

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

RSA No.3830 of 2012 (O&M)

Date of Decision: 30.07.2015

Harish Kumar and others

.....Appellants

Versus

Haryana State through Collector, Bhiwani and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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

Present:- Dr. Praveen Hans, Advocate,
for appellants.

SHEKHER DHAWAN, J (Oral)

Present Regular Second Appeal is against concurrent findings of both the Courts below whereby suit for mandatory injunction filed by plaintiffs-appellants was dismissed by Court of first instance and first appeal was dismissed by Court of first appeal.

2. For the sake of convenience the parties are being referred to as per their status before the Court of first instance.

3. Relevant facts for the purpose of decision of appeal that as per plaintiffs, they are owner in possession of land in question which is adjacent to the 'abadi' of village Rampura, Tehsil Bawani Khera, District Bhiwani. Defendants-State want to have ownership and possession of the same without acquiring the same. Court of first instance settled the issues and

after recording of evidence of the parties and appreciation thereof returned the findings that the road was constructed in the year 1984 and application for demarcation of suit land was filed by PW-3 on 15.06.2007 i.e. after a gap of 23 years. As such, suit is hopelessly time barred and suit for mandatory injunction was dismissed.

4. Court of first appeal also returned the said findings and dismissed the first appeal.

5. Learned counsel for appellants mainly took the plea that both the Courts below have not appreciated the factual position that road was constructed by defendants on the land belonging to plaintiffs without acquiring the same and no compensation was awarded to the plaintiffs. No person can be deprived of his property without following the due procedure. So the said finding be reversed and appeal be accepted.

6. Having considered the submissions made by learned counsel for the appellants this Court is of the considered view that both the Courts below have recorded concurrent findings of fact that road was constructed by defendant-State about 23 years back i.e. in the year 1984. First application for demarcation of land was filed after 23 years. So there is no question of issuance of any injunction much less to say mandatory injunction and the same was rightly denied by both the Courts below. There is no substantial question of law involved in the present case calling for interference by this Court by way of present Regular Second Appeal. Such a law was laid down by Hon'ble Supreme Court in case **Santosh Hazari Vs. Purushottam Tiwai (dead) by LRs., 2001(3) SCC 179.**

7. Needless to mention that if land of the plaintiffs has been acquired by the State without any compensation for acquisition proceedings,

plaintiffs shall have legal right to approach the authority constituted under Land Acquisition Act, if it is a case of acquisition of land of the plaintiffs. At any rate there are no grounds to set aside the said concurrent findings of facts of both the Courts below.

8. In view of the above present Regular Second Appeal being without any merit stand dismissed.

(SHEKHER DHAWAN)
JUDGE

July 30, 2015
msd