



2024:UHC:9696

HIGH COURT OF UTTARAKHAND AT NAINITAL

Second Appeal No. 186 of 2023

19 December, 2024

Nakkal (Deceased)

--Petitioner

Versus

BHEL Ranipur Haridwar and others

--Respondents

Presence:-

Mr. B.D. Pande, proxy counsel for Mr. Deep Chandra Joshi,
Advocate for the appellant.

Mr. V.K. Kohli, learned Senior Advocate assisted by Mr. I.P. Kohli,
Advocate for respondent no.1.

Hon'ble Vivek Bharti Sharma, J.(Oral)

This second appeal is against the impugned order dated 13.08.2018 and decree dated 27.08.2018 passed by learned Civil Judge (J.D.) Haridwar as well as impugned judgment and decree dated 16.11.2023 passed by 3rd Additional District Judge, Haridwar, District Haridwar in Civil Appeal No.11 of 2023 '*Nakkal (Deceased) and others' Vs. BHEL and another*', whereby the first appellate court affirmed the judgment dated 13.08.2018 passed by Civil Judge (J.D.) in Original Suit No.187 of 2005 '*Nakkal (Deceased) and others' Vs. BHEL and another*'.

2. Brief facts of the case are that the predecessors of the present appellant - Nakkal (*deceased*) had filed Original Suit No.187 of 2005 against respondent



no.1/BHEL on the grounds that Khasra No.357 area 2-16-0 bigha was owned by the paternal uncle of the original plaintiff (*father of the appellant*), and he died unmarried and intestate, therefore, this property devolved upon the original plaintiff.

3. Similarly, the land comprising Khasra No.356 area 2-7-0 bigha was owned by the ancestors of the appellant and by operation of law devolved upon the original plaintiff; that, on 25.07.2005 when the appellant/plaintiff was tilling this land one Mulki Raj, husband of the village pradhan, stopped the original plaintiff from tilling the land comprised in this Khasra; that, the original plaintiff made complaint to the District Magistrate, hence, the suit for the permanent injunction against respondent no.1 and 2/defendants.

4. It would be pertinent to mention that at later stage, by way of amendment, respondent no.2 was added as defendant in the plaint, however, no specific allegation was made against either of the respondents/defendants. It is also pertinent to note that the land in respect of which, the appellant/plaintiff alleges that some persons were interfering in the peaceful possession of this land, is described by only khasra numbers and nowhere in paragraph no.2 and 3 it is mentioned that in which locality /village the alleged Khasra No.256 and 257 were



situated. Though in the bottom of the plaint some property is described under the head 'विवरण सम्पत्ति' (*property description*). However, nowhere it is described whether it is the same property which is at paragraph no.2 and 3 of the plaint.

5. On perusal of the records one more fact, which is apparent on the face of the record, is that nowhere in the plaint appellant/plaintiff has alleged any act committed by any of the employee of respondent no.1/BHEL. The appellant/plaintiff only talks about someone Mulki Raj, the husband of the village pradhan, that he and his friends stopped him from tilling the field and threatened to destroy the crop and dispossess him from the land. None of these persons were made defendant in this case.

6. Per contra, learned counsel for respondent no.1/BHEL would submit that in the written statement (*Annexure No.2*) it has been specifically stated in paragraph no.7 that the land comprised in Khasra No.356 and 357 situated in Rawali Mahdood, Pargana Jwalapur, Tehsil and District Haridwar had been acquired in 1962 by the Government and the possession of the same was taken over by respondent no.1/defendant; that, though it is not pleaded in the written statement, this land had been transferred and



mutated in the name of respondent no.1/BHEL.

7. Learned counsel for the appellant/plaintiff would concede at Bar that in the revenue records this land is recorded in the name of respondent no.1/BHEL.

8. Counsel for respondent no.1/BHEL would further submit that in paragraph no.11 of the written statement, it is specifically stated that in the year 2003 this land was transferred to SIDCUL (*an undertaking of the Government of Uttarakhand*) for establishing industrial area, hence, the SIDCUL was the necessary party, therefore, the suit was bad for non-joinder of necessary parties also.

9. Counsel for the appellant/plaintiff would fairly concede at Bar that, notwithstanding the fact that the land had been transferred by respondent no.1/defendant to the SIDCUL, no application was moved to implead SIDCUL as a defendant.

10. This second appeal is filed against the concurrent finding of the Trial Court and the First Appellate Court.

Counsel for the respondent no.1/defendant, BHEL would submit at Bar that most astonishing fact is that the original plaintiff along with some other persons had filed Writ Petition (M/S) No.1100 of 2007 with the averments that in the year 1962 large part of the land



situated in villages Rawali Mahadood, Jamalpur, Roshnabad, Ranipur etc. in Haridwar Tehsil of District Saharapur (*now District Haridwar*) was acquired and transferred under Land Acquisition Act, 1894 to Bharat Heavy Electricals Ltd.(*BHEL*); that, in this writ petition, the original plaintiff had made a prayer that as this land, including the land as described in paragraph nos.2 and 3 of the plaint, is remaining unutilized, therefore, the original tenure holders, including original plaintiff, was entitled for re-conveyance of the land including the suit property subject to their depositing the amount of compensation received; that, this writ petition was dismissed by the Co-ordinate Bench of this Court vide its judgment dated 30.05.2019 but this important fact has been mischievously concealed from this Court.

11. Counsel for respondent no.1/BHEL would further submit that when it is an admitted case of the original plaintiff in Writ Petition (M/S) No.1100 of 2007 that the possession of this land was transferred and handed over to respondent no.1/BHEL, then the original suit for permanent injunction, giving rise to this second appeal, could not have been filed.

12. On the query of this Court, counsel for the appellant/plaintiff would submit that he has no other ground to press this appeal other than the facts stated in



paragraph no.2 and 3 of the plaint that the predecessors of the plaintiff were the original owner of the land.

13. In view of the above submissions of the respective counsel for the parties, this Court is of the view that the second appeal is misconceived and rather amounts to abuse of process of law, notwithstanding, the fact that in Writ Petition (M/S) No.1100 of 2007 of original plaintiff it is stated that the lands including the suit property had been transferred to respondent no.2/defendant and same was dismissed by the Coordinate Bench of this Court in 2019. This Court is of considered view that, even the original suit was not only misconceived but was an abuse of process of law. This is a pernicious tendency. This tendency should be dealt with sternly. Therefore, there seems to be no ground for admitting this appeal rather it should be dismissed with exemplary cost.

14. The second appeal is, accordingly, dismissed *in limine* with cost of ₹50,000/- to be deposited within fifteen days from today in the Trial Court. The same shall be payable to respondent no.1.

15. The appellant/plaintiffs are directed to vacate this land, if the appellants have entered into possession of this land surreptitiously as it would amount the unauthorized encroachment, within 15 days from today



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and hand over the possession to SIDCUL.

16. Let a copy of this judgment be sent to the District Magistrate, Haridwar to ensure the compliance.

(Vivek Bharti Sharma, J.)
19.12.2024

SS

SUKHBANT SINGH

Digitally signed by SUKHBANT SINGH
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