

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

RSA No.3239 of 1984(O&M)

Date of decision:30.3.2016

Agya Ram Thapar (Deceased) through LR's and another

....Appellants

VERSUS

Jullundur Improvement Trust

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Ashok Giri, Advocate for the appellants.

Mr. S.S. Brar, Advocate for the respondent.

REKHA MITTAL, J.

The present appeal lays challenge to consistent findings recorded by Courts below whereby suit filed by the plaintiffs was dismissed by the learned trial Court and the judgment and decree passed by trial Court was affirmed in appeal by dismissal thereof, filed at the instance of appellants/plaintiffs.

Land measuring 6 Kanal 12 Marlas comprising in Khasra No.16691/6717 (min) is the bone of contention out of which land measuring 6 Kanal 1 Marla was stated to be owned by Raghu Nath @ Ragho Ram - plaintiff No.2 and 11 marlas of Agya Ram Thapar – plaintiff No.1, sons of Sh. Shadi Ram Thapar. As per plea of the plaintiffs, the suit

land is not a part of 55 acres scheme prepared by the Jalandhar Improvement Trust, Jalandhar (hereinafter to be referred as 'the Trust') as the same was exempted from the aforesaid scheme. The learned trial Court framed a specific issue in regard to claim of the plaintiffs, which reads as under:-

“1. Whether the area of 6 Kanals 12 Marlas in dispute is not part of 55 acres scheme of the defendant-Trust? If so its effect? OPP.”

Issue No.1 was decided against the plaintiffs while dealing with issues No.1 and 2 jointly. As has been noticed hereinbefore, the first Appellate Court concurred with the findings of learned trial Court.

Counsel for the appellants would urge that in the award passed by the Land Acquisition Collector (Ex.P9), a reference has been made on internal page 3 (page 105 of the records of learned trial Court) whereby land measuring 30 Kanals 1 Marla including land comprising Khasra No.16691/6717/2 to 13 (5-17) was recommended to the Punjab Government (Local Government Department) for exemption under Section 56 of the Punjab Town Improvement Act, 1922 (hereinafter to be referred as 'the Act'), as the area is under built up structures. It is further argued that an application dated 20.10.1971 (Ex.P11) was submitted by Agya Ram Thapar- plaintiff No.1 for Raghu Nath @ Ragho Ram- plaintiff No.2 to exempt land measuring 6 Kanals 1 Marla comprised in Khasra No.16691/6717 belonging to Raghu Nath and in response thereto, a communication dated 26.07.1978 (Ex.P15) was received from the Trust wherein it was reiterated that Khasra No.6801 measuring 2 Kanals 7 Marlas and Khasra No.16691/6717 measuring 10 Kanals 18 Marlas falls

within Netaji Park and the Government of Punjab has been requested to exclude this area from 55 acres scheme.

Counsel has further argued that as no award has been passed in regard to the land belonging to the appellants nor any compensation has been paid to them in respect thereof, the respondent-Trust cannot be allowed to retain the land belonging to the appellants.

Counsel for the Trust, on the contrary, would submit that the Courts below, on a detailed consideration of the matter, rejected claim of the appellants/plaintiffs. It is argued that as submissions made by counsel for the appellants do not give rise to a question of law much less a substantial one, the appellants have no case to be heard on merits of the appeal, in view of scope of intervention in exercise of jurisdiction under Section 100 of the Code of Civil Procedure, 1908.

Another submission made by counsel is that plaintiff No.1- Agya Ram Thapar appeared in the witness-box and in his cross-examination, he admitted that notices were issued by Land Acquisition Collector to Raghu Nath in the acquisition proceedings. He moved an application on behalf of Raghu Nath before the Land Acquisition Collector. He made an application to the Land Acquisition Collector for awarding more amount to Raghu Nath in lieu of land acquired on his behalf. He has also filed an application before the Land Acquisition Tribunal for enhancement of the award of the land of Raghu Nath-plaintiff. Counsel would urge that the facts elicited during cross-examination of Agya Ram Thapar - plaintiff No.1 falsifies and belies plea of the appellants that they have not been paid compensation qua the land which had been a

part of 55 Acres Development Scheme developed by the Trust. In addition, it is submitted that on an earlier occasion, the appeal was disposed of by this Court vide order dated 23.03.2004 on the basis of report of Sh. Sukhdev Singh, Patwari, to the effect that Khasra No.16691/6717 (12-3) is neither shown in the land acquired nor any award has been passed by the Land Acquisition Collector in respect thereof and it was held that land belonging to the appellants measuring 6 Kanals 12 Marlas out of total land measuring 12 Kanals 3 marlas comprised in Khasra No.16691/6717 has not been acquired. Later, the Trust filed RA No.33-C of 2004 with the averments that the Patwari was misled by recommendation made by the respondent-Trust to the Government for exemption of land from acquisition under Section 56 of the Act and a wrong report under bona fide belief was submitted and compensation in respect of the land in dispute has been deposited with the Land Acquisition Collector as far back on 27.04.1984. The said application, after hearing counsel for the parties, was allowed vide order dated 16.02.2005, order dated 23.03.2004 was recalled and the appeal was re-admitted for hearing. It is vehemently argued that keeping in view the facts noticed in the order dated 16.02.2005, the appellants cannot derive any advantage to their contentions from any recommendation made by the Trust for exemption of land of the appellants when otherwise there is nothing on record to prove that the said recommendation made by the Trust was accepted by the State of Punjab or land belonging to the appellants was exempted from the scheme developed by the Trust.

I have heard counsel for the parties, perused the paper-book and the original records of the trial Court with the able assistance of counsel for the parties.

The appellants staked their claim to the suit land primarily on the plea that the same is not part of 55 acres scheme developed by the Trust. To bring home his contention, counsel for the appellants has invited attention of the Court towards recommendation made by the Collector for exemption of land comprising in khasra No.16691/6717 as per the award (Ex.P9) and a communication addressed by the Trust to plaintiff No.1 in response to the request made by Raghu Nath – plaintiff No.2. Counsel for the appellants has failed to point out any materials on record that the recommendation made by the Trust for exemption of land in question was ever accepted by the State of Punjab, the authority competent to allow any such exemption, as the development scheme is finally approved by the State of Punjab. Under these circumstances, the Courts below have rightly refused to accept claim of the appellants that land belonging to them comprising in Khasra No.16691/6717 is not a part of the development scheme (55 acres scheme) of the Trust.

Agya Ram Thapar, one of the plaintiffs, appeared in the witness-box and admitted the factum of filing of an application for enhancement of compensation in respect of the land belonging to Raghu Nath @ Ragho Ram. The very fact that Agya Ram Thapar made a land reference for enhancement of compensation negates plea of the appellants that no compensation qua the land in question was assessed by the Land Acquisition Collector.

Analyzed from another angle, even if the appellants have not been paid compensation in regard to the land belonging to them that was part of a scheme developed by the Trust, the appellants are always at liberty to take recourse to appropriate proceedings claiming compensation, in accordance with law.

In view of the above, I find myself unable to accept the submissions made by counsel for the appellants that either the judgments passed by the Courts below suffer from any infirmity much less perversity or any question of law much less a substantial one arises for adjudication.

For the foregoing reasons, finding no merit, the appeal is dismissed leaving the parties to bear their own costs.

MARCH 30, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE