

SUPREME COURT OF INDIA

Sepal Hotel Pvt. Ltd.

Vs.

State of Punjab

C.A.No.4678 of 2014

(Surinder Singh Nijjar and A.K. Sikri JJ.)

22.04.2014

JUDGMENT

A.K. SIKRI, J.

1. Leave granted.
2. The origin of the lis in this appeal can be treated to earlier proceedings which started sometime in 1970's and culminated in the judgment of this Court in the case of Yogender Pal & Ors. v. Municipality, Bhatinda reported in 1994 (5) SCC 709. We would revert back to the said case with detailed discussion at the appropriate stage, Suffice it is to mention at the stage that vide the said judgment this Court declared Section 192 (1) (c) of the Punjab Municipal Act {This provision conforms to Section 203 (1) (c) of the Haryana Municipal Act} as void, being violative of Article 14 of the Constitution of India. However, overruling of the said provision was prospective i.e. from the date of the decision rendered on 15.7.1994.
3. Coming to the facts of the present case, Shri Som Chand Katia and Shri Vijay Katia were original owners of land measuring 44 bighas 6 biswas comprised in Khasra No. 2001 situated at Bhatinda. Out of the said land a part comprising of 255 fts x 450 fts was licensed to the appellant for construction of a 3 Star Hotel on 15.7.1974. The appellant applied for grant of layout plan for the construction of a hotel, which was granted by the Municipal Committee. After the receipt of the layout plan the appellant

herein constructed the hotel on the said land. Since then the hotel has been in existence and running its business therefrom. The total area of the hotel was covered by a boundary wall and is in possession of the appellant herein.

4. The Municipal Committee framed a new Scheme i.e Town Planning Scheme No. 2, Part I, in the year 1975. This Scheme was sanctioned by the State Government. As per the said Scheme, a part of the land covered by the Appellant's hotel was required for the construction/widening of the road. The Municipal Committee issued a notice dated 7.6.1978 to the appellant herein directing the appellant to demolish the boundary wall of the hotel and transfer that part of the land to the Municipal Committee. Apprehending an action at the behest of the Municipal Committee, the appellant filed a suit for grant of injunction against execution of the aforesaid notice. The Counsel for the Committee appeared and gave an undertaking not to demolish the boundary wall and based on this statement the said suit was withdrawn on 5.12.1979. However, the Municipal Committee again threatened to demolish the boundary wall, thereby impelling the appellant to file another suit, being No. 386 dated 18.12.1979. This suit was decreed on 11.12.1981 with an observation that Town Planning Scheme qua the appellant having not finalised, therefore, the land belonging to the appellant could not vest in the Municipal Committee.

5. At the same time, the appellant also challenged the vires of Section 192 (1) (c) of the Municipal Act by way of a Writ Petition No. 226 of 1979. The said Writ Petition was disposed of by a Division Bench of Punjab and Haryana High Court on 16.1.1980 alongwith other connected matters whereby it directed the Committee to consider the objections of affected landowners under the provisions of Section 192 (1) (c) of the Act which would be filed within 12 weeks before the Committee and the Committee would then proceed to consider the said objection and dispose them of within three months. Thereafter, it could make a recommendation to the Government in accordance with provisions of Section 192 of the Act. It was made clear that till the objections are decided, the rights of the landowners would not be affected. However, it was stated that if the objections were rejected the provisions of Scheme shall become final and shall be forwarded to the State Government for amending the Scheme in accordance with law.

6. As per the directions, the appellant filed its objections before the Municipal Committee, stating therein that as per the measurement at the spot, the road which

starts from 40 feet wide Namdev Road and proposes to connect 30 feet wide road at the end of the hotel boundary and which passes through Khasra No. 2001 is at a distance of 275 feet but was wrongly shown in the Scheme at 224 feet. So, it was requested that the said discrepancy in the Scheme be corrected so that there is no dispute. The above objections of the appellant were considered by the Municipal Committee and a Resolution No. 306 dated 9.7.1980 was passed. The relevant portion concerning the objections of the petitioner in Item No. 11 is as under:

Item No. 11:

Vide this objection, the objector had stated that for joining the 30 feet and 40 feet wide road, the length of the road has been shown as per the Scheme as 224 feet whereas at the spot the length is 275 feet. Therefore, it was decided that the plan of the Sepal Hotel, which has been sanctioned by the Municipal Committee be checked at the site and after inspecting the site as per the objections raised by the objector, the survey plan of the one part be corrected. The aforesaid resolution was signed by Shri Gopal Singh, President, Municipal Committee, Bathinda, Mukhtiar Singh, Divisional Town Planner, Bathinda and Shri L.D. Gupta, Executive Officer, Municipal Committee, Bathinda.

