The State of Punjab Vs Jaswinder Singh and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 16, 1996

Acts Referred: Punjab New Mandi Townships (Development and Regulation) Act, 1960 â€" Section 20

Citation: (1996) 114 PLR 433

Hon'ble Judges: R.L. Anand, J

Bench: Single Bench

Advocate: P.P.S. Sihota, AAG, for the Appellant; G.S. Punia, for the Respondent

Final Decision: Dismissed

Judgement

R.L. Anand, J.
This a regular second appeal filed by the State of Punjab against the judgment and decree dated 13.8.1987 passed by the

Additional District Judge, Ludhiana, who reversed the judgment and decree of the trial Court dated 31.3.1986 and decreed the suit of the plaintiffs

as prayed for.

2. Brief facts of the case are that Shri Jaswinder Singh and 15 others filed a suit for permanent injunction restraining the Administration, New

Mandi Township Board, Chandigarh and State of Punjab from changing the nature and user of the plot noted by the words ABCD attached with

the site plan and the case set up by the plaintiffs was that Punjab State with a view to establish market for the sale of surplus agricultural produce

set up Mandi Township in different towns including Mullanpur Dakha. These mandi townships were being created by the Punjab Government

under a statute known as, Punjab New Mandi Township (Development and Regulation) Act, 1960. According to Section 3 of the said Act, the

State Government had the power to declare any area to be Mandi Township and for that purpose the Government may lease or otherwise transfer

by auction any land under the New Mandi Township Scheme. In pursuance of the said Act, a notification u/s 3 of the Act was issued declaring the

area of Mullanpur Mandi to be a new township area. A plan of the said area was prepared demarcating therein residential, non-residential market

area and other plots for its development. In that scheme the plot in dispute which has been shown red in the site plan marked as ABCD was kept

reserved for the construction of a Primary School. The auction of the residential plot etc was held in the year 1967 and the plaintiffs also purchased

plot with the understanding that disputed plot will be used for the purpose of Primary School. The plaintiffs have come to know that the defendants

are bent upon to change the user of the disputed plot in order to store the filthy water. This contemplated action on the part of the defendants was

illegal and there was no justification in doing so. If the defendants succeed in changing the user of the plot in dispute, it would adversely effect the

health of the occupiers of the adjoining buildings. The defendants were called upon not to change the user of the plot in question. Since they did not

accede to the request of the plaintiffs, hence the suit.

3. The suit was contested by the defendants-State on the plea that no notice u/s 80 C.P.C. was served by the plaintiffs before the institution of the

suit; that the suit is bad for non-joinder and mis-joinder of necessary parties, and that the plaintiffs No. 2, 5, 6, 8, 13 and 14 had no locus standi to

file the suit as they did not purchase any plot in the Mandi Township. On merits, the defendants admitted that the plot in question was reserved for

construction of Primary School but nobody offered bid to purchase the plot for running Primary School, so the nature was changed by the

Administrator who was competent to do so under the Act. No undertaking was given to the auction purchaser that the plot in question would be

used for the purpose of Primary School.

4. From the above pleadings of the parties, the trial Court framed the following issues :-

1. Whether the plaintiff is entitled to the injunction prayed for? OPP

2. Whether the suit is bad for non joinder and mis-joinder of necessary parties? OPD

3. Relief.

5. The parties led evidence on the record and on the conclusion of the proceedings, the trial Court decided issue No. 1 against the plaintiffs while

issue No. 2 decided against the defendants and finally the suit was dismissed.

6. Primarily on the grounds stated as follows :-

In the present case the defendants never represented that they would be constructing Primary School in the disputed plot. Had the disputed plot

been purchased by any respective bidder for running Primary School and subsequently the Administrator had changed the user the position would

be different. In the present case the defendants are not at fault. They reserved plot for the purpose of running a Primary School but nobody offered

bid to purchase the plot for running Primary School and accordingly the Administrator later on thought it proper to use it as storm sewer which is

for the benefit of the inhabitant of the locality. Accordingly, the plaintiffs are not entitled to the injunction as prayed for.

7. In other words, the trial Court rejected the plea of estoppel of the plaintiffs. Also it was observed by the trial Court that:

There is no doubt that the plot in dispute reserved for Primary School but nobody offered to purchase the plot for the purpose of running a

Primary School and that the Administrator has now decided to drain our rainy water during rainy season through the disputed plot.

This was the second reason given by the trial Court in dismissing the suit.

