

Municipal Corporation of Ludhiana Vs Kamlesh Jindal

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 9, 1991

Citation: (1992) 2 LJR 722 : (1992) PLJ 273 : (1992) 1 RRR 115

Hon'ble Judges: G.C.Garg, J

Judgement

G.C. Garg, J.

Plaintiff Kamlesh Jindal filed a suit for perpetual injunction restraining the Municipal Corporation of Ludhiana from interfering

in her possession over plot measuring 119 Sq. yards situated in Prem Nagar, Ludhiana, on the allegations that she was the owner in possession

thereof having purchased from M/s. Sadhu Ram Bal Kishan through registered sale deed dated 28th June, 1975. It was alleged that the plot was

carved out from an area measuring 6 bighas 7 biswas and the vendors had provided a lay out plan in that area before selling the plots that most of

the vendees who purchased plots have already raised construction. The defendants tried to lay out a public street on the plot in dispute and on

being objected they did not listen. It was further alleged that no notice had been served on the respondent before declaring this property as a

public street and that no valid acquisition was made for the purpose of laying out the street.

2. The suit resisted by the defendant Municipal Corporation on the plea that no plot existed on the site according to their record and rather there

existed a street of 20" width as provided in the Town Plan Scheme duly sanctioned by the Punjab Government in the year 1955. The further case of

the defendants was that the scheme was validly drawn after inviting objections and it was finalised and sanctioned by the Government and the

owners of the land falling under the street ceased to be the owners thereof.

3. on the pleadings of the parties, the following issues were framed :

1. Whether the plaintiff is the owner in possession of the suit property ? OPD

2. Whether there is town planning scheme prepared by the defendants and the suit property is part of the plot ? OPD

3. Whether the plaintiff is entitled to the injunction ? OPD

4. Whether there was a valid town planning scheme and the suit property has not been declared as street in that scheme ? OPD

5. Relief.

4. The trial Court vide judgment and decree dated 3rd October, 1977 dismissed the suit but the lower appellate Court, on appeal set aside the

judgment and decree of the trial Court and decreed the plaintiff's suit. It is against this judgment and decree of the first appellate Court that the

present appeal has been filed by the defendants.

5. The learned Additional District Judge after appreciation of entire evidence found that the property under the disputed plot was not proved to be

a part of public street as the appellant Corporation did not produce the property register required to be maintained under section 56(3) of the Punjab

Municipal Act showing the property in dispute to be a part of the public street or that the land had vested in the Municipal Committee under the

Scheme framed under section 192 of the Act *ibid*. It was also found that no survey plan had been produced and that the alleged street claimed by

the Municipal Committee as a public street was shown as absolutely straight in Exhibit D. 4 which was prepared by the defendants according to

site, the road was shown in curve position B 1 to B 2 in Exhibit D. 4 which was prepared by the defendants according to site, the road was shown

in curve position and there was nothing on the record to prove that plan Exhibit D. 2 stood amended. It was thus, concluded that the disputed plot

did not in any way form part of the public street.

6. The counsel for the appellant strenuously argued that in the plan Exhibit D. 2 which is a sanctioned plan of unbuilt area under Section 192 of the

Act *ibid* it is clearly shown that the land underneath the plot of the plaintiff was a part of the public street and thus, the plaintiff had no right to

encroach upon the same or to raise construction. The Municipal authorities were well within their rights to lay a road on the lane shown as public

street in the site plan Exhibit D.2. The learned counsel for the appellant further submits that nonmentioning of the street in the register required to be

maintained under section 56(3) of the Act *ibid* was not material once it is shown that it formed part of the street in sanctioned plan of unbuilt area in

Exhibit D. 2.

7. I have considered the submissions made by the learned counsel and do not find myself in agreement with the same. Exhibit D. 4 is a site plan of

this very area prepared by the defendants and produced on the record. As observed by the learned Additional District Judge, a road of 20" width

has been shown in Exhibit D.2 which is a straight road but on the spot as is apparent from plan Exhibit D. 4, this straight road does not exist and

houses have already been allowed to be built indiscriminately without having regard to the alleged public street shown in Exhibit D. 2. It seems

apparent that the defendant now want to change the course of public street as has been shown in Exhibit D.2 by making use of whatever vacant

land of the owners existing at the site and trying to make the street curved instead of straight as is shown in Exhibit D. 2. This, to my mind, could

not be done. Once the street as shown in Exhibit D. 2 was blocked on certain points without an objection from the Municipal Corporation, it

cannot stop the plaintiff from making use of the land purchased by her for raising construction. The alignment of the street has not been shown to

have been changed by a competent authority at no point of time and thus the street has been urged and the plaintiff could not be put to

disadvantage. There is no street bifurcating the block of the house in which the plot of the plaintiff exists though in the original plan Exhibit D.2, the

block has been bifurcated by street. None of the neighbours has objected to the plaintiff from raising construction on the plot purchased by her. In

this view of the matter, it is not open to the defendants to show that though a part of the street has been allowed to be closed, yet the street exists

in so far as the plaintiff is concerned. In my opinion, the defendants have totally failed to show that there existed a public street at the site where the

plaintiff has purchased the plot or that the plot purchased by her forms part of the public street. The alignment of the street could not be altered at

the whim of any officer and a resolution of the concerned Corporation for that purpose was absolutely necessary to be passed after notice to the

owners whose plots abut on that street and the persons whose land was to have been (sic) issued to the landowners at the time of framing of the

scheme does not mention the names of the predecessors in interest of the plaintiff though it mentions the names of certain other landowners.

8. No other point was urged before me.

9. Consequently, the appeal fails and is dismissed but with no order as to costs.