7. As per the appellant, after passing of the above Resolution dated 9.7.1980, no further action was taken by the Municipal Committee to amend the Scheme nor any communication was received by the appellant conveying its decision by the Municipal Committee with regard to the objections.

8. In the meantime, the suit bearing no. 386 of 1979 was decreed on 11.12.1981, wherein it was observed by the learned Senior Sub-Judge that the Town Planning Scheme qua the appellant had not become final and, therefore, the subject land cannot vest in the Municipal Committee and the disputed land on which construction exists cannot be said to belong to the Municipal Committee.

9. The appellant filed another Civil Suit bearing no. 641/ 1983 against the Municipal Committee for permanent injunction not to demolish four rooms, which are in the premises of the hotel itself. However, the said suit was dismissed and the appellant herein filed an appeal before the learned District Judge, Bhatinda, which was withdrawn upon the statements of the Counsel for the parties. It was agreed that

demarcation of the disputed rooms be made in the presence of the parties to verify as to whether the same are part of the street or not. The demarcation of the disputed rooms was to be made in the presence of the parties. Municipal Committee was restrained to demolish the rooms till demarcation is completed.

10. Pursuant to the above order, Shri Hem Raj, Patwari, Halqua carried out the demarcation of the disputed rooms and submitted his report dated 19.8.1986 to the Tehsildar on the basis of which an order was passed wherein it was held that there exists no passage or roads in Khasra No. 2001 in the revenue report. In the meantime, the provisions of Section 192 (1) (c) of the Act were interpreted by this Court in the case of Yogendra Pal (supra) in which Section 192 (1) (c) providing vesting of land in the Municipal Committee was declared ultra vires and, therefore, these provisions were struck down w.e.f. the judgment i.e. 15.7.1994.

11. However, the matter did not rest there. The appellant received notice dated 9.9.2003 from the successor of the Municipal Corporation- Respondent No. 2, directing the appellant to leave the street within 10 days in terms of the same Town Planning Scheme No. 2, Part I, framed in the year 1977. The appellant sent reply dated 16.9.2003 which was followed by another reply dated 27.9.2003. It is the case of the appellant that without considering these replies, Respondent No. 2 issued notice dated 9.10.2004 to the appellant under Sections 246 and 246A of the Act seeking to leave 30 feet street as per the Town Planning Scheme No. 2, Part I, on or before 13.10.2003. The appellant replied to that notice on 13.10.2004 alleging that the proposed action was illegal and amounted to the abuse of powers. Immediately thereafter the appellant also filed the Writ Petition No. 16377 of 2004 on 13.10.2004 in the High Court seeking quashing of the said notice dated 9.10.2004 and that the Town Planning Scheme No. 2, Part I be declared as lapsed due to non-implementation. As per the appellant, this planning Scheme was not implemented even after 30 years of framing and had, therefore, lapsed. However, the appellant withdrew this writ petition on 30.11.2004 with liberty to file fresh petitions. Fresh petition No. 19790 of 2004 was filed on 15.12.2004 challenging the said notice dated 9.5.2004. This Writ Petition has been dismissed by the High Court vide judgment dated 2.5.2006. That judgment is impugned by filing Special Leave Petition under Article 136, out of which present appeal arises.

