

In the High Court of Punjab and Haryana at Chandigarh

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R.S.A. No.2329 of 2012 (O&M)

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Date of decision:11.5.2015

Raghvinder Singh and others

.....Appellants

v.

Shanti Devi and others

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. C.B. Goel, Advocate for the appellants.

Mr. S.K. Vij, Advocate for respondents No.2, 4 and 6.

Mr. Ajay Kansal, Advocate for respondents No.8 and 9.

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Inderjit Singh, J.

This regular second appeal has been filed by Raghvinder Singh etc.-appellants/defendants against Shanti Devi etc.-respondents/plaintiffs and Haryana Urban Development Authority and Estate Officer, HUDA-respondents/defendants aggrieved against the impugned judgment and decree dated 31.3.2012 passed by the learned Additional District Judge, Gurgaon, vide which he has accepted the appeal filed by Smt. Shanti Devi etc. and reversed the judgment and decree dated 9.8.1994 passed by the learned Sub Judge Ist Class, Gurgaon.

The brief facts of the case are that Smt. Shanti Devi, Narinder

Sarup Bhatnagar, Om Parkash Bhatnagar and Anand Sarup Bhatnagar-plaintiffs filed suit against Raghvinder Singh etc.-defendants and Haryana Urban Development Authority (hereinafter referred to as 'HUDA') and the Estate Officer, HUDA-defendants for permanent injunction. As per the case of the plaintiffs, they filed suit for permanent injunction claiming themselves co-owners in possession of residential House No.235/2, bearing Khasra No.3796/1700 situated within the Gurgaon Village shown by letters 'ABCD' in the attached site plan. It is mainly case of the plaintiffs that Haryana Government had acquired the land on 10.1.1977 and after acquisition, the land was handed over to defendants No.4 and 5 i.e. HUDA and Estate Officer, HUDA, Gurgaon for construction of sewerage line. The middle portion of about 25 feet was made metalled whereas portion on either side was kept for the purposes of sewerage line. That after laying down this road, the house of the plaintiffs became open on roads on two sides. That the defendants on the pretext that they had been permitted by HUDA have started digging up foundation in order to construct the shop spreading over the entire frontage towards the wall 'CD'. It is also the case of the plaintiffs that their civil rights to have access to the newly constructed road will be violated if the construction is raised and further they are entitled to open doors, windows, ventilator without any sort of obstruction.

On the other hand, defendants No.1 to 3 contested the claim of the plaintiffs and stated that plaintiff No.1 was counsel for defendant No.1 in a reference under Land Acquisition Act filed for enhancement of compensation of the land acquired and he was aware of the fact that some

land was left out from being acquired. The pleas that the suit is not maintainable etc. are also taken.

After the parties led their evidence, the learned Sub Judge Ist Class, Gurgaon, vide judgment and decree dated 9.8.1994 dismissed the suit of the plaintiffs. Aggrieved from this judgment and decree passed by the learned Sub Judge Ist Class, Gurgaon, an appeal was filed before the learned District Judge, Gurgaon by the plaintiffs. The learned Additional District Judge, Gurgaon, vide judgment and decree dated 31.3.2012 set side the findings of the learned Sub Judge Ist Class and the suit of the plaintiffs was decreed. Aggrieved from this judgment and decree passed by the learned Additional District Judge, Gurgaon, the present regular second appeal has been filed by the defendants-appellants.

Notice of motion was issued in this case. Mr. S.K. Vij, learned Advocate has put in appearance on behalf of respondents No.2, 4 and 6 and Mr. Ajay Kansal, learned Advocate has appeared on behalf of respondents No.8 and 9 and contested this appeal. Lower Courts record was also summoned.

I have heard learned counsel for the parties and have gone through the record.

Learned counsel for the appellants mainly argued that the findings given by the learned Sub Judge Ist Class, Gurgaon, are correct and as per law and the findings given by the learned Additional District Judge, Gurgaon, are not as per evidence and law. He relied upon the exchange by the HUDA authorities in favour of defendants and they have every right to

make construction over the disputed site. The case of the appellants is that some of the land was left from being acquired falling in the middle of the portion where the road had been constructed and in lieu of that the property in dispute had been given in exchange as per documents Exs.D.1 to D.4.

On the other hand, learned counsel for the respondents argued that no oral exchange is permissible. The HUDA authorities were not competent to give the land in exchange on oral sanction. After the acquisition of the land and after passing of the award, the Government became owner and mutation was sanctioned in favour of the Government and reviewing this order of mutation by the Collector is illegal, null and void.

After hearing the learned counsel for the parties and after going through the record, I find that it is admitted fact that the property in dispute was acquired by the Government by issuing notification under Sections 4 and 6 of the Land Acquisition Act, 1894, and the award has already been passed in the year 1977, which means that regarding the property in question, the Government has become owner. The defendants' case is that they have become owner of the property in question on the basis of exchange deed Ex.D.1 dated 20.10.1983. I have seen this document Ex.D.1, which is dated 20.10.1983. Agreement word is written on this document. It is not on any stamp paper etc. This agreement was executed between Raghvinder Singh and the Chief Administrator, HUDA acting through Estate Officer. As per this agreement, second party i.e. HUDA is owner in possession of the area in dispute measuring 75 sq. yards and Raghvinder

Singh was shown owner in possession of commercial plot measuring 75 sq. yards out of Khasra No.1700 Min. As per this agreement, first party had agreed to exchange aforesaid plot with the area of the second party and second party has intimated the first party vide letter dated 3.3.1983 and letter dated 11.10.1983 approving the exchange. As per this agreement, it is stated that first party also agreed to the proposal of their above mentioned land. In no way, the perusal of the documents can be treated as Exchange Deed. It is simply mentioned that they have agreed to exchange of above said land. Ex.D.2 is a site plan attached with this agreement. Ex.D.3 is letter written by HUDA to Raghvinder Singh, which is dated 11.10.1983, asking him to come to the Office for executing agreement. Ex.D.4 is another letter dated 3.3.1983. From the perusal of all these documents it is clear that same cannot be held as Exchange Deed. Otherwise also, the Government of Haryana had acquired the land and is owner, but there is nothing on the record to show any consent of the Government to execute the Exchange Deed. This document Ex.D.1 has been signed only by the Estate Officer. The Estate Officer is not competent officer to exchange the Government land with the land of a private person. Otherwise also, as per the findings of the learned Additional District Judge, no original record of HUDA has been produced to justify the exchange of land with defendant No.1. No cogent evidence has been produced to show that any land of defendant No.1 has been left from acquisition in the middle of the road by producing the original record from the HUDA office. The consent of Chief Administrator, HUDA has been shown as oral in the said agreement, but no

document has been produced on record showing the consent of Chief Administrator, HUDA for exchanging this property.

The learned Additional District Judge, Gurgaon, has discussed all these documents as well as evidence produced by the parties in minute detail and correctly appreciated the evidence in right perspective. There is nothing on the record to show that these findings are against the evidence or against the law. When the road had been constructed by the Government acquiring the land adjoining the wall 'CD', the plaintiffs have every right to this side of the road to open windows, gate, ventilator etc. for access to this road also. The findings of the learned Additional District Judge in the judgment and decree dated 31.3.2012 are correct and as per law and do not require any interference from this Court and the same are upheld. Otherwise also, no substantial question of law arises in this regular second appeal.

Therefore, finding no merit in this regular second appeal, the same is dismissed.

May 11, 2015.

(Inderjit Singh)
Judge

hsp