



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

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**RSA-1853-1986 (O&M)**  
**Reserved on: 27.02.2025**  
**Pronounced on: 29.04.2025**

**JOGINDER SINGH & OTHERS**

. . . . Appellants

**Vs.**

**STATE OF PUNJAB AND OTHERS**

. . . . Respondents

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**CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA**

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Argued by: - Mr. Arun Nehra, Advocate; Mr. Sant Kashyap, Advocate;  
 Mr. Kuldeep Singh, Advocate; and Mr. Joginder Singh, Advocate  
 for the Appellants-Plaintiffs.

Mr. Rajiv K. Thakkar, Dy. AG Punjab  
 for respondent – defendant N: 1.

Mr. Amit Jhanji, Sr. Advocate with Ms. Eliza Gupta, Advocate;  
 Mr. Harkirat Grewal, Advocate  
 for the respondent – defendant N: 2.

Mr. Alok Jagga, Advocate; and Mr. Karan Inder Singh, Advocate  
 for the respondent – defendant N: 3.

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**DEEPAK GUPTA, J.**

Suit seeking decree for permanent injunction regarding property in dispute filed in representative capacity by plaintiffs Joginder Singh and others (*appellants herein*) was dismissed by the trial Court of Ld. Sub Judge Ist Class, Jullundur on 30.07.1983 and the findings have been affirmed by the first Appellate Court of learned Additional District Judge, Jalandhar on 02.06.1986, while dismissing the appeal of the plaintiffs/appellants. Against these concurrent findings, the present appeal has been filed by the plaintiffs.

2.1 In 1951, the Industries Department of the erstwhile State of Punjab prepared a layout plan (*Ex.PW3/A*) for the establishment of

industries at Jalandhar. The plan included a 120-foot-wide road flanked by green belts of 80–85 feet in width on both sides. Out of the total 130.5 acres, 13.4 acres were reserved for the green belt and 45.2 acres for roads.

2.2 Subsequently, some plaintiffs and other individuals purchased plots within the Industrial Area for setting up industries. The plaintiffs asserted that, as the vendor, the State of Punjab was obligated to maintain the 120-foot road and the adjoining green belts as public amenities. They also claimed a special right to these amenities, given the proximity of their buildings. Some plaintiffs acquired plots from the original purchasers and constructed industrial and residential units in accordance with the Bye-laws. They opened doors, windows, ventilators, and other access points towards the road and green belt, using these amenities for over 20 years. On this basis, the plaintiffs contended that even if no direct entitlement as vendees existed, they had acquired an easementary right by prescription through continuous, open, hostile, and rightful use of the property.

2.3 The plaintiffs further alleged that the defendant – the State of Punjab – had lost the right to restrict the plaintiffs and the general public from using the said amenities, as its ownership had become subject to their easementary rights, including the right of passage and enjoyment of air and light.

2.4 Recently, the defendant allegedly sought to divert the use of the green belt and the 120-foot road, as reflected in an auction and tender notice. It was also claimed that portions of the disputed property were being allocated to the Post and Telegraph Department, Punjab Police Department, and an educational institute, with building materials being stocked for new construction, thereby infringing upon the plaintiffs' rights.

2.5 Despite serving a legal notice, the plaintiffs received no favourable response, compelling them to approach the court. They filed the present suit on 16.07.1980 and prayed for a decree of permanent injunction to restrain the defendant from diverting or closing the road and green belt,

shown as red in the enclosed site plan by letters 'ABCDEFGHIJKLMN' and to uphold their right to continue using the property as an easement connected to their plots.

2.6 Initially, the suit was filed only against defendant – State of Punjab. Later on, Devi Sahai Sanatan Dharam Girls High School, and Mohinder Pal c/o Hind Rubber Factory were impleaded as defendants N: 2, and 3 respectively.

3.1 Defendant No. 1 – State of Punjab, in its written statement, raised several preliminary objections. It was contended that out of the 17 plaintiffs, only three — Hans Raj Dhawan (Plaintiff No. 7), Harbhajan Singh (Plaintiff No. 14), and Gurdial Singh (Plaintiff No. 17) — were regular allottees. The remaining plaintiffs, including Plaintiff No. 1 Joginder Singh, were not regular allottees and, therefore, had no enforceable rights in the Industrial Area.

3.2 It was further pleaded that although an initial layout plan was prepared by the Divisional Town Planner for developing the Industrial Area in Jalandhar, the plan was subsequently revised on 10.05.1979 and duly approved by the Government. The State asserted its absolute right to modify the layout plan according to changing needs and for the overall benefit of the industrial community. Under the revised plan, the width of the main road was reduced from 120 feet to 80 feet, which, it was claimed, would not cause any inconvenience to the public. Furthermore, plots had been allotted to departments such as Posts and Telegraph, Police Department, and for the construction of the DIC Building, Jalandhar — all for the benefit of the industrialists.

