

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

**RSA No.1036 of 2014(O & M)
Date of Decision:04.02.2015**

Mani Ram and others

....appellants

Versus

State of Haryana and others

.....respondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

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

Present: Mr.Virender Rana, Advocate
for the appellants

ARUN PALLI, J.(ORAL):-

Suit filed by the plaintiffs was dismissed by the trial Court vide judgement and decree dated 27.11.2012. Appeal preferred against the said decree failed, and was dismissed on 04.09.2013 by the first appellate Court. This is how, plaintiffs are before this Court in this Regular Second Appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, in a suit filed by the plaintiffs, they prayed for a declaration that defendants had constructed Kharkheri Minor in the land of the plaintiffs, comprised in khasra numbers depicted in the plaint, measuring 21K-10M, without affording any compensation.

Therefore, the plaintiffs were entitled to payment of compensation in lieu of the land that was used by the defendants for construction of Kharkheri Minor along with interest @24% per annum. It was averred that the plaintiffs happened to be the owners of the land measuring 21K-10M, situated in village Kharkheri, Tehsil Siwani, District Bhiwani. It was maintained that the defendants had constructed Kharkheri Minor in the land of the plaintiffs without affording any compensation. Though, plaintiffs approached the defendants several times for payment of compensation but to no avail. So much so, defendants were served with a notice under Section 80 CPC on 24.04.2008, but yet no compensation was afforded to the plaintiffs. Thus, the suit.

In defence, it was pleaded, inter alia, that the farmers/beneficiaries of the Minor had approached the government to construct a Minor near their fields as they were solely dependant on rainfall for irrigation purposes. Resultantly, the government constructed the Minor preceded by acquisition of land, in consonance with the provisions of the Land Acquisition Act, 1894 (for short, 'the Act'). A notification under Section 17(4) read with Clause(e) of the Act was published on 19.04.1978, followed by a notification under Section 6 of the Act, that was published on 27.06.1978. It was maintained that land of the plaintiffs was acquired and the compensation was duly paid to them. Therefore, plaintiffs were not entitled for any compensation least any interest thereto. Further, plaintiffs never approached the defendants for payment of any compensation as was being claimed. Accordingly, defendants

prayed for dismissal of the suit.

On a consideration of the matter in issue and the evidence on record, the courts below found that defendants had constructed the Kharkheri Minor in the land of the plaintiffs. Nothing was averred in the plaint that defendants had constructed the Minor in the land of the plaintiffs without acquiring their land. All that was pleaded by the plaintiffs was that the defendants had not paid any compensation in lieu of the land that was utilised for constructing the Minor. Nothing was further averred in the plaint as to in which year Kharkheri Minor was constructed by the defendants in the land of the plaintiffs. Plaintiff No.3 Jagmal-PW1, testified in his cross-examination that the defendants had constructed the Minor about 25-30 years back. He also deposed that he had been approaching the defendants for payment of compensation for the last 20 years. That being so, it was observed that if no compensation was released to the plaintiffs, they were required to file the suit immediately, when the cause of action first accrued in their favour whereas, the present suit was filed after almost 30 years on 25.08.2008, of the construction of the Minor. Though, plaintiffs had served a notice upon the defendants on 24.04.2008, but as the cause of action first accrued to the plaintiffs, when the defendants first refused to make the payment of compensation i.e. about 20 years back, the suit was barred by time in the wake of the provisions of Article 58 of the Indian Limitation Act. On the contrary, defendants have placed on record a copy of notification dated 19.04.1978 (Ex.D1) vide which the land of the plaintiffs was acquired. Ex.D2 was a notification issued under

Section 6 of the Act. Defendants had further placed on record copy of payment register (Ex.D3), vide which compensation was released to the land owners of village Kalond by Sub-Divisional Officer, Siwani, pursuant to the Award dated 22.02.1983. However, the requisite records qua payment of compensation in relation to the land owners of village Kharkheri were not traceable. Therefore, it was concluded that once, it was shown that vide Ex.D3, compensation was paid to the land owners, be that of village Kalond, it was established that the land for construction of Kharkheri Minor was acquired and compensation was duly paid to the land owners. That being so, it was incumbent upon the plaintiffs to prove that no compensation was indeed paid to them by examining the Land Acquisition Collector. However, just because the necessary records qua village Kharkheri were not available with the department, the plaintiffs could not be the beneficiaries on this account alone. Jagmal-PW1 testified in his cross examination that Kharkheri Minor was constructed about 30 years back and they never filed any suit for redressal of their grievances. He did not even remember the killa numbers that were acquired for construction of the Minor. That being so, the suit filed by the plaintiffs was dismissed and subsequently, even the appeal preferred against the said decree was also dismissed.

I have heard learned counsel for the appellants and perused the RSA paper book.

Learned counsel for the appellants simply seeks to reiterate the submissions that were advanced before the Courts below and rejected after a due and comprehensive consideration.

No other argument was advanced.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is devoid of merit and is, thus, liable to be dismissed for the reasons that are being recorded hereinafter.

Records show that pursuant to the notification dated 19.04.1978 (Ex.D1), issued under Section 4 of the Act, land of village Kalond and Kharkheri were simultaneously acquired for construction of Kharkheri Minor, followed by notification dated 27.06.1978 (Ex.D2), issued under Section 6 of the Act. The acquisition process was completed, as Award No.28 dated 22.02.1983, was rendered by the Land Acquisition Collector, Rohtak. Further, Ex.D3, i.e. copy of the payment register revealed that compensation in lieu of the acquired land was duly released to the land owners of village Kalond by SDO Siwani, Canal Sub Division No.1, on 22.02.1983. It is not disputed that the land owned by the plaintiffs i.e. 3K-15M was also acquired. The specific case set out by the defendants is that plaintiffs were duly paid the compensation. As concluded by both the courts below, process of acquisition concluded in the year 1983, and the only record that was available with the defendants to prove payment of compensation to the landowners pertained to village Kalond. Records qua village Khakheri was not available as more than 25 years had elapsed and thus, plaintiffs could not be the beneficiaries by default. Particularly, when they failed to show that, after passing of the Award dated 22.02.1983 by the Land Acquisition Collector, they, ever expressed their grievance to the defendants that they were

not paid any compensation. Ex facie, it seems un-natural and improbable that despite having not been paid any compensation, plaintiffs would have maintained deep silence for a period of 25 years. The present suit was instituted on 25.08.2008 i.e. after more than 25 years of the passing of the Award by the Land Acquisition Collector. Thus, as rightly concluded by both the Courts below, the suit was grossly barred by limitation.

Learned counsel for the appellants could point out as to how the findings that were concurrently recorded by both the Courts were either contrary to the position on record or suffered from any material illegality.

In the wake of the position as set out above, there hardly exists any ground, least plausible in law to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration in the present appeal. The same being devoid of merit is accordingly, dismissed.

04.02.2015

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(ARUN PALLI)
JUDGE