

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.17888 of 2010 (O&M)

Date of decision: August 31, 2016.

Atma Ram (dead) through LRs

... **Petitioner**

v.

State of Punjab and others

... **Respondents**

CORAM: **HON'BLE MR. JUSTICE SURYA KANT**
HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Shri Akshay Bhan, Sr. Advocate with
S/Shri Rajiv Mittal & Alok Mittal, Advocates for the petitioner.

Shri Rajesh Bhardwaj, Additional Advocate General, Punjab.

Shri Aman Bansal, Advocate for respondents No.2 & 3.

A.B. Chaudhari, J.

FACTS

Petitioner Atma Ram (since dead) had purchased along with other co-sharers, by name Anita Garg and Pawan Garg, land measuring 4 bigha 10 biswas by sale deed No.847 dated 15.4.1959 out of 63 bighas 9 biswas comprised in Khasra No.1997 situated at village Bathinda, District Bathinda. His share was 1/4th i.e. 1 bigha 2-1/2 biswas falling on western side of Bathinda-Guniani road. Thereafter, Atma Ram purchased 1/4th more share out of the said 4 bigha and 10 biswas by registered sale deed and thus he became owner in possession of total land measuring 2 bigha 5 biswas out of 4 bigha 10 biswas. Anita Garg and Pawan Garg had filed CWP No.2600

of 1994 in this Court putting to challenge notifications for acquisition of the land for the Scheme at Bathinda-Guniani Road. That was decided on 20.10.1989 in favour of the petitioners therein, i.e., Anita Garg and Pawan Garg and on 2.4.2012, Letters Patent Appeal No.467 of 1990 was allowed by this Court setting aside the judgment made by the learned Single Judge dated 20.10.1989. However, the appellate judgment dated 2.4.2012 was set aside by the Apex Court and fresh hearing by this Court was ordered by the Apex Court.

Petitioner Atma Ram had filed the present petition in this Court on 28.9.2010 with a prayer to declare possession by Bathinda Improvement Trust (in short the Trust) of 2 bighas 5 biswas land in Khata No.691, khasra No.1997 at Bathinda-Guniani road illegal and consequent restoration of possession to him. According to the petitioner, Atma Ram, in the year 2002 the Trust had tried to take the possession under the garb of the award passed. The petitioner had on erroneous advice of the counsel filed a suit for declaration and permanent injunction which was dismissed on 15.3.2010. Thereafter, from the year 2005, the petitioner had made correspondence with government authorities and there was a direction to make a fact finding report. It is in the light of the above facts, the petitioner sought the relief as earlier stated.

The Trust has filed written statement dated 20.7.2011 to this petition. It is stated that the petition filed by Anita Garg (CWP No.2600 of 1984) was filed on 20.10.1989 against which LPA No.467 of 1990 was filed and it remained pending for final hearing. In para 3 of the written statement, it was stated that the land of the petitioner and other co-sharers measuring 7

bighas 10 biswas was acquired. The Trust had taken the same stand before the Civil Court which finally on evidence dismissed the suit filed by the petitioner Atma Ram on merits.

ARGUMENTS

Learned Counsel for the petitioner in support of the writ petition vehemently contended that the Trust had not acquired the subject land belonging to the petitioner and still had made encroachment on the land belonging to the petitioner. The counsel then contended that the maps as well as jamabandi records clearly show that the land purchased by the petitioner was not acquired by the Trust and the land falling in Khata No.668 of khasra No.1997 on eastern side of Bathinda-Guniani road was acquired and the owners had taken compensation for the said area whereas the petitioner's land falls on the western side of the said road. As to the petitioner approaching the Civil Court by filing a civil suit and obtaining judgment against him, learned counsel submitted that the suit was filed under a wrong advice, i.e., Civil Suit No.48 dated 4.4.2002 decided on 15.3.2010 and at any rate according to the counsel though the said judgment and decree was not challenged by the petitioner, it would make no difference as the civil court itself observed that the matter was still pending in the High Court in relation to the acquisition and that is why the petitioner Atma Ram was prompted to file this writ petition though in the year 2010, since the suit was dismissed in the year 2010. Learned Counsel for the petitioner then contended that the co-sharers of the petitioner, namely, Anita Garg and Pawan Garg are already before this Court in LPA NO.467 of 1990 and the petitioner, being a co-sharers, would also be entitled to the relief

along with them. Approaching this Court late would make no difference in that eventuality. He therefore prayed for allowing the writ petition.