3.3 This defendant also submitted that no specific promise regarding the maintenance of the alleged amenities was ever made to the plaintiffs or any other purchasers. The State was bound only by the terms of the allotment agreements and retained the right to erect buildings or establish offices on its land.

3.4 It was further pointed out that the plaintiffs had illegally opened doors and access points on the side not permitted under the original layout plan, thus forfeiting any claim to a right of passage through the green belt. Additionally, Plaintiff No. 1 Joginder Singh was specifically accused of trespassing on Government land by encroaching upon the green belt for personal use, for which separate action under the applicable rules was being pursued.

3.5 With aforesaid stand, defendant No. 1 – State of Punjab prayed for dismissal of the suit.

4.1 Defendants No. 2 and 3, in their joint written statement, submitted that Defendant No. 2 – Devi Sahai S.D. Girls High School had been allotted 5 acres of land forming part of the alleged green belt by Defendant No. 1 in 1964–65. They had constructed substantial school building for the Girls High School and Model School by 1965–66 and had been in peaceful possession and use of the land since then without any objection from the plaintiffs. Later, in 1980, the school was formally allotted 1 acre, 6 marlas, and 5 square yards of land, upon which further development, including levelling, boundary walls, and additional rooms, was undertaken at considerable expense, again without any protest from the plaintiffs. Similarly, Defendant No. 3 – Hind Rubber Factory was allotted 135 x 227 square meters of land in 1980, where it also carried out land-filling and construction of boundary walls.

4.2 It was further submitted that, by their conduct and inaction, the plaintiffs were estopped from challenging the defendants' rights or raising any objections at this stage. It was reiterated that the Industrial Area was established for the development of industries, and the layout plan was lawfully revised on 10.05.1979 with Government approval, reflecting the State's authority to modify the plan as needed.

4.3 Denying the plaintiffs' claims of any easementary rights and controverting all other allegations made in the plaint, defendants No. 2 and 3 also prayed for dismissal of the suit.

5. In rejoinder, plaintiffs reiterated their claim. Necessary issues were framed. Evidence produced by the parties was taken on record.

***Findings of the Learned Trial Court***

6.1 The Learned Trial Court recorded that the Industrial Area in Jullundur was established in 1951 as per the original layout plan (Ex.PW-3/A), which depicted a 120 ft. wide road with adjoining green belts on both of its sides. However, the said plan was revised by the State Government in 1979. The Court held that the State Government was competent to revise the layout plan and that the plaintiffs, having instituted the suit in 1980, could not maintain a simple suit for permanent injunction without challenging the validity of the revised plan. In the absence of any prayer for declaration that the revised layout plan was illegal or ultra vires, the suit for injunction was held to be infructuous.

6.2 The Court further observed that neither the original layout plan (Ex.PW-3/A) nor the allotment orders (Ex.PW-5/1) conferred any right upon the plaintiffs or other allottees to open doors, windows, or ventilators towards the green belts. The plaintiffs failed to produce any sanctioned site plans from competent authorities approving such constructions. Rather, they admitted in their pleadings that such openings had been made without authority. Consequently, the plaintiffs, having approached the Court with unclean hands, were held disentitled to the equitable relief of injunction.

6.3 The Court also found that the sale deeds in favour of the plaintiffs, including Ex.PW-5/1, contained no covenant restricting the State Government from altering the layout plan or green belts. Therefore, the plaintiffs had no locus to challenge the authority of the State Government.

6.4 It was further found that defendant No.2, Devi Sahai Sanatan Dharam Government High School, had been allotted five acres from the

green belt as early as 1964-65, and had constructed a building thereon soon thereafter. The existence of the school building since long was established by the evidence of both parties. Consequently, the suit for injunction against the school was rendered infructuous.

6.5 Regarding the claim of easementary rights, the Trial Court held that under Section 15 of the Easements Act, 1882, an easement against the Government could be established only after continuous enjoyment for 30 years. As the plaintiffs claimed enjoyment for only 20 years, no easementary right in their favour could be said to have accrued.

6.6 The Court further concluded that the plaintiffs were estopped by their own acts and conduct from seeking relief, and that the suit against defendant No.2 was also barred by limitation.

6.7 In view of the above findings, the Learned Trial Court dismissed the suit vide judgment dated 30.07.1983.

#### ***Findings of the Learned Appellate Court***

7. In the appeal filed by the plaintiffs, all the findings of the trial court were affirmed by the first Appellate Court of learned Additional District Judge, Jalandhar, while dismissing the appeal filed by the plaintiffs vide judgment dated 02.06.1986.

