

**RSA No. 763 of 2015 (O&M) &
RSA No. 764 of 2015 (O&M)**

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 763 of 2015 (O&M)
Date of decision : April 20, 2015

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Superintending Engineer Yamuna/Water Services
Circle, Sector-16, Faridabad (Haryana)Appellants
and others

Versus

KamruddinRespondent

RSA No. 764 of 2015 (O&M)
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Superintending Engineer Yamuna/Water Services
Circle, Sector-16, Faridabad (Haryana)Appellants
and others

Versus

Wahid and othersRespondents

*** * * * ***

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Siddarth Sanwariya, DAG, Haryana.

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1. *Whether Reporters of Local Newspapers 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?*

RITU BAHRI, J

C.M No. 2259-C of 2015

For the reasons mentioned in the application, delay of 86

days in filing the appeal is condoned.

C.M is allowed.

RSA No. 763 of 2015

By way of this common judgment, two regular second appeals bearing RSA No.763 of 2015 and RSA No. 764 of 2015 will be decided. For the sake of convenience, facts are being taken from RSA No. 763 of 2015.

Appellants have come up in this regular second appeal against the judgment of the trial Court dated 27.11.2013 passed by the Civil Judge (Junior Division) Ferozepur Jhirkha, and the judgment dated 26.8.2014 passed by the District Judge, Mewat, whereby the appeal against the judgment of the trial Court was dismissed. Vide the trial Court judgment, the suit for possession by way of mandatory injunction filed by the plaintiff-respondent (hereinafter referred to as 'the plaintiff') in respect of the land detailed in para no.3 of the plaint was decreed. However, liberty was granted to the defendants-appellants (hereinafter referred to as 'the defendants') to acquire the land to the extent of which Gurgaon canal has been carved out as per law and to pay compensation to the plaintiff.

The facts, in brief, are that the defendants carved out Gurgaon Canal through the land in dispute long back without any acquisition and without paying any compensation. The plaintiff filed an application for demarcation of suit land before Assistant Collector IInd Grade, Punhana in which the Field Kanungo Punhana demarcated the suit land on the spot on 4.7.2009 and from said demarcation report, it revealed that land 3 kanals 0 marla out of total

land of rect. No. 10 killa no. 23/1/2(4-18) i.e total encroached area 3 kanal 0 marla has been utilized for Gurgaon Canal by defendants forcibly illegally and without any acquisition and compensation and totally in contravention of procedure of law. The defendants took the stand before the Court that the canal was constructed 41 years ago in the year 1971 and at that time, no objection was raised and hence plaintiff was not entitled for any injunction. As per Ex.P-2, Chief Engineer Haryana Irrigation Department had initiated the proceedings for acquisition but the proceedings were not taken to its logical end. As per the Jamabandi Ex. P-4 and Aksh Sajra Ex. P-5, the ownership of the plaintiff was proved and in view of the demarcation report Ex.P-7 the encroachment of 3 kanals merely stood established by the Department. The State being a welfare State cannot be permitted to take a plea of adverse possession and the suit of the plaintiff has been rightly decreed by both the Courts. However, liberty was given to the State to initiate acquisition proceedings and make payment of compensation to the plaintiff.

Reference at this stage can be made to a judgment of the Supreme Court in the case of **Tukaram Kana Joshi and others through Power of Attorney Holder vs. MIDC and others, 2013 (1) SCC 353**, wherein the land owners had been deprived of the immoveable property in the year 1964. They were non suited on the ground of delay and non availability of the records. Similarly situated persons had been given the benefit of acquisitions in the year 1966 condoning the delay. The delay in approaching the Court was

condoned by the Supreme Court and a direction was given to make payment of compensation. The observation in paragraph 13,16, and 17 are as under

13. In the case of H.D Vora v. State of Maharashtra & Ors., AIR 1984 SC 866, this Court condoned a 30 year delay in approaching the court where it found violation of substantive legal rights of the applicant. In that case, the requisition of premises made by the State was assailed.

16 .The appellants have been deprived of their legitimate dues for about half a century. In such a fact-situation, we fail to understand for which class of citizens, the Constitution provides guarantees and rights in this regard and what is the exact percentage of the citizens of this country, to whom Constitutional/statutory benefits are accorded, in accordance with the law.

17. The appellants have been seriously discriminated against qua other persons, whose land was also acquired. Some of them were given the benefits of acquisition, including compensation in the year 1966. This kind of discrimination not only breeds corruption, but also dis-respect for governance, as it leads to frustration and to a certain extent, forces persons to take the law into their own hands. The findings of the High Court, that requisite records were not available, or that the appellants approached the authorities at a belated

stage are contrary to the evidence available on record and thus, cannot be accepted and excused as it remains a slur on the system of governance and justice alike, and an anathema to the doctrine of equality, which is the soul of our Constitution. Even under valid acquisition proceedings, there is a legal obligation on the part of the authorities to complete such acquisition proceedings at the earliest, and to make payment of requisite compensation. The appeals etc. are required to be decided expeditiously, for the sole reason that, if a person is not paid compensation in time, he will be unable to purchase any land or other immovable property, for the amount of compensation that is likely to be paid to him at a belated stage.

Recently, the Supreme Court in the case of **Bhusawal Municipal Council vs. Nivrutti Ramchandra Phalalk and others** **2014(1) RCR (Civil) 866** has observed that delayed payment of compensation may loose the charm and utility of the compensation. Thus the compensation must be determined and paid without loss of time. It has been observed in paragraphs 13,14, and 15 as under:

13. In Tukaram Kana Joshi & Ors. v. Maharashtra Industrial Development Corporation & Ors., AIR 2013 SC 565, this Court held that right to property is not only a Constitutional or a statutory right but also a human right and human rights are considered to be in realm of individual rights which are gaining an even greater

multifaceted dimension and, therefore, in case the person aggrieved is deprived of the land without making the payment of compensation as determined by the Collector/court, it would tantamount to forcing the said uprooted persons to become vagabond or to indulge in anti-social activities as such sentiments would be born in them on account of such ill treatment. Therefore, it is not permissible for any State/authority to uproot a person and deprive him of his human rights, without ensuring compliance of the statutory requirement under the garb of development.

14. *In K. Krishna Reddy & Ors. v. The Special Dy. Collector, Land Acquisition Unit II, LMD Karimnagar, Andhra Pradesh, AIR* 1988 SC 2123, this Court while directing the statutory authorities to make the payment of compensation at the earliest observed that the person so uprooted may not be having any savings, he may not be knowing any other avocation, thus, he may face starvation with rising inflation. A delayed payment may loose the charm and utility of the compensation. Thus, the compensation must be determined and paid without loss of time.

15. *In Narain Das Jain (since deceased) by Lrs. v. Agra Nagar Mahapalika, Agra, (1991) 4 SCC 212*, this Court placed reliance upon various reports including the report of the Law Commission of India which made it

clear that “community has no right to enrich itself by deliberately taking away the property of any of its members in such circumstances without providing adequate compensation for it”.

The State in the present case has constructed a canal on the land of the plaintiff measuring 3 kanals 0 marlas way back in the year 1971 and 44 years have gone by and no compensation has been paid to the plaintiff. In view of observation of Hon'ble the Supreme Court in the cases of **Tukaram Kana Joshi (supra)**, and **Bhusawal Municipal Council (supra)**, no substantial question of law arises for consideration and the present regular second appeal is dismissed. However, the appellants are directed to initiate the acquisition proceedings and make the payment of the compensation within a period of 4 months of passing of this order and a compliance report in this regard be sent to the High Court.

April 20, 2015
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**(RITU BAHRI)
JUDGE**