



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-4436-2011

**Reserved on 17.11.2025
Date of decision: 27.11.2025
Uploaded on : 27.11.2025**

Trevedi Lal and others

...Appellants

Versus

Municipal Council, Hoshiarpur
Through its Executive Officer

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued by: Mr. Munish Gupta, Advocate for the appellants.

Mr. Baltej Singh Sidhu, Sr. Advocate with
Mr. Gurmeet Singh Budhiraja, Advocate and
Mr. Sangeet Pal Singh, Advocate
for the respondent.

DEEPAK GUPTA, J.

This Regular Second Appeal has been preferred by the plaintiff – Onkar Singh (now represented through his legal representatives) against the concurrent findings of the Courts below.

2. Suit for permanent injunction filed by the plaintiff, seeking to restrain the defendant–Municipal Council [*now Municipal Corporation*], Hoshiarpur from setting up any Rehri market or making any fixtures or constructions over land measuring 12 kanals 17 marlas comprised in Khewat No.132, Khatouni No.147, bearing Khasra Nos. 46-R/2 (7-15), 3/1 (2-6), 8 (1-3), 9/1 (1-13), as per Jamabandi for the year 1996-97, situated in revenue estate of village Naloian, H.B. No.225, Tehsil and District Hoshiarpur, was



dismissed by the trial Court on 08.12.2008, and the first appeal preferred by the plaintiff also met the same fate on 09.06.2011.

3. For the sake of convenience, parties shall be referred to by their status before the trial Court.

4.1 ***Plaintiff's case*** : The case set up by the plaintiff was that he is exclusive owner in possession of the land in dispute, situated near the bridge over Bhangi Choe, within the municipal limits of Hoshiarpur city. According to him, the land was lying vacant and in his possession. While passing over the bridge of Bhangi Choe, the plaintiff noticed that Shri Vijay Kumar Sharma, Tehsildar, along with municipal officers and staff, was standing near the suit property. On making inquiry, the Executive Officer of the Municipal Council informed him that the property was being surveyed for constructing a Rehri market and parking place for trucks and other commercial vehicles.

4.2 The plaintiff asserted that the property belonged to him and could not be used for any municipal purpose unless it was acquired in accordance with law. He further pleaded that despite his objections and requests, the Executive Officer claimed power to appropriate the property for such purposes and did not accede to his demand. It was alleged that repeated requests to the defendant to admit his claim were refused, thereby necessitating the filing of the suit seeking permanent injunction against encroachment and municipal interference.

5.1 ***Defendant's stand*** : Upon notice, the defendant appeared and in its written statement raised various customary preliminary objections, regarding maintainability, lack of jurisdiction of civil court etc. On merits, it was the specific stand of the defendant that the area in dispute, as per site plan prepared by the Municipal Council, formed part of Town Planning Scheme No.7, duly sanctioned by the State Government under relevant no-



tifications in the years 1967 and 1976. It was pleaded that the scheme had attained finality and that 95% of the work under the scheme had already been executed. As per the ownership statement in the scheme, the site in dispute vested in the Municipal Council, Hoshiarpur and the khasra numbers relied upon by the plaintiff did not correspond to the site in dispute.

5.2 Defendant further pleaded that the site of Choe extended for about 5 kms from Bahadurpur to Khanpur and that the khasra numbers claimed by the plaintiff fell elsewhere and were not even near the site in dispute. It was alleged that the plaintiff had instituted the suit with mala fide intention to grab municipal property. It was also stated that donkey owners who used to take sand from the Choe had raised temporary structures at some parts of the site, which were removed by the Municipal Council during an "Operation Clean". Some portion of the site had allegedly been previously used as a chowk, where the Municipal Council used to charge *Tehbazari* from Rehri owners selling vegetables and fruits.

5.3 It was further pleaded that the PWD was the owner of the road from Parbhat Chowk to Goushala Bazar, that bridges over the Choe and the bypass road had been constructed and maintained by PWD, and that the link road from Dhobi Ghat to New Bhangi Bridge was handed over to the Municipal Council by PWD. According to the defendant, when the plaintiff learnt that encroachments had been removed and a Rehri market was flourishing at the site, he filed the present suit with ulterior motives. The suit was, thus, sought to be dismissed.