8. The First Appellate Court did not agree with the findings of the trial Court on issue No. 1 and held in para No. 8 of the judgment as follows :-

This facts is admitted on the record that the time of the auction of the plot, to the plaintiff, the plot in dispute was kept reserved for the

construction of the Primary School, but when no person came forward to give bid, thereafter this plot was changed the running the rainy water and

was transferred to the marketing Board and in this manner the rainy water would be drained out within an hour after the rain is over. It would not

create any hygienic problem to the occupiers of the adjoining buildings. Once this fact, is admitted that the plot in dispute would be kept reserved

for constructing Primary School then after that nature of the plot cannot be changed by the administrative of his own without giving proper

opportunity to the occupants of the adjoining plots. In the similar circumstances, in Faridabad, a park was reserved in the master plan and

thereafter the parties wanted to construct Hospital in that park, on the objections raised by the occupants of the area, that authority has no

jurisdiction to change the nature of the plot from park to hospital, Hon''ble High Court has held that the authorities are not competent to change the

nature of the plot. Reported case is (1987 Shimla Law Journal, 241).

Also it was held by the First Appellate Court that the findings recorded by the Sub Judge to the effect that nobody came forward to offer bid for

purchase of the plot for running Primary School was not borne out. In nut-shell, the first Appellate Court differed with the finding of the trial Court

on issue No. 1 and reversed the judgment and decree of the trial Court. This time State has come in the present appeal.

9. I have heard the learned counsel for the parties and with their assistance have gone through the record of this case.

10. Learned Assistant Advocate General, Punjab, has relied upon Section 20 of the Punjab New Mandi Townships (Development and

Regulation) Act, 1960 and argued that the suit was barred because the action taken by the Administrator is genuine. The user of the disputed plot

from Primary School to the discharge of storm water was made in good faith in pursuance of the Act. In support of his contention, the learned

Assistant Advocate General, Punjab, referred to the statement of Shri Dalbir Singh Naib Tehsildar who deposed that no person came forward to

give the bid when the plot in question was put for auction for the use of Primary School. The Administrator took a decision that the storm water

should be passed through the plot in question and this action was also for the benefit of the occupier of the plots purchased by them. On the

contrary, it was submitted by learned Counsel for the respondents that a new case has been made out by the defendants/State and moreover, the

statement of Dalbir Singh Naib Tehsildar, DW-1 nowhere mentions that the action taken by the Administrator in changing the use of the plot in

question is in good faith. No record has been produced by the State in the trial Court fortifying the arguments raised by the counsel for the

appellants. The counsel also submitted that under the Act, the Administrator had no power to change the user of the plot in question. In the master-

plan the plot in question has been shown to be used for common purpose that is for the running of the Primary School and decision of the

Administrator definitely adverse the rights of the holders of the residential plots when the scheme of running of Primary School would be dropped.

11. I have applied my mind to the rival contentions of the parties and I am of the considered view that the appellants have no case. The defendants

never pleaded in the trial Court that the decision of the Administrator was taken in good faith. Rather, no office order has been produced on the file

of the trial Court to show that the Administrator before taking the decision for the conversion of the plot in question had arrived at a particular

conclusion that it would be in the interest of the Board if the use of the plot is allowed to be changed. A plea which has not been taken by the

parties in the trial Court, cannot be allowed to be taken in the second appeal as it would manifestly cause a prejudice to the opposite party. No

litigant has a right to take the opposite party by surprise. Also there is no documentary evidence on the record to show that the plot in question

was put to auction and that no bidder came forward to purchase the plot. In this regard, it will be fair for me to refer to the statement of Dalbir

Singh, Naib Tehsildar DW-1 who admitted that the plot in question was kept reserved for the Primary School. However, he has stated that when

the residential plot were put to auction in the year 1967, there was no understanding that the Board would not change the user of the plot in

question. In the cross-examination it has been admitted by the witness that there are residential houses on all sides of the plot in dispute and before

changing the site plan (master-plan), no notice was given to any of the occupants of the adjoining plot-holders. From the above, it can be safely

concluded that the plot in question was ear-marked for Primary School and the Administrator of the Mandi Board unilaterally took a decision

about the ultimate use of the plot in question from the Primary School to the discharge of storm water through the plot in question. No objections

were invited from the adjoining occupiers of the houses. The principle of natural justice has been flouted. In this view of the matter, I am inclined to

affirm the findings of the First Appellate Court on issue No. 1 wherein it is held that the nature of the plot could not be changed by the

Administrator at his own level without giving any proper opportunity to the occupants of the adjoining plots. Further I am in concurrence with the

reasons advanced by the learned First Appellate Court that there was no evidence on the record to borne out that nobody came forward to offer

the bid for the purchase of the plot for running the Primary School.

12. Resultantly, I dismiss the appeal by affirming the judgment and decree of the First Appellate Court, leaving the parties to bear their own costs.