

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

RSA No.1432 of 2010 (O&M)

Date of decision : 12.10.2015

Krishan Kumar

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. Atul Lakhanpal, Sr. Advocate with
Mr. Arjun Lakhanpal, Advocate for the appellant.

Mr. Ravi Partap Singh, Asstt. A.G. Haryana.

AMIT RAWAL, J. (Oral)

The appellant is in Regular Second Appeal against the concurrent findings of the fact, whereby suit for possession of land falling in Square No.3, Killa No.12(2-10), 19(1-10) and 20(0-2) measuring 4 kanals 2 marlas situated at Village Dhani Jattan, Tehsil Ellenabad, District Sirsa, had been dismissed.

Mr. Atul Lakhanpal, learned Senior Counsel assisted by Mr. Arjun Lakhanpal, learned counsel for the appellant submits, that both the Courts below have committed illegality and perversity in dismissing the suit as there has been gross misreading of the oral and documentary evidence particularly Ex.P6 and Ex.P6/1. He further submits that specific case of the appellant-plaintiff was that land owned by appellant-plaintiff was never

acquired. Had it been so, the appellant-plaintiff would have received the notice under Sections 5 and 12 of Land Acquisition Act, 1894 (hereinafter to be referred as 'the Act') vis-a-vis pronouncement of the award and deposit of amount of compensation.

He further submits that both the courts below have dismissed the suit on the ground that suit ex facie was time barred inasmuch as that though there is no direct evidence that land in dispute was acquired by the respondent-State for the purpose of carving/construction of the road. He further submits that notification under Section 4 of the Act was issued on 12.09.1991. Vide Ex.P-6/1, the State had sought administrative approval from the office of Engineer-in-Chief, Haryana, PWD (B&R) Branch Chandigarh of ₹9,29,500/- for acquisition of the land. He submits that had the land actually been acquired, nothing prevented State to place on record copy of the award and proof of deposit of the amount of compensation. On instructions from his client, he submits that he would be satisfied in case Government pays amount of compensation as Government cannot be permitted to acquire the land without payment of compensation. It amounts to gross violation of Article 300-A of the Constitution of India and thus, submits that following substantial questions of law arises for determination:-

- 1) Whether the findings of learned Courts below are based on misinterpretation and misreading of the evidence on record?
- 2) Whether a person can be deprived of his property without due process of law?
- 3) Whether the State is permitted to take the possession of land

without resorting to the acquisition proceedings or payment of compensation and if so whether such Act would amount to violation of provision of Article 300-A of the Constitution of India?

Mr. Ravi Partap Singh, Asstt. A.G. Haryana submits, that documents Ex.P6 and Ex.P6/1 are itself reveals that acquisition proceeding was initiated in the year 1971, whereas suit was filed in 2003, therefore, both the Courts below have rightly declined the suit on the ground that it was hit by gross delay of 32 years. He submits that there is no illegality and perversity in the impugned judgment and decree, much less, no substantial questions of law arises.

I have heard learned counsel for the parties and appraised the paper book.

No doubt the Notification under Section 4 was promulgated on 12.09.1991 vide Ex.P6 but the fact remains that State failed in its duty to place on record subsequent proceedings i.e. notification under Section 6 of the Act and proceedings under Sections 11 and 12 of the Act, neither the copy of the award nor any proof vis-a-vis assessment of the compensation purported to have been arrived by Land Acquisition Collector, has been placed on record. No person can be deprived of his land, much less, his land cannot be acquired without resorting to the due process of law. In my view it is a gross violation of Article 300-A of the Constitution of India.

Assuming for the arguments sake that the some acquisition proceedings had actually been taken place and the Government has already laid road on the whole part of the land, the fact remains that appellant-

plaintiff cannot be deprived of amount of compensation. No doubt, suit, by invoking the jurisdiction of provision under Section 9 of the Code of Civil Procedure for challenging the Notification under Sections 4 and 6 of the Act, is not maintainable. The plaintiff has not chosen aforementioned remedy and in the absence of the proof or entry in the revenue record, sought the relief of possession. Be that as it may. The fact remains that appellant-plaintiff cannot be deprived of payment of compensation.

Keeping in view the aforementioned observations, I am of the view that since the respondent-defendant has already laid road on the whole part of the land owned by the appellant-plaintiff, it is incumbent upon the State to compensate the appellant-plaintiff for such deprivation and the utility of the land.

Accordingly, questions of law framed above are answered in favour of appellant-plaintiff and against the respondent-defendant.

In view of aforesaid findings, impugned judgment and decree is set aside but, since much water has flown, the relief of possession cannot be granted, thus hereby declined, however, the State is directed to assess the amount of compensation in accordance with law and make the payment to the appellant-plaintiff, within a period of 18 months.

With the aforementioned directions, present regular Second Appeal stands partly allowed.

12.10.2015

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**(AMIT RAWAL)
JUDGE**