

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

Regular Second Appeal No.2001 of 2011 (O&M)

Date of decision: 30.6.2015

Swaran Singh and others

... Appellants

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Harsh Garg, Advocate,
for the appellants.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

This appeal has remained pending motion hearing since it was filed in 2011. On the outskirts of Old Panchkula city, there was a motor market which had mushroomed on public land situated in village Kharag Mangoli, Tehsil and District Panchkula. There were many motor mechanic shops constructed by the squatters on land to carry on business of repair and sale of spare parts and the market flourished without any government approval or was part of urban planning in the expansion of the new city. The plaintiff was one of those who ran a business as a motor mechanic since 1968. He claimed to be a tenant of the owner of the land. He asserted that he had constructed a shop on the land from his own pocket.

2. The State of Haryana vide notification dated 2nd July, 1985 published under Section 4 of the Land Acquisition Act, 1894 expressed

intention to acquire the land of village Kharag Mangoli for public purpose. Section 6 notification followed which was duly published. The land stood acquired for public purposes of creating residential and commercial areas.

3. The appellant claimed that he was a tenant and therefore person interested in the acquisition but was not issued an individual notice nor any share in the compensation payable to him was announced by the Land Acquisition Collector with respect to the tenancy and superstructure. The Government afforded an amount of ₹ 500/- only to the tenants as shifting charges. Aggrieved by displacement and non-payment of compensation to him, he made several representations to the high ups. He claimed that he was a member of the registered association of the motor market which dealt with the government on the issue of resettlement. It is the say of the plaintiff that at the instance of then Finance Minister, the Chief Administrator, HUDA gave personal hearing to the petitioner and other representatives of the union and after looking at their grievances, the Chief Administrator, HUDA suggested to the Government to allot alternative site in Sector 20, Panchkula for the uprooted motor market at cost price to the displaced persons to which proposal they readily agreed and gave their consents in writing including the plaintiffs and other motor mechanics. The matter was taken up in HUDA's 66th meeting and resolution # 66 [A-3] was passed wherein it was decided to allot alternative sites to the appellants and others at the reserved price of ₹ 2500/- per square meter. The 66th meeting was held on 13th March, 2006 and its record was exhibited as P12 in the suit filed by the plaintiff against HUDA for declaration including a mandatory and permanent injunction to the effect that the plaintiff is entitled to alternative

shop/site in lieu of shop occupied by the plaintiff in Old Panchkula Motor Market. A mandatory injunction was sought for a direction to HUDA to comply with resolution passed in the 66th meeting with the alternative relief of permanent injunction restraining the defendants from interfering in the peaceful possession of the plaintiff or from demolishing the shop in occupation or altering and changing the nature of the property in any manner whatsoever.

4. It is not in dispute that the Land Acquisition Collector passed the award on 26th June, 1988 and the acquisition proceedings have attained finality and the land vests in HUDA. It also could not be disputed that the recommendation made in the 66th meeting of HUDA has not been translated into a formal order of the State Government/HUDA. It has also come on record that the recommendations in the 66th meeting were reconsidered by the authorities of HUDA in its 80th meeting where it was decided to revoke the earlier decision of the 66th meeting for the reason that huge financial burden would be cast on HUDA if the recommendations of the 66th resolution were implemented. Therefore, the right to rehabilitation failed to crystallize. Learned Civil Judge, Senior Division vide judgment and decree dated 11th May, 2009 dismissed the suit on the ground that the jurisdiction of the civil court was barred in view of the provisions of the Land Acquisition Act as the acquisition proceedings had come to an end in 1989 with land the vesting in HUDA. As the plaintiff was non-suited on maintainability, issue # 1 was not gone into. No evidence was led on issue # 4 nor was the issue pressed at the time of arguments before the learned trial court.

5. In the appeal carried to the court of learned Additional District Judge, Panchkula, the plaintiff remained unsuccessful. The Court found that as per revenue record, the plaintiff was neither owner nor tenant on the suit land. Possession was delivered to HUDA in 1988. If the plaintiff was neither owner nor tenant, then he was not a person interested in the acquisition nor would he be entitled to compensation. It may be noted that plaintiff Ajmer Singh expired during the litigation and is represented by his sons Swaran Singh etc. as his legal heirs. It may be noted that two witnesses appeared for the plaintiff and deposed that from the very beginning, Ajmer Singh had been running his shop at the disputed site. Even if they are taken to be tenants it may not settle any rights on Ajmer Singh for compensation and costs of buildings even if made by him as he could settle the issue with his landlord separately there being no proof of payment of rent to landowner.