12. As pointed out above main contention of the appellant before the High Court was

that as the Scheme was not implemented for the last more than 30 years and objections filed by the appellant had not been decided, the said Scheme had lapsed and Respondent No. 2 had no authority to implement the same. This contention has not found favour with the High Court. The High Court took note of the fact that the appellant had earlier filed Civil Writ No. 226 of 1979 in the said court challenging that very Scheme. That writ petition along with many other similar writ petitions, were disposed of holding that the Scheme under challenge was rightly promulgated after passing an appropriate Resolution. Matter was remitted to Respondent No. 2 to decide objections, if any filed by the appellant and others similarly situated persons, with clear direction that in case the objections are rejected, the provision of the Scheme shall become final.

13. The High Court further noted that in order to dispose of objections filed by various individuals, matter was put up before the Municipal Committee on 9.7.1980. Many objections were disposed of including Objection Nos. 10 and 11 which were filed by the Managing Director of the appellant and the appellant respectively. In so far as objections of the appellant are concerned, it was ordered that to ascertain length of road left in the Scheme, measurement be done at the spot. Therefore, the only dispute which remained was with respect to measurement of the property at the spot. As such the appellant was not right in contending that its objections were not disposed of and were still pending. The High Court also went through the record and discussed the same. On that basis, the High Court has further observed that some demarcation was got done by the appellant from the Revenue Department on the basis of aks “ Shajra. In that report, it was observed that there is no street in Khasra No. 2001, in which Hotel of the appellant is situated. However, the High Court chose to discard that Report got prepared by the appellant, giving following reasons

The appellant is now placing reliance upon the said demarcation report to say that there existed no street which, as per allegation of respondent no. 2 has been encroached by the appellant. No benefit of that report can be extended to appellant, as the demarcation was not done keeping in view the Town Planning Scheme. Report seems to have been made on wrong facts. Admittedly in revenue record, the street is not in existence as the same has been carved out only in the approved Scheme, which is under challenge. Thereafter, when notice was sent to the petitioner to remove encroachment from the street, he again tried to delay the matter and subsequent thereto, filed the present writ petition.

14. On the basis of these facts as recorded by the High Court, it came to the conclusion that the challenge to the Scheme had attained finality and the objections were also considered and taken to logical conclusion. Nothing remained thereafter and it could not be said that the Scheme had not become final and cannot be implemented now. To recapitulate in brief, the High Court has in the impugned order recorded that:

i. The demarcation report seems to be made on wrong facts and that in the revenue record there was no street.

ii. It was further wrongly recorded that the earlier writ petition had been dismissed by the High Court on 16.1.1980. iii. With regard to the appellate order dated 20.5.1986, it was held that pursuant to the said order, the Managing Director of the Petitioner managed to get a wrong report, i.e. the demarcation report dated 19.8.1986.

iv. Finally, the High Court held that the Scheme had attained finality in view of the judgment of the Civil Court and the appeal had been dismissed as withdrawn and, therefore, it was not open to the appellant to say that the Scheme had not become final and could not be implemented after a period of 30 years. These are the reasons given by the High Court for dismissing the writ petition.

15. Before we proceed to record the submissions of the counsel on either side, we would like to point out the ratio of Yogender Pal (supra) mention to which has been made in the beginning. As pointed out above that was a case where the vires of Section 192 (1) (c) of the Punjab Municipal Act were challenged as violative of Article 14 of the Constitution of India and the appellants therein succeed in their challenge. Aforesaid provision was held to be unconstitutional as under this provision, to implement a Scheme land of the landowner could be taken away without even paying any compensation. At the same time, it is noteworthy that the overruling of this provision was made prospective i.e. from the date of the decision rendered on 15.7.1994.

16. It was noticed in para 29 that various lands had been acquired for Town Planing Schemes and in many cases the Schemes have also been completed. In view of the

said fact, it was held that it would not be in public interest to unsettle the settled state of affairs as it would create a total chaos. The court was, therefore, mindful of the fact that there would be cases where the Schemes had been implemented and constructions etc. had already been carried out in terms of the Scheme. Those Schemes which were already carried out were, thus, protected.

17. It is, in this scenario the moot question which falls for consideration is as to whether in the present case the Scheme in question had been finalised or not.

