

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

1. CR No.5764 of 2016
Date of decision : 19.09.2016

Estate Officer-II, Haryana Urban Development Authority, Gurgaon

...Petitioner

Versus

Manjit Singh and others

..Respondents

2. CR No.5776 of 2016
Date of decision : 19.09.2016

Estate Officer-II, Haryana Urban Development Authority, Gurgaon

...Petitioner

Versus

Mohit alias Mohit Malik and others

..Respondents

3. CR No.5777 of 2016
Date of decision : 19.09.2016

Estate Officer-II, Haryana Urban Development Authority, Gurgaon

...Petitioner

Versus

Smt. Raj Rani and others

..Respondents

4. CR No.5778 of 2016
Date of decision : 19.09.2016

Estate Officer-II, Haryana Urban Development Authority, Gurgaon

...Petitioner

Versus

Shamsher Singh Malik and others

..Respondents

5.

CR No.5779 of 2016
Date of decision : 19.09.2016

Estate Officer-II, Haryana Urban Development Authority, Gurgaon

...Petitioner

Versus

Shamsher Singh Malik and others

..Respondents

6.

CR No.5780 of 2016
Date of decision : 19.09.2016

Estate Officer-II, Haryana Urban Development Authority, Gurgaon

...Petitioner

Versus

Harish Kumar alias Harish Malik and others

..Respondents

7.

CR No.5781 of 2016
Date of decision : 19.09.2016

Estate Officer-II, Haryana Urban Development Authority, Gurgaon

...Petitioner

Versus

Lal Chand and others

..Respondents

8.

CR No.5782 of 2016
Date of decision : 19.09.2016

Estate Officer-II, Haryana Urban Development Authority, Gurgaon

...Petitioner

Versus

Shamsher Singh Malik and others

..Respondents

9.

CR No.5783 of 2016
Date of decision : 19.09.2016

Estate Officer-II, Haryana Urban Development Authority, Gurgaon

...Petitioner

Versus

Jasbir Singh and others

..Respondents

10.

CR No.5784 of 2016
Date of decision : 19.09.2016

Estate Officer-II, Haryana Urban Development Authority, Gurgaon

...Petitioner

Versus

Gurcharan Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Lokesh Sinhal, Advocate for the petitioner.

Mr. Ashok Aggarwal, Sr. Advocate with
Mr. Pavan Malik, Advocate for respondent(s).

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of aforementioned 10 revision petitions filed at the instance of Estate Officer-HUDA, Gurgaon against the dismissal of the application for being impleaded in the execution proceedings instituted at the instance of the landowners whose land had been acquired on account of the fact that execution petition has been filed at Mewat.

Mr. Lokesh Sinhal, learned counsel appearing on behalf of petitioner submits that Land Acquisition Collector had passed the award on 06.08.2012. The landowners preferred a reference under Section 18 of the Land Acquisition Act, 1894 and as a result thereof, order dated 29.09.2014 came to be passed which has been assailed in this Court vide various RFAs and in which, stay of the execution proceedings were sought, but this Court vide order dated 17.07.2015 granted 20% stay of the enhanced compensation subject to the conditions that the landowners will furnish a simple undertaking that amount received by them will be subject to the final decision of the appeal. No doubt the aforementioned order was assailed before Hon'ble Supreme Court, but the same was upheld. The respondent-Decree Holder sought the attachment of the properties situated outside the jurisdiction of the Civil Court, Mewat i.e. SCOs mentioned in the application situated at Gurgaon. It is in this backdrop of the matter, application (Annexure P-2) was filed but the same has erroneously been

dismissed. In support of his contention, he relies upon provisions of Sub-Section 4 of Section 39 of Code of Civil Procedure and as well as judgment rendered by Hon'ble Supreme Court in *Mohit Bhargava Vs. Bharat Bhushan Bhargava and others*, 2007 (4) SCC 795, to contend that Executing Court cannot seek the attachment beyond territorial jurisdiction and thus urges this Court for allowing of the revision petitions by setting aside of the impugned order.

Per Contra, Mr. Ashok Aggarwal, learned Senior Counsel assisted by Mr. Pavan Malik, learned counsel appearing on behalf of respondent(s) submits that present revision petitions are not filed under Section 115 of CPC, but under Article 227 of the Constitution of India and Hon'ble Supreme Court, as per the judgment rendered in *Surya Dev Rai Vs. Ram Chander Rai and others*, 2003(6) SCC 675, this Court, in the interest of justice, has wide power, can pass order which it deems appropriate, for adjudication of the lis. He further submits that from time to time, Judgment Debtors in the execution proceedings had been seeking time to make the payment or furnishing stay order from the Hon'ble Supreme Court but having failed to do so, came out with the application for impleadment. It is nothing but adoption of dilatory tactics which is not permissible in law. In fact, the non-payment of the amount of compensation is incurring huge amount of interest to the State Exchequer which is not permissible and officers, who are at the helm of the affairs, are not aware of the aforementioned fact.

During the course of arguments, Mr. Pavan Malik, learned counsel after obtaining instructions from his client submits that his client is

not averse in case execution application stated to be pending before Executing Court at Mewat are ordered to be transferred to District Judge, Gurgaon. He submits that HUDA shall be benefited in this regard.

I have heard learned counsel for the parties and appraised the paper book and as well as case law cited at Bar.

The provisions of Order 3 Rule 4 of Code of Civil Procedure are no longer res integra. It is now settled that no doubt the land sought to be acquired was situated within the jurisdiction of District Mewat but the fact remains that property sought to be attached and ordered to be sold in auction in pursuance of the proceedings initiated under Order 21 of the Code of Civil Procedure are situated at Gurgaon. As per impugned order, Schedule of the auction has also been fixed. The auction of the SCOs, as indicated in the application, is slated for 26.09.2016. In order to prevent the mis-carriage of justice and to prevent the prolongation/irony of the parties, much less, in my view it would be in the interest of State not to incur further interest, I deem it appropriate to transfer the execution application pending before the Executing Court at Mewat to District Gurgaon.

Parties through their counsel are directed to appear before District Judge, Gurgaon who shall either himself decide the execution application or transfer the execution in the competent court of jurisdiction. However, since in this process, little time will be consumed, I deem it appropriate to postpone the date of auction.

I re-schedule the date of auction of the properties and spot inspection would be done on 26.09.2016. Publication in the newspapers shall be done in the same manner as has been done after 10 days i.e.

06.10.2016 and auction would be on 26.10.2016 and the report thereafter on 01.11.2016.

This aforementioned direction of mine addresses the issue of the petitioner with regard to the territorial jurisdiction, therefore, in my view, challenge to the impugned order would be totally inconsequential as the grievance has been addressed.

However before auction, petitioners are directed to deposit 50% of the awarded amount including element of interest, solatium etc. which is permissible in accordance with law by 4th October, 2016.

It does not in variance to the order dated 17.07.2015 indicated stay to the extent of 20%.

Revision petitions stand disposed of in aforementioned terms.

Let this order be sent to the District Judge, Mewat and District Judge, Gurgaon for taking necessary action.

19.09.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No