#### ***Contentions of Learned Counsel for the Appellants-Plaintiffs***

8.1 Learned counsel for the appellants vehemently assailed the concurrent findings of the courts below. It was submitted that the original layout plan (Ex.PW-3/A), prepared on 01.07.1951, provided for a 120 ft. wide ring road, with green belts measuring 80 to 85 ft. on either side. It was pointed out that portions of the green belt were initially allotted to defendant No.2 — Devi Sahai Sanatan Dharam Government High School — in December 1963, and further allotments were made to the said school in January 1979, as well as to defendant No.3 — Hind Rubber Factory.

8.2 It was contended that although a revised layout plan was purportedly prepared and signed by the Assistant Town Planner on 10.05.1979, and transmitted by the Divisional Town Planner to the General Manager, Director of Industries, Jalandhar, under cover of letter Ex.D-2, there was no material on record to establish that such revised plan (Ex.D3) had ever been duly approved by the competent authority, i.e., the State Government.

8.3 It was further urged that in the so-called revised plan, the width of the ring road was reduced from 120 ft. to 80 ft., and the green belts on both sides were altogether eliminated, despite the absence of requisite governmental approval. Attention was also drawn to the fact that the allotments in favour of defendant Nos.2 and 3 predated the preparation of the alleged revised plan, thereby rendering the subsequent alterations arbitrary and without lawful sanction.

8.4 The learned Counsel contends that a green belt shown in a Master Layout Plan — whether in a residential, commercial, or industrial area — cannot be arbitrarily altered by the Government or any civic authority. Such action would violate Articles 21, 48-A, and 51(A)(g) of the Constitution of India. It was argued that removal of the green belt would adversely affect the health of residents, workers, and others in the industrial area. Attention was drawn to a letter dated 01.04.1959 (Ex. PX) from the Chief Engineer, PWD to the Director of Industries, Punjab, cautioning that the open space should not be sold to a school, as it was essential for the recreation of those living and working in the area. It was emphasized that green areas and parks are a necessity for environmental protection, recreation, fresh air, and children's play, and are matters of vital public interest. While preparing or modifying a layout plan, these aspects must be preserved and cannot be sacrificed for private development. Ld. Counsel referred to **AIR 2018 SC 220; AIR 1991 SC 1902; 1995(2) SCC 577; AIR 1996 SC 253 ; 1997(2) RCR (Civil) 163; AIR 1993 Allahabad 57; AIR 1994 Rajasthan 87; AIR 2004 Rajasthan 175; and 1982 PLJ 333.**

8.5 It is urged that at first glance, the cited judgments may seem rooted in interpretations of Urban Development and Planning statutes. However, a deeper analysis shows that they fundamentally uphold the right to life under Article 21 of the Constitution, emphasizing the State's duty to ensure a pollution-free environment. Although the cases primarily concern residential areas, the principles apply equally to commercial and industrial zones, where residents and workers are equally entitled to a healthy environment.

8.6 Ld. Counsel contends that in the present case, there is no statute guiding the modification of the Layout Plan. Even in the absence of specific laws, State actions must be reasonable and not arbitrary. Citing ***Bangalore Medical Trust (AIR 1991 SC 1902)***, where Hon'ble Supreme Court struck down a statutory modification removing a green space as arbitrary, it is argued that the present modification of the Layout Plan — done without public notice or regard to the Chief Engineer's 1959 letter (Ex.P-X) warning against selling of the open space — was similarly arbitrary and unjustified.

8.7 It is contended further that there is no evidence on record to show that the alleged revised layout plan was ever approved by the Government. Although the State pleaded an absolute right to alter the Master Layout Plan, this claim is untenable. DW2 Darshan Lal admitted that there is no document reflecting approval of Ex.D1 by the Governor of Punjab or the Secretary, Urban Development; the Revised Plan is merely signed by the Assistant Town Planner and Divisional Town Planner, without the signature of the Chief Town Planner. It was emphasized that under Article 166 of the Constitution and the Rules of Business framed thereunder, only the concerned Minister or Secretary to Government could approve such plans, not departmental officers. The court can direct the State to produce the applicable Rules of Business to verify compliance. Further, a letter dated 10.04.1979 (Ex.D10) from the Senior Town Planner to the Divisional Town Planner requested copies of the revised and old plans so that formal Government sanction could be obtained through the Chief Town Planner.

However, the subsequent letter dated 10.05.1979 (Ex.D2) forwarding the Revised Layout Plan to the General Manager, District Industries Centre, does not mention any approval having been granted by the Government.

8.8 It is urged further that the modification of the original Layout Plan (Ex.PW3/A) was carried out without issuing any notice to the residents and industrial owners, depriving them of an opportunity to object to the conversion of green spaces and reduction of the road width from 120' to 80'. Statements of PW5 Gurmail Singh and DW8 Sh. DD Abrol support this claim. The Chief Engineer, in his letter dated 01.04.1959 (Ex.PX), had also warned that selling the land for other purposes would leave no space for recreation for the people working or living in the area.