18. When the Scheme in the present case were framed in the year 1975 to implement the same, the Municipal Committee issued notice to the appellant on 7.6.1978 for demolition of boundary wall of the hotel and transfer the same to the Committee, which was required for the road. The appellant challenged the same by filing the writ petition in the High Court. In fact various Town Planning Schemes framed by the Municipal Committees of Amritsar and Bhatinda were the subject matter of challenge before the High Court by way of various Civil Writ Petitions. These were disposed of by a common order dated 16.1.1980. It was made clear that the provisions of the Scheme in so far as they affect the rights of the writ petitioners, will not be taken to be final and the said provisions will only become final after the objections filed by the appellants are considered by the Committees and disposed of.

19. Thus, a conjoint reading of the judgment in *Yogender Pal (Supra)* decided by this Court as well as judgment dated 16.1.1980 by which aforesaid writ petitions were decided by the High Court would make it clear that in those cases where the Scheme had been finalised, they remain protected and Respondent No. 2 shall have right to go ahead with the implementation of the said Scheme.

20. It is the common case of the parties that the High Court had permitted the appellants and others to file their objections and the Scheme was to become final only after the objections were considered by the Committee and disposed of. However, whereas Respondent No. 2 maintains that the objections of the appellants were disposed of/ rejected, the appellant argues otherwise and it is pleaded that the matter remained in limbo without any decision on its objections. The outcome of the present appeal would depend upon this aspect.

21. In his endeavour to demonstrate that no final decision was taken on the objections

of the appellant Mr. Nidhesh Gupta, learned Senior Counsel for the appellant submitted that these objections were considered on 30.6.1980 and 8.7.1980. A perusal of the proceedings dated 30.6.1980 makes it clear that it was decided that verification be done at the spot and in case there is any mistake in the plan of the Scheme, the same be got rectified. The objection regarding the demarcation was rejected by placing reliance on Section 192 of the Punjab Municipal Act, 1911, which permitted land to the extent of 25% to be taken without payment of compensation and additional 10% to be taken after payment of compensation.

22. In the proceeding dated 9.7.1980 the claim of the appellant for compensation was noticed and the said objection was rejected. However, it was also decided that the plan of Sepal Hotel as sanctioned by the Municipal Committee would be checked and after inspecting the spot, survey plan would be corrected in view of the objection of the objector.

23. In the meantime, Civil Suit No. 386 of 1979 filed by the appellant herein was also decided. A perusal of the judgment dated 11.12.1981 in the suit makes it clear that the contention of the counsel for the appellant herein that the objections had to be considered, was not disputed by the counsel of the Municipal Committee and he conceded that the Scheme framed by the Municipal Committee has not yet become final. It was also held that it is obvious from copies of resolution that the Municipal Committee is seized of the objections filed by the plaintiff.

24. As per Mr. Gupta, this makes it clear that even after the resolutions of 30.6.1980 and 8.7.1980, the objections of the plaintiff were, admittedly, yet to be decided and the Scheme had not yet become final.

25. It is further submitted that since in spite of the aforesaid orders, the Municipal Committee was seeking to pursue the action under the Scheme without deciding the objections, another Suit No. 64 of 23.12.1983 was filed by the appellant herein. After the suit had been dismissed, the appellate court passed a consent order dated 20.5.1986 wherein it was agreed that the appeal will be dismissed as withdrawn and an application for demarcation will be submitted within a month. The Municipal Committee agreed that demarcation shall be made in the presence of the parties and they will not demolish the disputed rooms till the demarcation was done. The appeal was dismissed as withdrawn in view of the said statement.

26. Thereafter, a demarcation was done on 19.8.1986. A perusal of the same makes it clear that it was noticed therein that there was no street falling in the concerned Khasra number as per the revenue record and, therefore, the street could not be demarcated.

