

(2012) 02 P&H CK 0075

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 2455 of 2009

Municipal Corporation Ludhiana

APPELLANT

Vs

Madhu Goyal and another

RESPONDENT

Date of Decision: Feb. 17, 2012

Acts Referred:

- Punjab Municipal Corporation Act, 1976 - Section 246(1), 269

Hon'ble Judges: M.M.S. Bedi, J

Bench: Single Bench

Judgement

M.M.S. Bedi, J.

This is defendant's appeal against the judgment and decree passed by the lower appellate Court decreeing the suit of the plaintiffs-respondents for permanent injunction restraining the defendant-appellant from demolishing or interfering in the possession of the plaintiffs-respondents in the suit property except by due process of law.

2. Suit of the plaintiffs-respondents was dismissed by the trial Court holding that the defendant-appellant was entitled to remove any encroachment over the street made to the extent of 64 feet X 20 feet, approximately.

3. Learned counsel for the Municipal Corporation, defendant-appellant has vehemently contended that the suit of the plaintiff-respondent has been wrongly decreed as the defendant-appellant corporation does not want to demolish or interfere in the possession of the plaintiffs-respondents over the property in dispute which is shown red in the site plan but notices had been issued to the plaintiffs when construction was raised encroaching the area of the road to the extent of 64 feet X 19 feet. It has been submitted by the counsel for the appellant that encroachment had actually been removed by the plaintiffs-respondents. It is claimed that the Municipal Corporation has got a legal right to issue notice to the plaintiffs-respondents under Sections 246 (1) and 269 of the Punjab Municipal

Corporation Act, in case any encroachment is made on the area covered under the road. It is also argued by the counsel for the appellant that in case any construction is raised in violation of the sanctioned plan, the same can be demolished by adopting due process of law.

4. After hearing the counsel for the defendant-appellant as well as counsel for the plaintiffs-respondents and carefully going through the decree passed by the lower appellate Court, I am of the considered opinion that the defendant-appellant has not been absolutely debarred from demolishing or interfering in the possession of the plaintiffs in the suit property but the right of the defendant-appellant has been safeguarded to proceed against the plaintiffs-respondents in due course of law by adopting relevant statutory provisions of the Municipal Corporation Act. It appears from the statement of DW.1 Nirmal Singh that after the receipt of notice EX.P5, the necessary legal compliance had been made and some encroachments made by the plaintiffs-respondents has already been removed. I do not find any reason to set aside the decree passed by the lower appellate Court as the right of the defendant-appellant to adopt due process of law to demolish the construction has not been curtailed. It is only the forcible dispossession or forcible demolition which has been curbed by the injunction order.

5. No ground is made out for interference.

6. Dismissed with above clarification.