/or construction is put up on suit land, it cannot be said that the same can be said to be in violation of order of status quo. It is required to be noted that the land is used by the Municipality for a public purpose i.e., for a public park and the local people are using the same. Therefore, in the facts and circumstances of the case and for the reasons stated hereinabove we deem it proper to close the contempt proceedings.

11. In view of the above discussion and for the reasons stated above, the present appeals succeed. The impugned judgment and order passed by the High Court in Regular Second Appeal No. 115/1994 is hereby quashed and set aside. The judgment and decree of permanent injunction granted by the learned Trial Court is also quashed and set aside. The judgment and order passed by the First Appellate Court is hereby restored. Consequently, the original suit filed by the original plaintiff stands dismissed. The contempt proceedings stand disposed of.

All pending application(s), if any, stand disposed of. In the facts and circumstances of the case there shall be no order as to costs.