

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. R. No. 2883 of 2023

Pronounced On : October 05, 2023

Bipandeeep Kaur and others ... Petitioners
vs.

Municipal Corporation, Ludhiana
through its Municipal Commissioner ... Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Ms. Sudeepti Sharma, Advocate
with Ms. Mehak Kanwar, Advocate
and Mr. Ishan Gupta, Advocate
for the petitioners.

Mr. Yadwinder Singh Bhangu, AAG, Punjab.

Mr. Sanjeev Soni, Advocate
with Mr. Sarthak Soni, Advocate
for the respondent.

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GURBIR SINGH, J. :

1. Challenge in this revision petition is to judgment dated 02.05.2023 (Annexure P-1), passed by learned Additional Sessions Judge, Ludhiana in Civil Misc. Appeal No.95 of 2023 dated 20.03.2023, whereby appeal against the order dated 17.03.2023 (Annexure P-2), passed by learned Civil Judge (Junior Division), Ludhiana, on an application moved by the plaintiffs-petitioners under Order 39 Rule 1 and 2 CPC, for grant of temporary injunction, has been dismissed.

2. The petitioners (hereinafter called as – the plaintiffs) filed a suit for permanent injunction restraining the respondents etc. (hereinafter called as – the defendants) from interfering in peaceful possession or raising any

construction or making any dump illegally and forcibly, over the plot measuring 832.55 sq. yds., comprised out of Khasra No.1018/1029, Khata No.793/851-1274/1376, situated at Taraf Saidan, H.B. No. 172, Tehsil and District Ludhiana, shown in red colour in the site plan attached and bounded as under :-

East	Road measuring 185 feet
West	Nala
North	Road
South	Road

3. The case of the plaintiffs, in brief, is that they are the recorded owners of the above mentioned plot. The defendant Municipal Corporation, Ludhiana started making false claim over the suit property and is inclined to make dump on the suit property illegally and forcibly. The plaintiffs approached the Revenue Department and moved an application for demarcation of the suit property. As per the site plan prepared by the Revenue Officers, the suit property is the ownership of the plaintiffs and it has never been acquired by the defendants or any other Authority and the plaintiffs have never been granted any compensation for the construction of road or kacha path etc. over the suit land. The Assistant Town Planner, Municipal Corporation, sought clarification from the Sub-Divisional Magistrate, Ludhiana regarding the property in question as to whether the land in question belonged to the private party. It was certified by the Sub-Divisional Magistrate and Halqa Kanungo that the suit property mentioned in the report and in the site plan of demarcation, belonged to the plaintiffs. The plaintiffs also requested the officials of defendants that they had no right

to interfere in the suit property. A legal notice was also served upon the defendants but to no avail. Defendants threatened the plaintiffs that they would make the dump over the suit property illegally and forcibly.

4. The defendants contested the application, filed reply raising preliminary objections about the maintainability of the suit and non-service of notice under Section 396 of the Punjab Municipal Corporation Act. It has been alleged that the suit has been filed with ulterior motive to cause obstruction in starting the construction work for installation of portable compactor for the welfare of general public. It has been further contended that under the Smart City Mission of Government of India, the State Government, vide its order dated 22.03.2016, constituted Ludhiana Smart City Ltd., under a special drive for the vehicles to steer and other developmental projects in the city of Ludhiana. In order to manage the garbage, it became imperative to check the same. For effective management of the solid waste of the area, it was decided to install a portable compactor at the above-stated open site. The Hon'ble National Green Tribunal was monitoring the work of local bodies for ensuring the compliance of Municipal Solid Waste Rules 2016. Objections were also raised qua locus standi and cause of action to file the suit. It has been further alleged in the reply that the plaintiffs intentionally and willfully have suppressed the factum with regard to the fact that garbage dump was existing over the suit property for the last more than 15 years and for the effective management of solid waste of the area, it has been decided to install a portable compactor.

5. Vide order dated 17.08.2022, passed by learned Civil Judge (Junior Division), Ludhiana, ad-interim injunction was issued whereby

defendants were restrained from constructing or making any dump over the suit property. Appeal was preferred against the said order and learned Appellate Court, vide order dated 16.09.2022, remanded the case to the learned Trial Court to get the suit property demarcated from the Revenue Authorities and then decide the injunction application afresh, on receipt of demarcation report and after hearing objections of the parties, if any. The learned Trial Court, vide order dated 17.03.2023 (Annexure P-2), dismissed the application for grant of temporary injunction.

6. Learned counsel for the plaintiffs has argued that the learned Trial Court did not get the property demarcated. The defendants suffered an oral statement that as per the report of Revenue officials, demarcation could not be done as there was no Field Book, Aks Sajra or Latha available with them. In the *jamabandi* (Annexure P-3), plaintiffs are shown to be owners of the suit property. The site plan of the suit property is Annexure P-4. There is demarcation report dated 04.03.2016 on the file, but now, Sub-Divisional Magistrate, in compliance of the orders dated 02.06.2023, passed by a Co-ordinate Bench of this Court, has filed an affidavit that demarcation was impossible. The relevant Khasra Numbers cannot be ascertained in the absence of Aks Sajra. These are the documents maintained by the government. The affidavit filed by Sub-Divisional Magistrate is apparently false. In the absence of the revenue record, the demarcation can be conducted through satellite mapping and total station survey. The record of the area would have been available with the other departments. It is not possible that record of the area is lost. If it is lost, then it is required to be reconstructed. The defendants have no right to encroach upon the land of

the plaintiffs and to raise construction thereon.

7. Learned counsel for the defendants has argued that the plaintiffs have simply filed a suit for injunction on the basis of possession. The plaintiffs have failed to prove that they are in prima facie possession of the suit property. The suit property is part and parcel of road. It is situated in between Nala and road and it is being used by Municipal Corporation for placing the garbage. The garbage dump in question is existing at the spot for the last more than 15 years. The *jamabandi* (Annexure P-3) is only with regard to share in the property and there is no mention of any exclusive area out of Khasra No.1018 in possession of the plaintiffs. For grant of injunction, plaintiffs are required to prove prima facie case in their favour, balance of convenience and irreparable loss or injury which cannot be compensated with money. The defendants are going to use the property for the welfare of public and not for having any commercial activity. The defendants intend to install a portable compactor at the spot. The plaintiffs have failed to prove that they are in possession of the suit property. So, they are not entitled for injunction. The entry in *jamabandi* is relevant only when the land is under cultivation. The entries in *jamabandi* do not confer any title on a person whose name appears in the *jamabandi*. The demarcation report obtained by the plaintiffs has already been set aside by the Assistant Collector Ist Grade-cum-Sub Divisional Magistrate, Ludhiana (East), vide order dated 19.01.2023, in the appeal filed by the defendants. The Town Planning Scheme was duly sanctioned and notified. The Municipal Corporation, Ludhiana can reserve 25% of the total area for the common purpose. In a judgment of Hon'ble Supreme Court passed in **Yogendra Pal**

vs. Municipality, Bathinda reported as **1994(5) SCC 709**, decided on 15.07.1994, the said provision was held to be void from the date of decision. In the instant case, the Town Planning Scheme has been notified earlier. So, the same is binding. The present site also falls under that 25% of that Town Planning Scheme. It is further argued that the defendants are working in public interest. Later on, if it is found that property of the plaintiffs falls in the said area, the plaintiffs can be compensated but no injunction can be issued to stop the project which is meant for public purpose. Reliance in this regard has been placed on cases **State of Jharkhand vs. Surendra Kumar Srivastava and others** reported as **2019 (4) SCC 214**, **Yogendra Pal (supra)**, **Skyline Education Institute (India) Pvt. Ltd. vs. S.L.Vaswani and another** reported as **2010(2) SCC 142**, **Municipal Corporation, Gwalior vs. Puran Singh @ Puran Chand** reported as **2015(5) SCC 725**, **Suraj Bhan and others vs. Financial Commissioner and others** reported as **2007(6) SCC 186**, **Dropdi vs. Kanhiya and others** reported as **2007(1) CivCC 73** and also on **Walter Louis Franklin (dead) through LRs vs. George Singh (dead) through LRs** reported as **1997(3) SCC 503**. Since there is no demarcation and demarcation at this moment is not possible and project cannot be stopped, otherwise public purpose would be adversely effected, the impugned judgment and order have rightly been passed in accordance with law and the present petition deserves dismissal.

8. I have heard submissions of learned counsel for the parties and perused the case record.

9. The plaintiffs are claiming ownership of the suit property on the basis of a copy of *jamabandi* for the year 2007-08, comprised in Khasra

No.1018/1029, Khata No.793/851-1274/1376, situated at Taraf Saidan, H.B. No. 172. A copy of mutation is also placed on the file. The defendant Municipal Corporation has not placed any document on the file to show that the suit property is declared public street or is acquired in any manner. It has been submitted that 25% of the area is reserved for common purposes i.e. road, park, street etc., but there is nothing on record as to which portion of the Khasra Number was reserved for the common purposes. Said question can only be decided on the basis of evidence to be led during the trial of the case. Defendants are not having any document to prima facie prove better title than the plaintiffs over the suit property.

10. The question arises whether defendant Municipal Corporation, Ludhiana can use the property, owned by a private party, without acquiring such land and without paying any compensation to the owner? The other question arises whether an open plot, without any construction, even if used as a dump, can it be considered that the original owner is ousted from the possession? No document has been placed on file under what circumstances the Khasra Number in question is shortlisted for installation of portable compactor. The defendant Municipal Corporation has not produced any document that property in question is already declared to be a street or public dump. The plaintiff filed suit on the basis of demarcation report dated 04.03.2016, but the said demarcation report has been set aside by the Assistant Collector Ist Grade-cum-Sub Divisional Magistrate, Ludhiana (East), vide order dated 19.01.2023 i.e. during the pendency of the suit which has been filed on 22.04.2021. The learned Appellate Court remanded the case vide order dated 16.09.2022, with specific direction to get the suit

land demarcated afresh and then decide the application. Instead of getting the demarcation afresh, the application was dismissed. It is the duty of defendants to carry out demarcation and without the demarcation, the plaintiffs cannot be ousted from the disputed land. A specific direction was given to the defendants by this Court to file the affidavit in the department concerned with regard to mode of demarcation in the absence of revenue record or as to whether the demarcation could be conducted with the record available with the Department of Water Resources. The Sub Divisional Magistrate, Ludhiana (East) filed the affidavit. Para nos.3 to 7 of the said affidavit are as under :-

- "3. That after receipt of the intimation, the deponent directed teh Kanungo Halqa to visit the spot and to do the needful.*
- 4. That the Kanungo Halqa visited the spot on 23.06.2023 in the presence of Sh. Randhir Singh Inspector, Municipal Corporation, Ludhiana and Patwari of the Corporation and submitted his report on 23.06.2023. As per the report of Kanungo Halqa, the demarcation is not possible in absence of the Aks-Sajra (Map). Copy of the report is enclosed herewith as Annexure-2.*
- 5. That it is humbly submitted that without the Aks-Sajra (Map), the relevant Khasra Numbers cannot be traced and it cannot be ascertained as to which property falls in which khasra number. Otherwise, also the area is thickly populated and even with the help of Total Station Survey, demarcation is impossible. In the case of mapping with the*

help of Satellite also, relevant khasra number cannot be ascertained in the absence of Aks Sajra.

6. *That in this regard, correspondence has also been done with the department of Water Resources and a copy of map has been received from the said department. However, in this copy of map, several khasra numbers are missing and a number of plots have been left unlabeled which makes it impossible to conduct the demarcation by referring to this map. Copy of letter received from the Department of Water Resources is enclosed herewith as Annexure-3 and copy of map is Annexure-4.*
7. *That in the above mentioned facts and circumstances, demarcation of the property in dispute is impossible and no mode of demarcation can be suggested. Further, in the absence of demarcation the ownership of the petitioner on the piece of land in dispute cannot be established."*

11. As per provision of Section 45 of the Land Revenue Act, there is presumption in favour of the entries recorded in the record of rights i.e. *jamabandi*. The defendants are not having any document in their favour and have not been able to demarcate the land and it is not the case of the defendants that the suit property does not fall under Khasra No.1018/1029. The defendants cannot make any construction on the suit property till the disposal of the case. The possession of the property on the vacant plot always vests with owner and even if the garbage is being thrown on the same by the public, it does not divest the true owner from its possession. In

