

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 10523 of 2013

Date of decision : 29.09.2014

Parveen Kumar

....Petitioner

V/s

Additional District Judge, FTC, Bathinda & ors.

....Respondents

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Sarjit Singh, Sr. Advocate
Ms. Ishrat Pannu, Advocate for the petitioner.

Mr. Suresh Singla, Addl. A.G. Punjab.

Mr. G.S. Ghuman, Advocate for respondents no. 2 & 3.

RAJAN GUPTA J.

Petitioner has impugned order, Annexure P8 & P9 dated 11.10.2010 & 30.03.2013 passed by Commissioner, Municipal Corporation, Bathinda and appellate authority directing demolition of construction raised by the petitioner.

Petitioner claims that one Nihal Singh was owner of half share of land in khasra no. 2130(15-7) within revenue estate of Bathinda. Darshana Devi predecessor-in-interest of petitioner purchased the share from Nihal Singh vide sale-deed dated 23.09.1981. After death of Darshana Devi, petitioner succeeded to her share. His name was reflected in jamabandi for the year 1997-98. As Municipal Committee threatened to interfere in the possession of Darshana Devi, she filed civil suit no. 382/93 seeking permanent injunction to restrain the Committee from interfering in

her possession. Said suit was decreed on 01.03.1996. Municipal Committee unsuccessfully challenged the findings before the Additional District Judge, Bathinda. Even RSA preferred by Municipal Committee was dismissed. During pendency of these proceedings, Municipal Corporation, Bathinda came into existence. It served a notice on the petitioner under relevant provisions of Municipal Corporation Act, 1976. Petitioner filed objections to the notice and submitted that boundary wall had been raised around the plot by vendor Nihal Singh which was in his possession prior to sale-deed dated 23.09.1981. After hearing the objections, respondent no. 2 rejected the claim of the petitioner and directed demolition of alleged unauthorized construction. Petitioner filed appeal before the ADJ, Bathinda. Same was, however, dismissed vide order dated 30.03.2013. Aggrieved, present petition has been filed before this court.

Mr. Sarjit Singh, learned Sr. counsel has submitted that authorities below failed to take into consideration the fact that Darshna Devi, mother of the petitioner was bona fide purchaser from Nihal Singh. After death of Darshna Devi, petitioner becomes sole owner of the plot in question. No acquisition proceeding was ever initiated by the concerned authority to acquire the land wherein plot of the petitioner is situated. Thus, impugned orders are vitiated.

Learned counsel appearing for the Corporation has opposed the plea. According to him, plot in question falls in the Town Planning scheme dated 21.03.1977, Annexure R-2/1. It was found that petitioner had encroached on part of 20 feet wide road

as highlighted in site plan, Annexure 2/5. According to him, Darshna Devi claims to have purchased the plot after scheme dated 21.03.1977 was notified. Thus no fault can be found with the impugned orders.

I have heard learned counsel for the parties and given careful thought to the facts of the case.

It is evident that mother of petitioner was not owner of the plot at the time Town Planning scheme was sanctioned. The site in dispute was earmarked as park which petitioner is stated to have encroached upon. Suit was filed to injunct the Municipal Committee from dispossessing Darshna Devi. Suit was decreed. Municipal Committee challenged the same before the appellate court but remained unsuccessful. RSA No. 3278 of 2000 was filed before this court. Though the appeal was dismissed by this court yet it was observed as follows:-

"Further it is not disputed that no proceedings had been initiated by the Municipal Committee against the respondents in so far as the unauthorised constructions is concerned. There can be no exception to the conclusions drawn by the Courts below that the Municipal Committee i.e. appellant-defendant herein shall be at liberty to initiate proceedings in accordance with law so as to remove/demolish any encroachment or illegal constructions effected by the respondent-plaintiffs in accordance with law.

Dismissed.

No costs."

Corporation issued notice to the petitioner under relevant statutory provision regarding unauthorized boundary wall

raised on the spot. After considering the reply, it found that same was an encroachment needed to be demolished. Appellate authority came to same conclusion. I find no infirmity with the orders passed. Plea of counsel for the petitioner that land had to be acquired under relevant provisions of Punjab Town Improvement Act, 1936 is without any substance. Mother of the petitioner namely Darshna Devi was not owner of the land at the time scheme was framed. She claims to be a subsequent purchaser from Nihal Singh in September 1981 vide sale-deed dated 23.09.1981. Under the circumstances, no interference in writ jurisdiction is warranted. Dismissed.

September 29, 2014
Ajay

(RAJAN GUPTA)
JUDGE



सत्यमेव जयते