8.9 Ld. counsel rely on the judgments in *AIR 1994 Rajasthan 87*; *1982 PLJ 333* and *AIR 1991 SC 1902*, emphasizing that with the evolution of administrative law, even administrative actions affecting civil rights must comply with the principles of natural justice. It is argued that civil consequences include not just property or personal rights but also material and non-pecuniary interests. Thus, before modifying a Layout Plan, notice must be given to affected persons and cogent reasons must be recorded. The Government's action in the present case, carried out without notice and justification, is arbitrary, unfair, unreasonable, and violative of Article 14 of the Constitution, which prohibits arbitrariness in State action.

8.10 It is contended further that the Government is estopped by its conduct from removing the green belts and reducing the width of the 120' Ring Road to 80'. At the time of selling the plots, authorities assured buyers that the area would have a 120' wide road flanked by green belts of 80–85 feet on both sides, as reflected in the layout plan referred to in the conveyance deeds (Ex.D1). Witnesses PW1 Joginder Singh, PW5 Gurmail Singh, PW6 Gurdas Singh, PW7 Raminder Singh, and PW9 Girdhari Lal confirmed purchasing plots after viewing this layout plan. Further,

maintenance and green belt development charges were collected from plot holders, as deposed by PW7 Girdhari Lal and DW6 Sh. DD Abrol.

8.11 Ld. Counsel argues that the allotments of land to the private school and Hind Rubber Factory were made in a malafide and arbitrary manner. Decisions to allot land were taken on 25.01.1979 and 30.04.1979 (Ex.DW8/2) before the alleged modification of the layout plan on 10.05.1979. At the time of allotment, the land was still designated as a green belt. No public applications were invited, indicating the arbitrary sale of public property influenced by undisclosed interests, contrary to law and public interest. In this regard the following rulings are relied upon: **2010(1) RCR (Civil) 311; AIR 1999 SC 2468; AIR 2011 SC 952; and 2010(1) RCR (Civil) 311.**

8.12 Assailing the findings of the learned trial court as well of appellate court on issue regarding suit being barred by time against the school, it is urged that said finding is totally incorrect, as School was allotted 1.5 Acres' land on 26.12.1963 and then allotted more land in 1979. The suit filed on 16.07.1980 was clearly within limitation qua land allotted to School in 1979. Even qua the land allotted to school in 1963, the suit was within limitation, as the school had encroached upon Green Belt, which was public property and it was a continuing wrong.

8.13 Ld. Counsel argues further that the relief in the present case can be moulded by the Court, as the suit was filed in a representative capacity and is in the nature of public interest litigation. Courts have the authority to act *suo moto* in matters involving public interest, even without formal pleadings. Courts have also acted on letters, postcards, or media reports to protect public interest. In this case, both parties were fully aware of the issues and led detailed evidence. This Court had earlier allowed the Government to file an affidavit (order dated 21.11.2013). Thus, the Court has ample power to mould relief and do substantial justice, particularly when societal interests are at stake. Therefore, the findings of the lower

courts are perverse. Reliance is placed on the judgments: ***AIR 1963 Punjab 538; AIR 1981 Punjab 197; and 2010(5) RCR (Civil) 219.***

8.14 Moreover, apart from the School and Hind Rubber Factory, no other construction has taken place on the 120' wide road and 80' green belt as per the 1951 layout plan (Ex.PW3/A). The suit for injunction against further construction is clearly maintainable to prevent violation of Articles 14, 19, 48, and 51A(g) of the Constitution. It is notable that Hind Rubber Factory and the School raised construction after the suit was filed and even undertook to demolish the same, as recorded in orders dated 08.06.1993 and 25.08.1993.

8.15 With all the above submissions, it is prayed that the appeal be allowed, the judgments and decrees of the courts below be set aside, and the plaintiffs' suit be decreed with costs throughout.

***Contentions by Ld. Dy.AG for State of Punjab - Respondent N: 1:***

9.1 Ld. Dy. Advocate General representing the respondent N: 1 – State of Punjab has drawn attention towards the fact that this court on 21.11.2013 had passed following order:

“The first respondent-State is directed to give an affidavit through the Chief Town Planning Officer of the State of Punjab explaining the authority under which his office is constituted and the enactments which govern the establishment of industrial areas in towns and for preparation of master plans, coming into force of the Punjab Regional and Town Planning and Development Act, 1996. The affidavit shall set out specific details with reference to the town of Jalandhar, where there had been a plan sanctioned in the year 1951 for establishing industrial lay out and that is purported to have been modified on 10.5.1979 in supersession of the earlier plan. The affidavit shall state the authority under which any supersession was possible and the procedure mandated through any Act, Rule or Regulation governing town planning in the State of Punjab and particularly with reference to the town of Jalandhar.

The case is of the year 1986 and there is no assistance from the

State at any point of time during entire course of trial about the source of power or manner in which the authority has exercised by the office of the town planning.

Adjourned to 12.12.2023.

The State is put to notice that any lapse on its part will be taken very seriously.

Copy of this order be issued dasti to the State counsel under the signatures of the Special Secretary attached to the Bench”

9.2 It is pointed out that in pursuance to above order, affidavit dated 10.12.2013 was filed by Shri Harnek Singh, Officiating Chief Town Planner, Punjab, Department of Town & Country Planning, Punjab, which is as under:

“I, the above named deponent do solemnly affirm and state as under:-

- i.* That the present affidavit is being filed in compliance of the order dated 21.11.13 passed by Hon'ble Punjab & Haryana High Court.
- ii.* That the Department of Town & Country Planning was set up in Punjab on 01.03.1962 as a State Agency for planning, programming and development of the human settlements and physical planning both in the urban and rural sectors. During the third five year plan (1961-1966), the Govt. of India had instituted a Central Scheme of 100% financial assistance for preparation of master plans/development plans for important cities and towns in the country. The central assistance was made available to the states for setting up of town planning organizations for such preparation, hence the Department of Town & Country Planning, Punjab was established. The layout plan of industrial area in question was prepared earlier by the office of Chief Engineer, Development (East) Punjab, P.W.D. (B&R) and later on revised by Provincial Town Planner, Punjab Shimla in the year 1951 vide Drawing No. P.T.P.283/51. After coming into existence of Department of Town & Country Planning, Punjab in the year 1962, this drawing was taken over by office of Chief Town Planner, Punjab.
- iii.* That the industrial areas in the state of Punjab were used to be set

up on executive instructions from the State Government after selection of site by a Site Selection Committee. The industrial area in question at Jalandhar was set up by Department of industries. The Chief Town Planning office, Punjab being a Planning Agency for the State of Punjab prepared the layout plan for this industrial area on request from concerned department.

- iv. That the master plans in the state of Punjab prior to coming into force of The Punjab Regional and Town Planning & Development Act, 1995 were formulated on executive instructions of the State Government. The industrial area in question at Jalandhar was carved out for setting up of industries after selection of site by a District Level Committee.
- v. That the Layout Plan of the industrial area in question was prepared by Provincial Town Planner, Punjab, Shimla (being joint Punjab) in the year 1951 vide Drawing No. P.T.P.283/51 which was later on altered on demand raised by the Department of Industries from time to time, keeping in view the requirements for the provision of Institutions such as Police Station, Fire Station, Telephone Exchange Office and District Industrial Centre and Drawing No. DTP(J)29/79, dated 10.05.79 was prepared. The industrial area in question being a government project, the amendment of layout plan of this area was carried out in a capacity of being Planning Agency for the State of Punjab on demand raised by the Department of Industries.
- vi. That the supersession of Drawing No. P.T.P.283/51 by Drawing No. DTP(J)29/79, dated 10.05.79 was carried out on demand of concerned department. There was no specific Act, rules or regulation for supersession of such drawings. It was carried out being a Planning Agency to the State of Punjab.
- vii. That the appellants have not impleaded the answering respondent as a party in this R.S.A. before the Hon'ble courts below, therefore, no assistance could be provided in this case before this Hon'ble court."

9.3 Ld. State Counsel submits that it is clear from the abovesaid

affidavit that prior to the Department's formation, the layout plan of the industrial area in question at Jalandhar was originally prepared by the Chief Engineer, Development (East), PWD (B&R), and later revised by the Provincial Town Planner, Punjab, Shimla, in 1951 (Drawing No. P.T.P.283/51). After 1962, this drawing came under the charge of the Chief Town Planner, Punjab. The industrial areas, including the one in question, were set up on the basis of executive instructions from the State Government after site selection by a committee, and the layout plans were prepared by the Chief Town Planner's office on request from the concerned departments. It has thus been clarified that before the enactment of the Punjab Regional and Town Planning & Development Act, 1995, master plans and layout modifications in Punjab were prepared based on executive instructions rather than under a statutory framework. Specifically, the layout plan prepared in 1951 (P.T.P.283/51) was subsequently modified in 1979 (Drawing No. DTP(J)29/79) at the request of the Department of Industries, to accommodate institutional needs like a police station, fire station, telephone exchange, and District Industries Centre. Thus, the supersession of the 1951 drawing by the 1979 drawing was done purely on departmental demand as part of the planning agency's executive function, without any specific statutory provision, act, or rules governing such supersession at that time.

9.4 It is argued that in view of above, there was illegality in revising the layout plan and as such, suit itself was filed on wrong premise of government's incompetency to revise the same.

9.5 Prayer is accordingly made for dismissal of the appeal.

***Contentions by Ld. Counsel for Respondent N: 2:***

10.1 Replying to the aforesaid contentions, it is pointed out by Ld. Sr. Advocate for the defendant – respondent N: 2 that the plaintiff filed this suit seeking only the relief of permanent injunction, without claiming any declaration or mandatory injunction. The building of DSSD Girls High School was constructed in 1964-65 without any objection from the plaintiffs, either during or after construction, until the filing of the present suit on

16.07.1980. As the building already existed when the suit was filed, no injunction could be granted against defendant No. 2, a fact duly noted by the lower courts.

10.2 It is urged further that the school was allotted 1.5 acres of land via allotment letter dated 26.12.1963 (Ex. DW8/1) and an additional 1.5 acres via letter dated 03.04.1979 (Ex. DW8/2, Ex. DB). A letter dated 10.01.1974 confirmed the school's possession of the allotted land. It is submitted that in the written statement filed by defendant No.1 and also of defendant No. 2 & 3, it has been clearly stated that the layout plan has already been amended on 10.05.1979. However, the plaintiffs neither challenged the same nor made any application for amendment of the plaint seeking relief accordingly and as such, suit has been rightly dismissed by declining relief of permanent injunction.

10.3 Still further, it is pointed out that the suit, filed on 16.07.1980, is barred by limitation. The school building was constructed in 1964-65, i.e., 16 years prior. Under Article 113 of the Limitation Act, the limitation period is three years, making the suit hopelessly time-barred.

10.4 Ld. Sr. Advocate pointed out further that plaintiffs based their claim stating that they had constructed their buildings as defined in the bye laws and opened doors, windows and ventilators and other means of ingress and egress for themselves and had been using greenbelt and the road as a right of an easement for more than 20 years. If in any case, it is held that plaintiffs are not entitled to user of greenbelt and the road as vendee, then such rights have ripened into easement by prescription because the user has been open hostile and a tinge of right. In this regard, Ld. Counsel has drawn attention to Section 4, 15 & 17 of the Easement Act, 1882 to contend that for the purpose of claiming easementary rights, a plaintiff is required to prove that he was in peaceful, open and uninterrupted enjoyment of the right. However, the plaintiffs in this case have failed to even aver or prove the same. Further, when the said right is claimed against the Government, the use and enjoyment of the right should be for a period of 30 years, but

the plaintiffs have pleaded that they have been enjoying the said right for past 20 years. Thus, they have failed to plead and/or prove the necessary and mandatory requirements for the purpose of grant of easement right. It is further urged that the easementary right as claimed by the plaintiffs cannot be uninterrupted in view of the admitted fact that the building of the school stood constructed in 1963 itself. Thus, the plaintiffs are not vested with any easementary right, as claimed.

10.5 With aforesaid submissions, prayer is made for dismissal of the appeal.

***Contentions by Ld. Counsel for Respondent N: 3:***

11.1 Supporting and supplementing the contentions raised on behalf of respondents N: 1 & 2, it is vehemently urged by Ld. Counsel for respondent N: 3 that the suit filed by the plaintiffs was rightly dismissed by both the Courts below, having become infructuous and not maintainable, in absence of any prayer for declaration challenging the revised layout plan dated 10.05.1979 and the consequential allotments to various allottees, including the Police Department, District Industries Centre, Post Office, and respondents Nos.2 and 3.

11.2 It is pointed out that the case set up by the plaintiffs was solely for a permanent injunction restraining the defendants from converting the 120 feet wide road and the adjoining green belt, which the plaintiffs alleged to have been using as an easementary right. Their pleadings in the plaint clearly indicate that the cause of action was founded on the existence of the original layout plan of 1951 and the amenities provided therein. The basis of the claim was the alleged continued use of the greenbelt and the road, asserting easementary rights, and opposing any alteration or reduction thereof. It is pointed out that the written statement filed by the State of Punjab on 20.09.1980 had categorically informed the plaintiffs about the amendment of the layout plan on 10.05.1979. It was clearly pleaded that the government had the right to amend the layout and that no specific

promise regarding maintenance of a greenbelt had been made. Illegal conduct of the plaintiffs in opening doors/windows towards the greenbelt without approval was also highlighted. Upon becoming aware of the amended layout and consequential allotments through the defendants' pleadings, the plaintiffs had their first opportunity to amend the plaint by incorporating a challenge to the revised layout plan but failed to do so.

11.3 It is argued that even after the defendants led evidence by exhibiting documents Ex. D-1 and Ex. D-2 (letters and revised plan approving the allotments for public amenities), and after complete disclosure regarding the amended layout, the plaintiffs did not seek any amendment to their pleadings.

11.4 Still further, the affidavit filed by Shri Harnek Singh, Officiating Chief Town Planner, pursuant to the High Court's order dated 21.11.2013, clarified that layout plans in Punjab prior to 1995 were prepared and modified based on executive instructions without specific statutory procedures, and that the amendment of the 1951 layout plan in 1979 was carried out at the demand of the Department of Industries for providing civic facilities.

11.5 It is contended that it is thus submitted that in absence of any prayer for setting aside the revised layout plan or the consequent allotments, the relief of injunction sought by the plaintiffs could not have been granted. Once the amendment of the layout plan had already taken place prior to the filing of the suit, and the plaintiffs had failed to challenge the same, the suit became infructuous.

11.6 It is further emphasized that the legality or illegality of the revised layout cannot now be adjudicated, as no declaratory relief was either sought or pressed at the appropriate stage, and the suit for mere injunction without challenging the underlying administrative action was inherently not maintainable. It is submitted that no relief can be granted

which has not been specifically prayed for, relying upon the judgment of the Hon'ble Supreme Court in ***Desh Raj v. Rohtash Singh, 2023(3) SCC 714.***

11.7 Still further, the entire edifice of the plaintiff's case is premised on the argument that the amendment in the layout plan would affect amenities by reducing the greenbelt. However, though PW7 Ramender Singh says in cross-examination that amenities provided by the government were recorded in the conveyance deed, but the plaintiff's conveyance deed (Ex.DW5/1 dated 08.11.1955) contains no such clause promising any greenbelt or 120-foot road. The plaintiffs have failed to demonstrate any right vested in them either to prevent change in the layout plan or to claim an absolute right over the greenbelt, which remains government land. No infringement of any legal right has been established.

11.8 It is further the contention of Ld. Counsel that the plaintiff's claim of easementary rights is untenable. Under Section 15 of the Indian Easements Act, 1882, a right of easement against government land requires 30 years of usage; whereas the plaintiff alleged only 20 years' use. No injunction suit is maintainable without proof of an enforceable legal right. Reliance is placed on ***Arjun Singh v. Rattan Chand and others, 2016(2) Law Herald 1435*** and ***Anathula Sudhakar v. P Buchi Reddy and others, 2008(2) RCR (Civil) 879***, where it was held that an equitable relief of injunction is not available to one, who is out of possession and who has not sought possession.

11.9 Further, no evidence has been led by the plaintiffs to show any public health hazard or nuisance arising from the change in layout, despite passage of 54 years, thereby establishing that the amendment was in public interest and not prejudicial to citizens.

11.10 Ld. Counsel contends that the amendment in layout plan was a policy decision taken by the State Government based on evolving needs of the town's development, which is beyond the scope of judicial review. Reliance is placed on ***Prafful Shukla and Ors. v. State of Madhya Pradesh***

**and Ors., 2024(1) SLR 613.** The plaintiffs have no vested right to insist that the layout plan should never be altered. In **Ahbaab Singh Grewal and others v. State of Punjab and others, 2016(5) RCR (Civil) 153**, it was held that need-based development projects undertaken by authorities cannot be assailed based on outdated urban planning expectations.

11.11 It is urged further that the conduct of the plaintiffs disentitle them to any relief. Plaintiffs have themselves violated building norms by opening doors and windows illegally onto the greenbelt without any sanctioned site plan. The admissions made by PW5 and PW9, coupled with findings recorded by the Trial Court, show that plaintiffs lack clean hands.

11.12 The plaintiffs are further estopped from maintaining the suit. Defendant No.2 had made improvements and constructions pursuant to lawful allotments, without any contemporaneous objection by the plaintiffs. Bona fide third-party rights have crystallized over time. The suit is also liable to be dismissed due to the passage of significant time (54 years) and the creation of third-party rights, relying on the principles laid down in **Welfare Society v. State of Punjab and another, 2012(2) PLJ 500**, where it was held that belated challenges to changed layouts, resulting in third-party rights, cannot be entertained.

11.13 With aforesaid submissions, prayer is made for dismissal of the appeal.

12. This Court has considered submissions of both the sides in depth and has appraised the entire record carefully, including the respective written submissions made by Ld. Counsels for appellants, respondents N: 2 & respondent N: 3.

**Points for Determination:**

13. On hearing both the sides, this court finds that following points need determination:

- Whether the plaintiffs had any enforceable right over the greenbelt/road?
- Whether the plaintiffs could seek an injunction without challenging the revised layout plan?
- Whether the Courts below committed any error in dismissing the suit?

***Analysis and Findings:***

14. **No enforceable right established:** The foundation of any claim in civil law must lie in a legal or contractual right. A perusal of the Conveyance Deed dated 08.11.1955 (Ex. DW5/1) executed by the Director of Industries, Punjab, reveals no covenant granting or assuring the plaintiff any right over the greenbelt or the 120-foot-wide road. Further, in cross-examination (PW7), it was admitted that amenities were to be understood from the sale deed alone, and no specific assurance regarding the greenbelt was made therein. Thus, the plaintiffs utterly failed to demonstrate any enforceable right, either express or implied.

15.1 **Suit not maintainable without seeking declaration:** It is a settled proposition that no relief can be granted beyond the pleadings and prayer clause. In *Raj Bahadur and others V/s Haryana Urban Development Authority 2016 (3) PLR 218*, plaintiff filed suit for injunction challenging construction being carried out by defendant without declaration challenging the layout plan. This Hon'ble Court held as under:-

“4. I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit in the appeal, for, in case, the appellants-plaintiffs were aggrieved of the action of HUDA, in seeking the amendment of the sectoral plan, nothing prevented them to seek declaration by paying the Court fees. Once, declaration has not been sought, the suit simpliciter for permanent injunction was not maintainable. At the best, in case, the appellants-plaintiffs had some grievance, viz-a-viz, loss of business which is yet to be determined as SCOs allotted to the private respondents had not been erected, damages can be claimed by

leading the direct and cogent reasons, but not in the manner and mode as has been adopted."

15.2 Hon'ble Apex Court in the case of ***Urban Improvement Trust, Bikaner versus Gordhan Das through LRs and Others 2024(3) SCC 250*** while relying on ***Anathula Sudhakar v. P. Buchi Reddy (2008) 4 SCC 594*** has categorically held that plaintiff will be required to amend the suit to include the prayer for declaration, where on perusal of the reply of the defendant, such amendment is necessitated. Relevant extract of the judgment reads as under:

"Where the plaintiff, believing that the defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raise a serious dispute or cloud over the plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title."

Similar view has been taken by this Court in ***Dev Ram versus Swarna Ram 2023 (3) RCR (Civil) 804*** and in ***Desh Raj and others vs. Rohtash Singh (2023) 3 SCC 714***.

15.3 It is thus clear that court cannot grant a relief, which has not been prayed for. In present case, the plaintiffs became aware of the revised layout plan and consequent allotments on 20.09.1980, when the State filed its written statement. However, the plaint was never amended to seek a declaratory relief challenging the validity of the revised plan or the consequent allotments. In the absence of such a prayer, the suit for injunction simpliciter was not maintainable, as what was sought to be restrained — change in the layout — had already occurred.

16. **Easementary claim unsustainable:** Whole basis of plaintiffs' claim is based on easementary rights for more than 20 years in green belt & the road and to open doors/windows etc. towards them. However, under Section 15 of the Indian Easements Act, 1882, a right of easement over Government land can arise only after 30 years of uninterrupted use. The plaintiff's claim based on 20 years of use falls short of this statutory requirement, rendering the easementary plea meritless.

17. **Policy decision beyond judicial review:** Amendment of layout plans in larger public interest, to accommodate essential services like Police Stations, District Industries Centres, and Post Offices, constitutes a policy decision. As held in *Prafful Shukla and others vs. State of Madhya Pradesh and others, 2024(1) SLR 613*, courts should refrain from interfering unless such policy is manifestly arbitrary, which is not the case here.

18. **Conduct of plaintiff disentitles equitable relief:** It is an axiomatic principle that equitable relief is not available to parties, who approach the Court with unclean hands. The plaintiffs, by unauthorizedly opening doors, windows & other openings towards the greenbelt without any approved site plan and using the greenbelt for private purposes, have acted in contravention of building norms. Judgments in *Arjun Singh vs. Rattan Chand and others, 2016 (2) Law Herald 1435* and *Anathula Sudhakar vs. P. Buchi Reddy and others, (2008) 2 RCR (Civil) 879*, reiterate that such parties are not entitled to the discretionary remedy of injunction.

19.1 **Passage of time and creation of third-party rights:** The revised layout plan dates back to 1979, i.e., nearly 54 years ago. Government departments and third parties have acted on the revised plan, acquired allotments, made constructions, and altered their positions. As held in *Welfare Society vs. State of Punjab and others, 2012(2) PLJ 500*, belated challenges are impermissible, particularly when third-party rights have accrued.

19.2 Judgment cited by plaintiff in the case of *Lal Bahadur Versus*

**State Of Uttar Pradesh and others, 2018(15) SCC 407** is distinguishable on facts and not applicable, as that was a case of residential area. It was further the case of the plaintiff that health hazard will occur in case the layout plan is permitted to be amended. In the present case, it is industrial area and not residential area. Secondly, plaintiffs have not been able to show single prejudice nor led any evidence to prove that with the change of layout any health hazard can take place. Thirdly, layout plan was changed on 10.05.1979 and there is no such health hazard till 2024 in the last 54 years. Fourthly, passage of the time without any adverse impact on account of change of layout itself proves that it was not detrimental nor caused any health hazard.

**Conclusion:**

20. Upon a holistic appraisal of the pleadings, evidence, findings of the Courts below, and submissions made, this Court finds no merit in the appeal. The concurrent findings are well-reasoned, based on correct appreciation of evidence and settled legal principles, and warrant no interference. Consequently,

- The appeal is dismissed with costs.
- Pending applications, if any, also stand disposed of.

**29.04.2025**

*Vivek*

**(DEEPAK GUPTA)**

**JUDGE**

Whether speaking/reasoned? Yes

Whether reportable? Yes