a judgment of this Court passed in **Bhan Singh vs. Tej Singh** reported as **1997(1) RCR (Civil) 46**, it has been held that mere acts of user such as throwing rubbish does not establish the possession. In another judgment of Delhi High Court in **Shahabuddin vs. State of UP and others** reported as **MANU/DE/0546/2005**, it is observed that tethering cattle, preparing cow dung cakes etc. over an open land cannot be taken as proof of exclusive possession. The version of the defendants, that the land has been selected for the purpose of installing a compactor for the public purpose in order to manage the garbage of the area, is not a ground, on which the nature of the property can be allowed to be changed during the pendency of the case. In case **State of Jharkhand (supra)**, 90% of the construction work had already been completed, which was being built in Khata No.24, whereas in the suit, the plaintiff had claimed property falling in other Khatas i.e. Khata Nos.19, 21 and 33. In case **Yogendra Pal (supra)**, the question was whether the Municipal Committee, as per Scheme, can transfer the land under Town Planning Scheme dated 11.05.1976, for common purposes under Section 192(1)(c) of the Act. It was held that the concerned provision would be void from the date of decision. In case **Skyline Education (supra)**, the injunction was sought regarding use of trade-name. In case **Municipal Corporation, Gwalior (supra)**, it is held that khasra entries do not convey any title. In case **Suraj Bhan (supra)**, it is held that entries in the revenue record do not confer any title on a person whose name appears in the record of rights. In case **Dropdi (supra)**, it is held that revenue entries are relevant when the land, to which they pertain, is under cultivation and not when a residential house is constructed therein. In case **Walter Louis Franklin (supra)**, the

appellants purchased the property from the Church and injunction was granted as the courts below had rightly granted the perpetual injunction. All the aforesaid authorities relied upon by learned counsel are distinguishable on facts and cannot be applied to the facts and circumstances of the present case. In case titled as [Chairman, Indore Vikas Pradhikaran vs. Pure Industrial Coke & Chemicals Ltd.](#), reported as [\(2007\) 8 SCC 705](#), it has been held by Hon'ble Supreme Court that the right to property is not only a constitutional right but also a "human right" in line with [Article 17](#) of the Declaration of Human & Civic Rights of 26.08.1789, observing as follows :

"53. The right to property is now considered to be not only a constitutional right but also a human right.

54. The Declaration of Human and Civic Rights of 26-8-1789 enunciates under Article 17:

"17. Since the right to property is inviolable and sacred, no one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it and just and prior indemnity has been paid".

Further under Article 17 of the Universal Declaration of Human Rights, 1948 dated 10-12-1948, adopted in the United Nations General Assembly Resolution it is stated that: (i) Everyone has the right to own property alone as well as in association with others. (ii) No one shall be arbitrarily deprived of his property."

12. The defendant Corporation cannot say if it is found that suit property is owned by plaintiffs, then they will acquire the land under the

Right to Fair Compensation Act, 2013.

13. In the light of the above discussion, I am of the considered view that plaintiffs are prima facie proved to be the owners of the suit property. The defendants are not having any better title. So, the defendants cannot change the nature of the suit property. The use of property as a dump has no right to change the nature of the property. The defendants have failed to show any provision of law that the plaintiffs can be deprived of the suit land, without acquiring the same, either by the agreement or in accordance with law. The defendants have also suppressed that a specific order was passed by the Court that demarcation be got done with the assistance of Department of Drainage but defendants did not disclose whether the Department of Drainage was associated and thereafter, only Sub Divisional Magistrate concerned has filed the affidavit. The prima facie case exists in favour of the plaintiffs. Defendants can install the compactor at any other place. They have no right to change the nature of the land. Balance of convenience is also in favour of the plaintiffs. If nature of the land is changed, then plaintiffs would be deprived of their property. So, they would suffer irreparable loss.

14. The findings recorded by the learned Court below are against law. Therefore, the present revision petition is allowed. The application moved by the plaintiffs-petitioners under Order 39 Rule 1 and 2 CPC, for grant of temporary injunction, is allowed and the defendants-respondents, its agents, servants, attorneys, assignees, employees etc. are restrained from making a dump over the suit property, as mentioned in the heading of the plaint, till the disposal of the suit.

15. However, nothing stated herein above shall have any effect on the merits of the case as the same is only for the purpose of deciding the instant revision petition.

16. Pending applications, if any, shall stand disposed of along with this judgment.

October 05, 2023

monika

(GURBIR SINGH)

JUDGE

<i>Whether speaking/reasoned ?</i>	<i>Yes.</i>
<i>Whether reportable ?</i>	<i>Yes.</i>