2025:PHHC:109796

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-1698-2025
Decided on : 20.08.2025

Rajinder Talwar and others ..... Petitioners

Versus

Municipal Council, Rajpura and others ..... Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

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Present: Mr. Abhinav Gupta, Advocate and
Mr. Jatinder Kumar Kansal, Advocate
for the petitioners.

Ms. Promila Nain, Advocate
for respondents No.1 to 3.

Mr. Mukul Aggarwal, Advocate
for respondent No.4.

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VIKRAM AGGARWAL, J (ORAL)

The instant revision petition, preferred under Article 227 of the Constitution of India, assails the order dated 11.03.2024, passed by the Court of Additional Civil Judge (Senior Division), Rajpura vide which an application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (for short 'CPC'), filed by the petitioners-plaintiffs for amendment of plaint was dismissed.

2(i). The petitioners-plaintiffs instituted a suit (Annexure P-1) in representative capacity for permanent injunction restraining the defendants from selling or changing the nature of the green belt (Marked as ABCD in the site plan). Mandatory injunction directing the defendants not to convert the green belt into any residential or commercial plots was also sought.

2(ii). The case set up was that the portion marked as ABCD was a park/green belt and that the defendants, in connivance with each other, were trying to sell the said property in the shape of residential/commercial plots and a resolution to this effect had been passed by the Municipal Committee, Rajpura. It was averred that this act would cause hindrance in the use of the green belt and would also cause loss to the atmosphere of Rajpura Town.

3. The suit was opposed by the defendants. In the written statement, filed by defendants No.1 to 3 (Municipal Council, Rajpura), the basic stand taken was that the area projected as green belt was not in fact a green belt and earlier also plots had been sold in the said area in 1980. No objection had been received at that point of time. Out of the said area, some area had been left out which was being put to auction by defendant No.4 (Pepsu Township Development Board, Rajpura). A separate written statement was filed by defendant No.4 on the same lines.

4. During the pendency of the suit, an application under Order 6 Rule 17 CPC (Annexure P-4) was moved by the petitioners-plaintiffs stating that in the statement of Ms. Ramandeep Kaur, Assistant Town Planner, District Town Planning Officer, Patiala, who had appeared as a witness, site plan Ex.D-5 had been produced in which it had illegally been shown that the disputed area was not a green belt. Accordingly, relief of declaration was also sought to be added alongwith certain additions in the body of the plaint.

5(i). The application was opposed by way of replies filed by defendants No.1 to 3 and 4 (Annexures P-5 and P-6). It was averred that Ex.D-5 was the

master plan of Rajpura which had been prepared and sanctioned by the Government and was within the knowledge of the plaintiffs. However, no challenge had been laid to the said master plan. It was averred that the trial had completed as evidence of both sides had concluded and arguments had also been advanced.

5(ii). It was averred that under the circumstances, the application was barred by limitation and had been filed just to fill up the lacunae in the suit. It was further averred that allowing the application would result into a *de novo* trial.

6. By way of the impugned order, the application for amendment was dismissed, leading to the filing of the instant revision petition.

7. I have heard learned counsel for the parties.

8(i). Sh. Abhinav Gupta, learned counsel representing the petitioners has strenuously urged that the impugned order is not sustainable. It has been submitted that in the testimony of Ramandeep Kaur (DW-3), Assistant Town Planner, it came for the first time that as per the master plan, the site in dispute was not a green belt. Learned counsel has submitted that no reference to the master plan was made in the written statements and it was only in the statement of Ramandeep Kaur that reference to the same was made. Learned counsel submits that in view of the same, no relief as regards declaration was claimed in the plaint originally and only when the aforesaid fact came to the knowledge of the petitioners, the application for amendment was instituted.

8(ii). Learned counsel further submits that the nature of the suit would not change and that in fact the amendment is essential for the just decision of the case.

9. Per contra, learned counsel for the respondents have submitted that there is no illegality in the impugned order. It has been contended that in the written statements, it had duly been stated that the site in question was not a green belt. It has further been submitted that the master plan was published in 2011 and since that time, the disputed site was not a green belt. It has been submitted that the master plan is a public document and no challenge was laid to it at the time of filing of the suit. Learned counsel have further submitted that the application for amendment has been moved at the fag end of the trial when the case was fixed for arguments, showing the intention of the petitioners. It has further been contended that the Department of Town & Country Planning which had prepared the master plan was not impleaded as a party and in the absence of the same, no declaration could be sought. It has been contended that even otherwise, the declaration sought to be claimed by way of amendment would be time barred as the master plan was published in 2011.

10. I have considered the submissions made by learned counsel for the parties.

11(i). First of all, the impugned order was passed on 11.03.2024. The instant revision petition has been filed in February, 2025 i.e. almost one year after the passing of the impugned order. No explanation worth its name has been given, despite queries, about the reasons for the delay. Though, there would be no specific limitation to prefer a petition under Article 227 of the Constitution of India, it would be expected to be filed within a reasonable time. One year cannot, by any stretch of imagination, be stated to be a reasonable period.

11(ii). Be that as it may, even on merits, the instant revision petition is found to be devoid of merit. The suit was filed in the year 2020. The heading of the plaint itself mentions that the map of Rajpura was being attached. In the written statement, a clear cut stand was taken that earlier in 1980 also, certain plots had been sold and only the land which was left was now being sought to be auctioned. At that time, no objection had been raised by the petitioners. It was also specifically stated that the disputed site was not a green belt. Reference was also made to certain previous writ petitions filed by the previous allottees.

11(iii). No doubt, in the evidence of DW-3, Ramandeep Kaur, (Assistant Town Planner, District Town Planning Officer, Patiala), the master plan was produced as Ex.DWD-4. The drawing number of the master plan was STP (P) / 29/1/2011 dated 21.10.2011 revised on 20.09.2017-22.06.2018-(03.05.2021). However, the statement shows that the master plan was published on 29.01.2011. In the written statement, it had been stated that the disputed site was not a green belt. In furtherance of the said averments, the master plan was produced. It is a matter of common knowledge that areas like green belts, residential, commercial etc. are designated in the master plan itself. It is, therefore, fallacious for the petitioners to contend that they came to know about the master plan only through the statement of DW3.

11(iv). Concededly, the trial was at its fag end when the application for amendment of plaint was moved seeking to incorporate the following:-

> ***"That the applicants/plaintiffs want to add the relief of declaration after the words "Copy of Map of Rajpura is attached herewith" and before the words "AND Suit for mandatory injunction" as***

following:-

> ***"Suit for declaration to the effect that the proposed land use plan of 2010-2031 issued by the District Town Planning Officer, Patiala is illegal, null and void and is against the original master plan of Rajpura and without any explanation with regard to allegedly converting the green belt area into the non-green belt area"***

5) That the applicants/plaintiffs also want to add a para No.2-A after the para No.2 of the plaint as under:-

> ***"The proposed land use plan of 2010-2031 issued by the District Town Planning Officer, Patiala is illegal, null and void and is against the original master plan of Rajpura and without any explanation with regard to allegedly converting the green belt area into the non-green belt area since no reasoning at all has been given in the above said plan that as and when the land was converted from green belt area to non-green belt area."***

6) That the applicants/plaintffs also want to add the relief of declaration in the prayer clause as under:-

> ***"A decree for declaration to the effect that the proposed land use plan of 2010-2031 issued by the District Town Planning Officer, Patiala is illegal, null and void and is against the original master plan of Rajpura and without any explanation with regard to allegedly converting the green belt area into the non-green belt area."***

11(v). As regards amendment of pleadings, in ***Revajeetu Builders & Developers versus Narayanaswamy & Sons & Others 2009 (10) SCC 84***, the

Supreme Court of India examined the entire law starting from the decision of the privy council in ***Ma Shwe Mya v. Maung Mo Hnaung, AIR 1922 Privy Council 249*** wherein it was observed as under:-

> ***"All rules of court are nothing but provisions intended to secure the proper administration of justice, and it is therefore essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subject-matter of the suit."***

11(vi). A perusal of the aforesaid observations of the privy council as far back as in 1922 would show that it is the same law which is holding the field even today. It is not in doubt that powers of amendment should be exercised liberally but by means of the amendment, the nature and subject matter should not change. The Supreme Court then examined various judgments rendered by the English Courts, the Supreme Court, the Bombay High Court etc. and certain principles were culled out which ought to be taken into consideration while allowing or rejecting an application for amendment;

> ***"On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.***
>
> ***(1) Whether the amendment sought is imperative for proper and effective adjudication of the case ?***
> ***(2) Whether the application for amendment is bona fide or***

mala fide ?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? And

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

11(vii). The said view of the Supreme Court of India has recently been reiterated in the case of ***Basavaraj versus Indira And Others 2024 (4) RCR (Civil) 115*** also. Reference can also be made to the judgment of the Supreme Court of India in ***Life Insurance Corporation of India versus Sanjeev Builders Private Limited & Anr. 2022 AIR (Supreme Court) 4256*** wherein also, the law as regards amendment of pleadings was summed up;

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of

Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is

required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897)

11(viii). Reverting to the facts, as noticed earlier, the trial has concluded. Evidence has been led by both sides and the matter is fixed for final arguments. The amendments sought to be incorporated will definitely change the nature of the suit. Even otherwise, a *de novo* trial would have to be started.

11(ix). Here, the proviso to Order 6 Rule 17 CPC would come into force and the application for amendment would not be worthy of being allowed.

Keeping in view the aforementioned facts and circumstances as also the law on the subject as discussed, the instant revision petition is found to be devoid of merit and is accordingly dismissed.

Pending application(s), if any, shall stand disposed of accordingly.

20.08.2025 **(VIKRAM AGGARWAL)**
mamta **JUDGE**

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No