
(1995) 11 P&H CK 0007

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2325 of 1986

Sat Dev Khullar

APPELLANT

Vs

Municipal Committee and Another

RESPONDENT

Date of Decision : 30-11-1995

Acts Referred:

Punjab Municipal Act, 1911 — Section 193

Citation : (1996) 113 PLR 11

Hon'ble Judges : N.K. Kapoor, J

Bench : Single Bench

Advocate : R.P. Bali and Parminder Suman, for the Appellant; D.R. Mahajan, for the Respondent

Final Decision : Allowed

Judgement

N.K. Kapoor, J.—This is plaintiffs regular second appeal against the judgment and decree of the Additional District Judge whereby the judgment and decree passed in favour of the plaintiff has been reversed.

2. Briefly put, the plaintiff submitted a site plan for raising construction of godowns and a room in the suit property to the Municipal Committee, Batala, for necessary approval in terms of the Municipal Act. This plan was submitted on 29.9.1983 which has been rejected on 31.1.1984 thereby leading to the filing of a suit for declaration to the effect that the order of rejection dated 31.1.1984 is illegal, ultra vires, inoperative, null and void and not binding upon the plaintiff on the following grounds; (i) that the site plan was submitted by the plaintiff on 29.5.1983 and since the same was not rejected within the statutory period of two months, the same automatically stands sanctioned; (ii) that the proposed construction to be raised on the private property of the plaintiff does not contravene the Bye-laws of the Municipal Committee; (iii) that the order rejecting the site plan is vague and non-specking; (iv) that the impugned order is mala fide and has been passed at the instance of Dr. Raghunandan Kumar Gupta and Dr. V.K. Gupta merely to harass the plaintiff.

3. The defendant Committee put in appearance, filed written statement and controverted the various material averments made in the plaint. As per case set up by the Municipal Committee, the proposed plan was against the Municipal Rules and Bye-laws and so has been rightly rejected on 31.1.1984. Otherwise the suit is barred u/s 49 of the Punjab Municipal Act (for short "the Act").

4. On the pleadings of the parties, a number of issues were framed. The trial Court on the basis of evidence finally found substance in the plea of the plaintiff and so awarded a decree for perpetual injunction restraining the defendant from interfering in the possession of the plaintiff and also from preventing him from raising any construction on the suit property.

5. The lower appellate Court re-examined the mater and found substance in the plea of the Municipal Committee that the plan submitted by the plaintiff contravenes clause 25 of the Bye-laws. The Court further came to the conclusion that as per definition of "street" in Section 3(13) of the Act, any road, footway or a passage, accessible, whether permanently or temporarily to the public, will fall within the ambit of "street" and thus even a private passage will come within the purview of "street". On facts, the Court held that since the proposed passage has a width of 5 feet, as per plan submitted, the same contravenes Clause 25 of the Bye-laws and so accepted the appeal thereby dismissing the suit.

6. Learned counsel for the appellant with a view to seek reversal of the judgment and decree of the Additional District Judge has argued that the Court below has erred in law in not properly comprehending the real dispute between the parties. According to the counsel, learned lower appellate Court has not properly construed clause 25 of the Bye-laws of the Municipal Committee. The learned counsel made reference to the site plan Exhibit P-3 and P-4 and argued that even the municipal lane has a width of four feet. Not only this, the Municipal Committee earlier sanctioned site pan in respect of two shops of the plaintiff without raising any such objection meaning thereby the width of the lane still existing in front of the two shops of the plaintiff is 4 feet and so the proposal to raise godowns in respect of the other vacant land giving a passage of four feet wide has been declined solitary for some extraneous reasons. Otherwise too, such a plan does not contravene the Bye-laws. Not only this, since no intimation was given to the plaintiff within the statutory period as to whether the plan submitted stands approved or rejected, the same automatically deems to have been approved. This way the judgment and decree of the lower appellate Court deserves to be reversed.

7. Learned counsel for the Municipal Committee once again made reference to the order of rejection and took support from the provisions of the Act and the Bye-laws justifying the action taken by the Municipal Committee. According to the counsel, even if it be taken that there has been some omission on the part of the Municipal Committee when the earlier plan was sanctioned in respect of the two shops (giving a passage of 4 feet only) that by itself will be no ground to allow the plaintiff to contravene the Building Bye-laws. In any case, any such act

cannot amount to estoppel against the Municipal Committee.

8. I have heard learned counsel for the parties, perused the order of the trial Court as well as of the Additional District Judge and also the impugned order passed by the Municipal Committee rejecting the plan as well as the site plan submitted by the plaintiff. Admittedly, the plaintiff submitted a site plan in respect of the proposed godowns and a room on 29.9.1983. As per Section 193 of the Act, the Municipal Committee is to accord or refuse the sanctioning of the plan within a period of 60 days of the receipt of such an application i.e. in case of refusal, the same is to be communicated to the concerned applicant. In the present case, the impugned order has been passed on 31.1.1984 i.e. after the expiry of a period of 60 days, so the impugned order is not sustainable on this ground alone. The lower appellate Court despite having come to the conclusion that the rejection of the plan was conveyed after the expiry of period of 60 days, yet chose to reverse the judgment and decree of the trial Court on the ground that the proposed plan contravenes clause 25 of the Bye-laws of Municipal Committee, Batala. Clause 25 of the Building Bye-laws of the Municipal Committee, Batala, is reproduced hereunder:-

"25. No portion of any building abutting or any street to which from time to time the Committee may, by resolution, declare this bye-law to apply shall be built within 20 feet of what was the centre of such street at the time of the passing of these bye-laws and no portion of any building abutting on any other street shall be built within 10 feet of what was the centre of such street at the time of passing of these bye-laws provided that when the municipal committee has fixed a building line to regular the frontage of buildings in any street the municipal committee may permit a building to be constructed upto that line irrespective of the distance of any portion of it from the centre of the existing street."

9. A bare perusal of the aforesaid provision makes it abundantly clear that before these bye-laws became applicable the committee has to pass a resolution in this regard. Significantly, nothing has come on record in the form of evidence on the basis of which it could be concluded that the Committee, in fact, has passed any resolution in the light of the aforesaid Building Bye-laws of the Municipal Committee. This being so, the Court below has, in fact, erred in law in relying upon the bye-laws to defeat the claim set up by the plaintiff.

10. The matter can be examined from another angle also. In the present case, the site plan Exhibit P-4 gives in a graphic manner the location of the various buildings around or nearby the suit property and the lane connecting the main road. Towards the west of the site plan Exhibit P-4, there is a main bazar known as Chakri Bazar connecting to Nehru Gate. A municipal lane opens in this Bazar. This municipal lane has a width of four feet right upto the existing shops built by the plaintiff. This way the present existing lane can be said to have a width of four feet and the proposed plan to make godowns and the room also fall in line with the existing structure thereby giving a passage of four feet. In view of this peculiar fact possibly there cannot be any objection of the kind now raised by the

Municipal Committee while declining the plaintiffs application for sanctioning of the site plan.

11. Accordingly, I accept this appeal, set aside the judgment and decree of the Additional District Judge and decree the suit of the plaintiff as prayed for. No costs.