27. Mr. Gupta, questioned the correctness of the finding of the impugned order by making the following submissions:

i. The order dated 16.1.1980 categorically records that the provisions of the Scheme in so far as they affect the rights of the petitioners will not be final and the provisions will only become final after the objections filed by the appellant are considered by the committee and disposed of.

ii. A perusal of the proceedings dated 30.6.1980 and 8.7.1980 makes it clear that the objections were still pending and demarcation etc. had still to be carried out.

iii. This fact stood admitted in the order dated 11.12.1981 wherein the counsel for the Municipal Committee had conceded that the Scheme framed had not yet become final and that the Municipal Committee was seized of the objections.

iv. It is submitted that after the aforesaid date, the only progress was the report dated 19.8.1986, as per which report the demarcation of the street could not be done since there was no street as per the revenue record. Assuming there was an error in the said demarcation, at best a fresh demarcation could have been ordered. In any event, it could not be said that the Scheme had been finalised, as recorded by the High Court.

v. A perusal of the order passed by the appellate court dated 20.5.1986 also makes it absolutely clear that it was agreed that there will no demolition till the demarcation was done. Accordingly, without any demarcation having admittedly been done thereafter, there was no question of the Scheme having become final.

vi. That the aforesaid facts are further reinforced for a consideration of the

agenda item dated 27.12.1995, pursuant to the judgment of this court. A perusal of the resolution makes it clear that the Municipal Committee had decided that the Schemes which are pending are hereby dropped by the Municipal Council, Bathinda and the office is directed to act accordingly. Thus, all pending Schemes stand dropped as per the aforesaid resolution.

28. Per contra, Mr. Mahabir Singh, learned Senior Counsel appearing for Municipal Corporation, Bhatinda (Respondent No. 2) submitted that the judgment in the case of Yogender Pal had no applicability as the law declared therein was made prospective by observing that it would not be in public interest to unsettle the settled state of affairs. It was, thus, a case of prospective overruling. He further submitted that as per the judgment dated 16.1.1980 of the High Court, the provisions of the Scheme were not to become final unless the objections filed by the appellants are disposed of by the Committee. A fortiori, the Scheme was to attain finality if the objections were to be rejected and that was specially observed by the High Court. Countering the submissions that the objections had not been decided/ rejected Mr. Mahabir Singh argued that these objections were specifically rejected by the Municipal Committee way back on 30.6.1980 and on 9.7.1980. He further submitted that this rejection was never challenged by the appellant. Instead he preferred a civil suit for permanent injunction which was, however, dismissed on 4.11.1985. A reading of this order would reveal that the objections were duly considered by the Committee and the same were dismissed. Even appeal was filed against this judgment and decree of the trial court but the appellant withdrew the same and, therefore, finding of the trial court that objections were rejected had become final. His further plea was that these are pure finding of facts which have been arrived at against the appellant who has dragged on the matter for last 30 years after successfully encroaching upon the land which was duly carved under Town Planning Scheme for public street. He further submitted that the appellant had suppressed all these proceedings including filing of Civil Writ No. 19812 of 1996 which was subsequently withdrawn by him.

29. We have given our anxious thought to the aforesaid submissions of learned Counsel for the parties. It is a common case of the parties that the judgment in Yogender Pal (Supra) is prospective i.e from the date of judgment which is 15.7.1994. It is also a common case of the parties that the Scheme in question was framed much earlier. Thus, as pointed out above, the only issue is as to whether the Scheme had attained finality and answer to this question depends upon another issue viz. whether

objections of the appellant to the Scheme were disposed of by Respondent No. 2 or not, in compliance with directions dated 19.6.1980 of the High Court.

30. It is borne from the record that these objections were duly considered on 30.6.1980 and 8.7.1980. In the proceedings of 30.6.1980 objections of the appellant regarding demarcation were rejected. At the same time it was decided that verification be done at the spot and in case there is any mistake in the plan of the Scheme, the same be got rectified. It was so done. Thereafter, matter came up before the Committee on 9.7.1980 and after considering the entire matter the Committee specifically rejected the objections of the appellant. Operative portion of the minutes of the meeting dated 30.6.1980 as well as 9.7.1980 are as under:

Minutes of the Meeting dated 30.6.1980:

Shri Som Chand Katia, Writ Petitioner No. 226/79 is present. He has stated that his total land measuring 31550 sq. yards is covered under the Scheme and his land to the extent of 35% has been taken under the Scheme and some of his land thus goes waste. The objector has been asked to get the demarcation of the total land at the spot and produce the plan in the office of Municipal Committee by 7.7.1980 and should also get the spot inspection of the land so that in spot inspection it could be verified as to how much of his land falls under the Scheme. In case any area more than 25% of his total land comes under the park/road, the same may be adjusted. The objector has stated that he is not ready to give any land for road or park without compensation. Thus objection of the objector is rejected because under Section 192 of the Punjab Municipal Act, 1911 land to the extent of 25% without payment of compensation and an additional 10% with payment of compensation can be taken for the purpose of roads and parks under the proposed Town Planning Scheme.

