

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.3874 of 2015

Date of Decision.29.06.2015

M/s Shree Digamber Paper Mills

.....Petitioner

Versus

Haryana Urban Development Authority and others

.....Respondents

Present: Mr. Rakesh Gupta, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J. (ORAL)

1. The defendant in suit, who resisted an action brought at the instance of the plaintiff complaining of a resumption made by HUDA as illegal and that further the allotment to the defendant of 15 acres of land was incompetent, obtained favourable order upto the lower Appellate Court but suffered a reversal of fate through a decision of this Court rendered in second appeal disposed of on 27.08.1993. The Court held that a relief of declaration that the order of allotment made in favour of the 3rd defendant, who is now the revision petitioner, could not be granted but further taking note of the totality of circumstances into consideration that the resumption was illegal, the property could be bifurcated and HUDA would permit the existing plot of 15 acres into two equal plots, one to the plaintiff in the suit and another moiety to the 3rd defendant. The same order also observed that if HUDA was not prepared to allow for such a bifurcation, it was incumbent upon it to make a fresh

allotment of 15 acres to the plaintiff.

2. It appears that the 3rd defendant, who got possession of the 15 acres lost 7 ½ acres also to the plaintiff and when the 3rd defendant applied for sanction for construction in the plot retained by him, the permission for construction was refused by the authorities on the ground that bifurcation of the plot was not permissible by law. The defendant appears to have come to this Court of complaining of contempt of the Court decree that the bifurcation was not permissible by law and therefore, HUDA was perforce to make a fresh allotment in favour of the plaintiff and he could not be subjected to any loss of 7 ½ acres of land which was lost to him in purported compliance of the High Court's order. The petition for contempt was declined by this Court but, however, it appears to have observed that the 3rd defendant could work out his remedy before the Executing Court.

3. Before the Executing Court, the 3rd defendant sought for recovery of 7 ½ acres of land which was lost relying on the observations of the High Court in the contempt petition. The Court has rejected that application and the 3rd defendant is the revision petitioner before this Court.

4. I will find the petition to be untenable for the only reason that the order passed by the High Court in second appeal was on the basis of concession given by the respective counsel that the property could be bifurcated within a particular period and delivered in equal moieties. If such a process has taken place, no matter outside the court process and the 3rd defendant admittedly has lost possession, it will be futile by him to contend that it was open to HUDA only to make

allotment of 15 acres of some other land to the plaintiff and could not have wrested possession of the property from the defendant. Rejection of building plan ought to have been taken as independent cause of action for the defendant to complain by means of a challenge in an appropriate forum and he cannot allow for a decision taken by a public authority brazenly against the order passed in second appeal by this Court to prevail and to seek for recovery of the whole of the property. If the argument is that bifurcation itself was incompetent then it would amount to saying that the order passed by the High Court in second appeal was an incompetent order. Such a contention cannot be allowed for before this Court.

5. The contentions taken by the petitioner are rejected and the revision petition is dismissed as requiring no interference.

(K. KANNAN)
JUDGE

June 29, 2015
Pankaj*