6. The entire case of the appellants is built on a promise made in the 66th meeting of HUDA which was revoked in the 80th meeting. The decision taken in the 80th meeting was adverse to them but those proceedings were not challenged in the present suit or by separate proceedings taking recourse to law. It is not disputed that the compensation had been paid to the landowner and shifting charges to the displaced persons. If this was the position and whether Ajmer Singh had accepted the shifting charges or not, even then the remedy did not lie in the civil court in the face of the acquisition proceedings attaining finality. Learned Additional District Judge-II, Panchkula in her judgment and decree dated 17th January, 2011 agreed with the learned trial court that no relief could be granted by the civil court and dismissed the appeal.

7. I asked one last question from Mr. Harsh Garg, the learned counsel appearing for the appellants whether appellants # 1 and 2 have continued the vocation of their late father Ajmer Singh, but he was unable to give a satisfactory answer. Still further, I asked him as to the fate of other mechanics in Old Panchkula and whether they were allotted alternative sites/shops in lieu of shops occupied by them in the old motor market and whether Government or this Court had granted any relief to the displaced persons, he was unable to answer. In the circumstances, it is not possible to take any other view than the one taken by the learned trial court and the court of first appeal.

8. However, I may say a few words about the maintainability of the suit before the civil court. There appears to be no express bar in the Land Acquisition Act, 1894 that the civil court possesses no jurisdiction under Section 9 CPC to entertain a suit where rights are claimed under the Act against procedural errors with respect to acquisition proceedings and whether they were conducted in accordance with law or to claim other incidental and ancillary matters. Ordinarily, civil courts are to try all suits of civil nature unless barred except in suits where cognizance is either expressly or impliedly barred.

9. In **State of Bihar v. Dhirender Kumar and others**; (1995) 4 SCC 229, the Supreme Court by a short order expressed their inclination “as presently advised” that by necessary implication, the power of the civil court to take cognizance under Section 9 of the CPC stands excluded in land acquisition matters and the civil court has no jurisdiction to go into the question of validity or legality of the notification under Section 4 and declaration under Section 6 except by the High Court in a proceeding under

Article 226 of the Constitution of India. The Supreme Court was of opinion that the Act is a complete code in itself and was meant to serve public purpose. This view was reiterated in **Laxmi Chand and others v. Gram Panchayat, Kararia and others**; (1996) 7 SCC 218 by a similar order.

10. The view expressed in the years 1995-96 by the Supreme Court have been affirmed by the Supreme Court in **State of Punjab v. Amarjit Singh and another**; 2011 (14) SCC 713 wherein it has been reiterated by the Supreme Court that the trial court does not have jurisdiction to entertain a suit. In **Bangalore Development Authority v. K.S.Narayan**; (2006) 8 SCC 336, the Supreme Court again dealt with proceedings arising out of a civil suit filed before the trial court where the plaintiff complained that the notice under Section 17 of the Land Acquisition Act was not served upon him and, therefore, the proceedings acquiring the land suffered invalidity. The civil court had declined the relief of stay against dispossession being owners of land acquired on the ground that notification had been rendered invalid on account of non-service of notice, the order of the High Court reversing the decree of the learned trial court in ruling that the acquisition proceedings were invalid, was set aside, the Court held that the civil court did not have the jurisdiction to entertain the suit and the trial Judge was right in refusing injunction at the interlocutory stage. The Supreme Court held that the issue could be examined only in a writ petition filed under Article 226 of the Constitution before the High Court and not by the civil court.

11. In view of the legal position explained in the aforesaid judgments of the Supreme Court, the appeal has to suffer dismissal in relation to the prayers for declaration and permanent injunction which

cannot be entertained by the courts a quo. However, the relief of mandatory injunction for a direction to the defendants to comply with the resolution of HUDA in its 66th meeting albeit revoked at the 80th meeting is held to be triable by the civil court as, i.e., prayer has nothing to do directly with acquisition land, though the prayer arises in the wake and in the aftermath of acquisition proceedings. This legal position has escaped notice of both the courts below when the suit was not held maintainable in toto. I would not go that far from the legal point of view since this prayer was severable from the rest. But then to consider the question of relief of mandatory injunction to compel HUDA to revive a dead letter in the face of the 80th meeting of HUDA revoking the earlier decision for rehabilitation through allotment of a alternative sites in Sector 20, Panchkula is quite another matter. The revocation forecloses the case of the appellants as neither they have a vested or accrued right to allotment by shifting to another site nor have they challenged the decision by amending the suit. There is no evidence on record to support interference with the decision taken by the competent authority in HUDA in its 80th meeting. The empty promise made by the Finance Minister or the 66th meeting agenda and the recommendation may have given rise to an expectation but it was not a legitimate expectation based on the principle of promissory estoppel.

12. For these reasons the appeal is dismissed. The judgments and decrees of the courts below are affirmed but it is held that the suit was maintainable qua mandatory injunction but no relief can be granted to the appellants for the present.

(RAJIV NARAIN RAINA)
JUDGE

June 30, 2015