Minutes of the Meeting dated 9.7.1980

As per decision dated 30.6.1980, the objector Shri Som Chand Katia was required to get the measurement of his land at the spot. He has produced a photostat copy of revenue record relating to Khasra No. 2001 which has been attested by Halqa Patwari. As per the same, their total area in the Scheme comes to 44300 sq. yards. The plea of objector is that the Sepal Hotel whose

area is 12750 sq. yards has different out of the total area and the land for roads and parks be taken out of the remaining area as per law. But he should be given compensation of the same as well. On perusal of record, it is found that sanction of building plan of Sepal Hotel has also been given to them who were the original owners of total land. Therefore, the Sepal Hotel had also been adjusted in the Scheme. Therefore, the Sepal Hotel had also been adjusted in the Scheme. Therefore, it is decided that the plot of Sepal Hotel cannot be treated to be different from the land belonging to the said family under the purposes of Scheme and in this way out of total ownership land, the land under the road and parks does not form more than 25% which is as per law, therefore, this objection is rejected. Therefore, in this objection, the objector has written that the length of road joining the 30' x 40' wide roads has been shown to be 224 under the Scheme whereas the sport the same is 275. therefore, it is decided that plan of the Sepal Hotel as sanctioned by Municipal Committee be checked at the spot and after inspecting the spot survey plan be got corrected in view of the above objection of objector.

31. It is clear from the above that objections were specifically rejected. Only thing which the Municipal Committee wanted was to check the plan of Sepal Hotel as sanctioned by the Municipal Committee at the spot and after inspecting the spot the survey plan be corrected. It is also clear from the above that main objection was for payment of compensation which was rejected on the ground that the land under the road and the parks does not form more than 25% and, therefore, in view of Section 192 of the Act no compensation was payable.

32. Learned Senior Counsel for the respondent is right in his submission that these orders were not challenged. Instead, the appellant filed Civil Suit No. 614 of 1983. However, this suit was dismissed by the trial court. The appellant preferred appeal there against. This appeal was dismissed as withdrawn. It was the contention of the appellant that this appeal was withdrawn in view of consent order dated 20.5.1986 wherein it was agreed that an application for demarcation will be submitted within a month and demarcation shall be made in the presence of the parties and till then respondent shall not demolish the disputed rooms. However, from this the appellant cannot be allowed to contend that objections had not been decided. The at the most, issue of demarcation was to be settled as the appellant was raising this issue time and again. However, it is accepted by the appellant itself that demarcation was done on

19.8.1986.

33. From the aforesaid, we cannot agree with the contention of the appellant that objections of the appellant were still pending. At the same time it becomes clear that the only issue which remained was about the demarcation and demarcation was also carried out and the Patwari submitted his Report dated 19.8.1986.

34. Having said so, what we find is that this demarcation report has altered the position. As per the demarcation Report of the Patwari, 30 feet road as set out in the Town Planning Scheme does not exist in the revenue record. Once that be the position, how the Scheme would be implemented is the poser. The High Court has remarked that the appellant managed to get a wrong Report. At the same time, what is the correct position at the site has also not come on record. In a situation like this, we are of the opinion that once the High Court observed that there was an error in the demarcation Report, more appropriate action was to order fresh demarcation.

35. In view of the above though we reject all the contentions of the appellant, at the same time we modify the order of the High Court to the extent that there shall be fresh demarcation done at the site through Patwari. On the basis of said demarcation, if it is found that in the revenue record 30 feet road exists, that area will be clearly demarcated and delineated, and thereafter the Scheme would be implemented. The aforesaid exercise shall be carried out within a period of two months from today. The appellant shall be associated in the exercise of demarcation. Once this demarcation, is done the parties shall abide by the same.

36. Appeal disposed of in the aforesaid terms.