

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

RSA No.4522 of 2012(O&M)

Date of decision: 4.12.2015

Narain Dutt

.....Appellant

versus

State of Punjab and others

.....Respondents

Coram: Hon'ble Mr. Justice Amit Rawal

Present: Mr. Sanjeev Sharma, Advocate for the appellant.

Mr.Piyush Bansal, DAG Punjab.

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?

Amit Rawal, J.(Oral)

The appellant-plaintiff is aggrieved by the judgment and decree of both the Courts below whereby claim for possession and for recovery of damages has been declined by both the courts below.

Mr. Sanjeev Sharma, learned counsel appearing on behalf of the appellant submits that State of Punjab had promulgated a notification issued under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') on 21.7.1995. However, the said notification lapsed and again a fresh notification dated 28.7.1997 under Section 4 of the Act was promulgated. Thereafter, notification under Section 6 of the Act dated 19.5.1998 was promulgated. The appellant received notice under Section 9(3) of the Act on

26.3.1999, however, it is a matter of record that no award was pronounced for acquisition of the property. But as per notification only small area was left with the appellant which is of no use and utility. Then acquisition proceedings lapsed and this fact is not disputed by the Court below. The only point which has gone against the appellant that he has not been able to prove the construction of bye pass road on 125 sq.yards of plot (out of total plot of 200 sq. yards) bearing Khasra No.32//6/2 (0-7) Marlas. The appellant sought the assistance of the Court below to get the property demarcated in order to ascertain the actual and factual aspect of the matter. Field Kanungo was appointed accordingly and he has submitted his report Ex.P1 and as per his report, by pass road has been constructed and small portion has been left with the appellant. In essence, remaining and balance land has become unusable for want of construction of bye pass road. The aforementioned report has not weighed in the mind of the Court below, for, it was not as per the instructions of Financial Commissioner as well as High Court Rules and Order. He submits that during the pendency of the appeal, another report of the Field Kanungo was sought to be placed on record by taking the aid of the provisions of Order 41 Rule 27 of the Code of Civil Procedure which also reiterates the previous report of the Kanungo, thus, it is a classic case where appellant-plaintiff has been deprived of his land without compensation. It is violation of Article 300-A of the Constitution of India. Accordingly, the following substantial question of law would arise for determination by this Court:

“Whether a person can be deprived of his right for compensation much less can be deprived of his land under

Article 300-A of the Constitution of India or not.”

Mr.Piyush Bansal, learned counsel appearing on behalf of the State submits that both the Courts have concurrently held that the appellant-plaintiff in order to succeed in the suit to prove its case by leading direct and cogent evidence, the report could not have looked into by the Court below as it was not as per the High Court Rules and Orders and thus, no substantial question of law arises. There is hardly any scope for any interference under Section 100 of the CPC.

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

The construction of bye pass road is a matter of record which has not been disputed. The only question is whether the aforementioned bye pass has been carved out on the part of land belonging to the appellant-plaintiff. As per the report of the Kanungo, it has been found that area measuring 125 square yard has been acquired/utilised for the construction of bye pass road and that report has not been accepted for want of technical defect. I am of the view that a person cannot be deprived of his land without payment of compensation as it is an example of violation of Article 300-A of Constitution of India. I am of the view that matter is required to be reconsidered by the lower Appellate Court. In view of this, matter is remitted back to the lower Appellate Court, who shall, while exercising the powers under Section 96 of the CPC, direct revenue official to demarcate the land and ascertain the actual severance of the land/dispossession of the plaintiff-appellant. Both the parties to the lis be also given an adequate opportunity to lead evidence in this regard and plaintiff-appellant can also

claim damages in terms of money.

Keeping in view the aforementioned facts and circumstances, impugned judgment and decree of the Court below is set aside. Substantial question of law is thus decided in favour of appellant and against the respondent. The matter is remanded to the lower Appellate Court to decide the controversy, with the afore-mentioned observations, afresh. Parties or their counsels are directed to appear before the lower Appellate Court on 17.12.2015.

Appeal stands allowed.

4.12.2015

Meenu

(AMIT RAWAL)
JUDGE