6. The plaintiff filed replication, controverting the averments in the written statement and reiterating the case as set out in the plaint.

7.1 *Findings of the trial Court* : On the basis of the pleadings, issues were framed and evidence was led by both sides. The trial Court, while noticing the jamabandi entries showing the plaintiff as owner of the khasra



numbers detailed in the head-note of the plaint, proceeded to examine whether (i) the identity of the suit property, as claimed by the plaintiff, stood established, and (ii) whether the defendant had encroached upon any portion of such property.

7.2 The plaintiff relied upon the report of the Local Commissioner (Ex.P-8), as per which, one Balbir Singh was in illegal possession of some small portion, one Pawan Kumar was in illegal possession of another portion, besides existence of Rehri and one sugarcane machine in an area measuring about 1 kanal 12 marlas, whereas the remaining property was lying vacant. The trial Court, however, noticed that the name of the Municipal Council did not figure in the report as having encroached upon any part of the property.

7.3. The trial Court also referred to the testimony of DW1 Birbal Dass, an official of the Municipal Council, who stated that donkey owners had raised temporary constructions which were removed during “Operation Clean” and that the Municipal Committee had not got any Rehri parked over the plaintiff’s land. Though the witness admitted that *Tehbazari* record was available with the Municipal Council, the plaintiff did not summon nor produce any such record to show that the Rehri standing on site were paying *Tehbazari* to the defendant.

7.4. Holding that (a) the plaintiff had failed to prove that the alleged Rehri market had any nexus with the Municipal Council, and (b) the report of the Local Commissioner did not prove encroachment by the defendant, the trial Court dismissed the suit on 08.12.2008.

8.1 *Findings of the First Appellate Court* : The First Appellate Court re-appraised the evidence and broadly affirmed the findings of the trial Court. It observed that the plaintiff had failed to establish the identity of the “property in dispute” as being the same land, which he owned as per



the revenue record. PW3 Onkar Singh himself admitted that he was owner of 12 kanals 17 marlas of land “near” the disputed property and did not specifically state the exact site, where the Rehri market was alleged to exist.

8.2 The Appellate Court further noticed that in the jamabandi entries, the land comprising Khasra Nos. 46-R/2, 3/1, 8 and 9/1 was described as “gair mumkin Choe” and in the cultivation column, the entry was “Makbooza malkaan”, indicating non-cultivable land adjoining the Choe. The Appellate Court took the view that in the absence of proper, rule-compliant demarcation, it was not possible to correlate these khasra numbers with the physical site, where the Rehri market was alleged to have been established.

8.3 The First Appellate Court also discarded the Local Commissioner’s report, inter alia, on the ground that the demarcation was not carried out in accordance with relevant High Court Rules and Orders; pucca points were not affixed; and the officials of the Municipal Council were not associated at the time of demarcation. Reliance was placed on judicial precedents of this Court holding that such a report, not based on proper demarcation and not associating the affected party, cannot be safely relied upon.

8.4 On this reasoning, the First Appellate Court concluded that: (i) the plaintiff had failed to prove that the property in dispute formed part of his khasra numbers; (ii) it had not been established that the property did not form part of Town Planning Scheme No.7; and (iii) no encroachment by the Municipal Council was proved. The appeal was accordingly dismissed on 09.06.2011.



Proceedings in second appeal and order for fresh demarcation :

9. Assailing the concurrent findings, learned counsel for the appellant contended before this Court that the Courts below had mis-appreciated the evidence, particularly the Local Commissioner's report and the revenue record, and had erroneously held that the identity of the property and encroachment by the Municipal Council were not established.

10. On the other hand, learned counsel for the respondent supported the judgments of the Courts below and submitted that no interference in second appeal was called for.

11. Considering that the dispute essentially revolved around whether encroachment existed over Khasra Nos. 46-R/2 (7-15), 3/1 (2-6), 8 (1-3), 9/1 (1-13), measuring 12 kanals 17 marlas, as per jamabandi for the year 1996-97, and noticing the controversy between the parties regarding the actual location and identity of the site, this Court, vide order dated 08.12.2016, deemed it appropriate, in the interest of justice, to direct a fresh, rule-compliant demarcation. The Deputy Commissioner, Hoshiarpur was directed to appoint the Tehsildar to demarcate the properties aforementioned, in accordance with law, in the presence of both parties, with the assistance of the revenue record concerning Khasra Nos. mentioned by the plaintiff as well as Khasra No.46/10, on which the respondent had placed reliance.

12. This direction, in essence, amounted to seeking additional evidence in exercise of powers akin to those under Order XLI Rule 27 read with Section 107 CPC, to clarify the factual dispute regarding identity and location of the suit land, an exercise permissible in second appeal where such evidence is necessary to pronounce judgment and both parties are afforded full opportunity.



13. Pursuant to the above order, the Tehsildar, Hoshiarpur conducted demarcation and submitted his report annexed with affidavit dated 09.02.2017, along with site plan and notes. After setting out the methodology and background, the operative conclusions recorded by the Tehsildar are that:

- In Khasra No.46//3/1, over an area of about 1 kanal 10 marlas, a Sabzi Mandi/Rehri Market stands constructed;
- In other portions of Khasra Nos. 46//2, 8 and 9/1, there exist a mandir, roads, scrap material and some shops, with specific measurements and areas described in karams and marlas;
- In Khasra Nos. 46//10/2 and 46//10/3, a Gaushala is being constructed by the Municipal Corporation, Hoshiarpur.

14. The municipal body filed objections to the demarcation report, which were taken on record and examined by this Court. Having perused the report, the site plan and the objections, this Court found no infirmity which would warrant discarding the demarcation, particularly as it was carried out by a senior revenue official (Tehsildar) in the presence of the parties, on the basis of revenue record and in compliance with the earlier directions of this Court.

15. Thereafter, this Court, vide order dated 17.12.2019, specifically noticed that as per the demarcation report and the site plan prepared by the Tehsildar, encroachment of 1 kanal 10 marlas of Sabzi Rehri Market had been found in Khasra No.46//3/1 and that encroachments and roads were also reflected in respect of Khasra Nos. 46//2, 8 and 9/1. Time was granted to counsel for the respondent to obtain instructions with regard to the roads shown in the site plan and notes.



16. In compliance, an affidavit dated 27.03.2025 was filed by Sandeep Kumar, Joint Commissioner, Municipal Corporation, Hoshiarpur. In this affidavit, it has been categorically stated that the Municipal Corporation has no concern with:

- the Rehri market as shown at Serial No.1 in the notes of the site plan;
- the mandir as shown at Serial No.4 in the notes of the site plan; and
- the roads as shown at Serial Nos.5, 6 and 8 in the notes of the site plan,

as mentioned in the Tehsildar's report dated 08.02.2017, and that the said roads are constructed and maintained by the PWD Department.

17. The stand so taken in the affidavit is clearly at variance with the earlier pleadings of the defendant, wherein it had been asserted that the site in dispute vested in the Municipal Council, formed part of Town Planning Scheme No.7, that part of the site had been used as a chowk, where the Municipal Council charged Tehbazari from Rehri owners selling vegetables and fruits, and that during "Operation Clean" it was the Municipal Council, which had removed temporary structures raised by donkey owners at the site.

18. Based upon all the aforesaid facts and circumstances, it is argued by learned counsel for the appellant-plaintiff that plaintiff-appellant reserves his right to take appropriate legal actions against the encroachers of his property as shown at Sr. No. 2 to 8 of the demarcation report and the annexed site plan. However, as far as the Rehri market shown at Sr. No. 1 is concerned, it is the municipal corporation-defendant, which has to take the responsibility to remove that encroachment and that necessary direction is required to be given by this Court.

19. On the other hand, it is contended by learned counsel for the



respondent-defendant that respondent has no concern with any such Rehri market and therefore, it is for the plaintiff to take appropriate action against the people, who have encroached any portion of the property and who park their Rehri etc. at the land. Learned counsel submits that defendant Corporation cannot take any such responsibility to remove the Rehri market.

20. This Court has considered submissions of both the sides and have appraised the record carefully.

Substantial questions of law :

21. In the above factual backdrop and in the light of the fresh court-directed demarcation report, the following substantial questions of law arise for consideration in this second appeal:

- Whether, in view of the demarcation conducted by the Tehsildar in compliance with the order of this Court, the concurrent findings of the Courts below regarding non-establishment of the identity of the suit property and absence of encroachment by the defendant can be sustained?
- Whether, in the face of the defendant's own pleadings admitting its past use of the site as a chowk and charging *Tehbazari* from Rehri owners, the defendant–Municipal Corporation can now legally shirk its responsibility to remove the encroachment in the form of a Rehri market found to be existing on the plaintiff's land?

22. Both these questions go to the root of the dispute and arise squarely from the record as now clarified by the Court-directed demarcation. They, therefore, fall within the ambit of Section 100 CPC and warrant



interference with the concurrent findings, which stood rendered on a materially incomplete and uncertain factual foundation.

Discussion and legal reasoning :

23. The Courts below declined relief essentially on the ground that the plaintiff had failed to establish that the site, where the Rehri market stood was the same as the land owned by him as per the jamabandi entries. It is true that jamabandi entries, by themselves, may not conclusively establish the precise identity and location of land on the spot, especially when the land is described as “gair mumkin Choe” and there is surrounding urban development. Hence, proper demarcation, based on revenue map and measurements, becomes crucial.

24. It is precisely to cure this deficiency that this Court directed demarcation through the Tehsildar in the presence of both parties. The demarcation report now clearly and categorically maps the physical site to Khasra Nos. 46//2, 46//3/1, 46//8 and 46//9/1 and specifies that in Khasra No.46//3/1, an area of about 1 kanal 10 marlas is occupied by the Sabzi Rehri Market. This directly connects the site of encroachment with the khasra numbers mentioned in the head-note of the plaint and in the jamabandi in the plaintiff’s favour.

25. Once such demarcation, carried out by a competent revenue authority in the presence of the parties, is accepted by the Court after considering and rejecting the objections of the defendant, the earlier view that the identity of the property was not established, cannot be sustained. The foundation of the concurrent findings thus stands displaced. The plaintiff’s title to these khasra numbers was never seriously disputed; rather, even the trial Court proceeded on the footing that he was owner of the land as per jamabandi. The only doubt was with respect to the physical correlation



between his khasra numbers and the actual site of the Rehri market, a doubt which now stands resolved in his favour.

26. In such circumstances, to deny relief despite a clear demarcation would amount to permitting encroachers to continue on private property merely because, at an earlier stage of litigation, the identity was not satisfactorily established. This Court, vested with the power to correct substantial errors of law arising from misappreciation of material evidence, cannot countenance such a result.

27. The second limb of the reasoning of the Courts below was that no encroachment by the Municipal Council was proved, as (a) the Local Commissioner's report did not expressly name the Municipal Council as an encroacher, and (b) no Tehbazari record was produced to show that the Rehri were stationed there under the authority of the Municipal Council.

28. Two aspects are now material:

- First, the demarcation report of the Tehsildar has confirmed that there is a Sabzi Rehri Market occupying 1 kanal 10 marlas in Khasra No.46//3/1, which forms part of the plaintiff's land.
- Second, in the written statement, the defendant itself pleaded that some part of the site was earlier used as a chowk and that the Municipal Council used to charge Tehbazari from the Rehri owners, who stood there for selling vegetables, fruits etc., and that during "Operation Clean" it was the Municipal Council, which removed temporary structures of donkey owners.

29. An admission in pleadings is the best form of evidence and requires no further proof. The defendant cannot, at a later stage, resile from or dilute its clear admission that it was exercising control over the site by levying Tehbazari and by regulating the presence of Rehri and other tem-



porary structures. The subsequent plea, through an affidavit, that the Municipal Corporation has “no concern” with the Rehri market, cannot efface the earlier stand nor can it be permitted to be used as a device to shirk responsibility.

30. Even otherwise, as a matter of public law, a municipal body is under a statutory duty to regulate and, where necessary, remove unauthorized encroachments upon public streets, public places or private land, where encroachments disturb public order or impede lawful use. Where the encroachment has grown with its tacit permission and under its regulatory regime, such as Tehbazari, the municipal body cannot wash its hands off the situation and compel a private land-owner to individually litigate against each small encroacher, particularly when their presence has been facilitated by municipal actions or omissions.

31. In the present case, the plaintiff’s grievance in the suit was not that each Rehri owner be personally evicted by passing a decree against him, but that the Municipal Council be restrained from planting, permitting or regularizing a Rehri market on his land. In substance, the relief claimed is one of prohibitory and mandatory injunction against the municipal body, to prevent it from using or permitting use of the plaintiff’s land for a Rehri market. Once the land is found, on demarcation, to belong to the plaintiff and there exists a Rehri market which, by defendant’s own pleadings, had been allowed and regulated by it, a decree of mandatory injunction directing the municipal body to remove such encroachment, is fully justified.

32. The argument of the Municipal Corporation that it has “no concern” with the existing Rehri market cannot be accepted. A party cannot be permitted to approbate and reprobate in the same breath – first asserting control and regulatory power over the site to justify its conduct, and later



disowning all concern, when called upon to discharge the corresponding responsibility to remove encroachment. Such a stand is legally untenable.

33. At the same time, it is equally true that this Court cannot, in these proceedings, adjudicate upon the rights and obligations of individual Rehri owners, or other encroachers, who are not parties to the suit, nor can it decide disputes between the plaintiff and persons whose names are reflected at Serial Nos.2 to 8 of the demarcation report. The plaintiff's rights vis-à-vis them must be worked out in appropriate proceedings. However, in so far as the respondent municipal body, as a statutory authority, is concerned, it can certainly be directed to remove encroachment and to ensure that the plaintiff's land, as identified at Serial No.1 in the demarcation report, is restored to him.

34. This approach is also consistent with the principle that the Court, particularly in second appeal, is not powerless to mould relief to do complete justice between the parties, once the material facts stand clarified and the substantial questions of law are answered in favour of the appellant.

Conclusion & Directions :

35. In view of the discussion above, both the substantial questions of law stand answered in favour of the appellant and against the respondent—Municipal Corporation. The concurrent findings of the Courts below, to the extent they rest on non-identification of the suit property and absence of encroachment by the Municipal Council, cannot be sustained in the light of the Court-directed demarcation and the defendant's own pleadings.

36. Accordingly, the present Regular Second Appeal is partly allowed in the following terms:

(a) The judgments and decrees of the trial Court dated 08.12.2008 and of the First Appellate Court dated 09.06.2011 are set aside to the ex-



tent they dismiss the suit in relation to that part of the suit land, which is shown at Serial No.1 in the demarcation report of the Tehsildar, Hoshiarpur (Sabzi Rehri Market) over 1 kanal 10 marlas in Khasra No.46//3/1.

(b) A decree of mandatory injunction is hereby passed, directing the defendant–Municipal Council/Corporation, Hoshiarpur to remove the entire encroachment in the form of the Rehri market from the land shown at Serial No.1 in the demarcation report and to hand over vacant and peaceful possession of the said portion to the plaintiff/appellants.

(c) It shall be the duty and responsibility of the defendant–Municipal Council/Corporation to take all necessary steps, including seeking assistance from the local police and district administration, to ensure removal of the Rehri market and other unauthorized constructions/fixtures from the said land within a reasonable period, preferably within a period of six months.

(d) The Municipal Council/Corporation shall be at liberty, in coordination with the Government or concerned authorities, to explore the possibility of providing an alternative site to the affected Rehri owners, so that they are not left remediless. However, the mere absence or non-availability of an alternative site shall not be a ground to delay or deny removal of encroachment from the plaintiff's land.

(e) In respect of the remaining portions of the land/suit property and encroachments reflected at Serial Nos.2 to 8 in the demarcation report, it is clarified that no adjudication is being made in the present proceedings, and the plaintiff/appellants shall be at liberty to take such appropriate legal remedies, as may be available to them in law against the concerned encroachers/occupants.



37. Subject to the above directions and clarifications, the appeal stands partly allowed. Decree-sheet be prepared accordingly. Demarcation Report of Tehsildar, Hoshiarpur alongwith annexed site plan prepared by him, shall form part & parcel of the decree-sheet. There shall be no order as to costs.

27.11.2025

Yogesh

**(DEEPAK GUPTA)
JUDGE**

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No