Per contra, learned counsel for the Trust vehemently opposed the writ petition and inviting our attention to the written statement filed by the Trust, counsel for the Trust argued that the Trust in clear terms stated in the written statement about the acquisition of subject land of the petitioner in accordance with law and the possession was also taken on 5.5.1989 after the award was passed on 23.12.1988. The petition is liable to be dismissed as it was filed in the year 2010 without putting to challenge the acquisition proceedings in this petition on a spacious plea that the Trust had made encroachment on the subject land. According to the counsel for the Trust, the petitioner is blowing hot and cold which would be clear from the judgment of the civil court in that the petitioner had challenged the acquisition proceedings and also claimed to be in possession before the civil court. Thus this petition is again on the same issues This petition is therefore clearly not maintainable as the judgment recorded by the civil court cannot be ignored and binds the petitioner. Attention was also invited to the order dated February 12, 2002 on CM No.5634 of 2001 in LPA No.467 of 1990. The counsel for the Trust therefore prayed for dismissal of the writ petition.

CONSIDERATION

At the outset, it is necessary to state the facts about this litigation. The Trust had published notification under Section 36 of the Punjab Town Improvement Trust, 1992 (in short the 1992 Act) on 4.2.1984 and subsequent notification under Section 42 on 6.3.1987. The award was

declared on 23.12.1988. The co-sharers of petitioner Atma Ram, namely, Anita Garg and Pawan Garg had filed CWP No.2600 of 1984 challenging acquisition, which was allowed on 28.10.1989. Admittedly, petitioner Atma Ram had not put to challenge the acquisition at that time. But he filed civil suit in the year 2002 challenging acquisition etc. Similarly some other petitions challenging acquisition were also allowed on the said date by the learned Single Judge of this Court. The Trust had filed LPA before this Court which was decided ultimately on 2.4.2012. The Apex Court on 8.2.2013 set aside the said appellate judgment and remitted all the matters to this Court for fresh consideration.

Now in so far as present CWP No.17888 of 2010, CPW No.2943 of 2015 and COCP No.1222 of 2001 are concerned, the same were not listed before this Court before the judgment was delivered on 2.4.2012 perhaps due to the loss of records of these cases. Therefore, as per the orders made by the Hon'ble Chief Justice of this Court, these matters have been placed for hearing with LPAs. CWP No.2943 of 2015 has been filed on 13.2.2015 and is also listed for hearing.

Now, coming to the present writ petition, it is necessary for us to quote the prayers in the present writ petition that was filed on 28.9.2010.

Following are the prayers:-

“a) a writ in the nature of Mandamus declaring the unauthorized retention of possession of land measuring 2 Bighas 5 Biswas comprised in Khata No. 691, Khasra No. 1997 situate at Bathinda Guniana Road, Batahinda by the respondent No.2-Trust to be illegal, unauthorized and violative of Articles 14 and 300-A of the

Constitution of India:

b) a writ in the nature of Mandamus praying for seeking a direction to the respondent No.-2 Trust to immediately restore the possession of the land measuring 2 Bighas 5 Biswas to the petitioner in the interest of justice, equity and fair play;

c) A writ in the nature of Madamus directing the respondents to comply with the letter dated 10.05.2006 [Annexure P-20] written by respondent No.1 to respondent No.3 as also the letter dated 17.07.2006 [Annexure P-24] written by respondent No. 3 to the petitioner, in the interest of justice, equity and fair play;”

Perusal of the above prayers shows that the petitioner is seeking declaration about the alleged unauthorized possession/retention of the land measuring 2 bighas 5 biswas in khasra No.1997 and consequent order of restoration. In the writ petition, it is stated that the possession was taken illegally in the year 2002. It is clear that there is no challenge to the acquisition proceedings in this petition, as can be seen from the prayers above. In the written statement, there is a specific statement in reply on merits in para 2, which is quoted below:-

“2. That it is specifically denied that the land measuring 4 Bighas and 10 Biswas in Khata No. 691 falls on the Western Side of the Bhatinda-Goniana road. The contents of para No.4 of the preliminary objections made are reiterated. It is pertinent to mention here that Khata No. 668 falls on western Side of the road and land falling in this Khata has been acquired by the Trust. ...”

The petitioner being the co-sharer with Anita Garg and another,

cannot try to contend that his land was not acquired being on the western

side. The petitioner, therefore, clearly knew about the stand taken by the Trust on the acquisition of his land and that is why, the petitioner filed Civil Suit No.48 dated 4.4.2002. The civil suit was for declaration and permanent injunction. Instead of stating the facts, evidence and finding etc. in that suit, it would be appropriate for us to quote the relevant paragraphs from the civil court judgment, which would give clear answer to the contentions raised by Learned Counsel for the petitioner. We, therefore, quote the following paragraphs from the said civil court judgment:-

“JUDGMENT

Plaintiff Atma Ram has filed the present suit for declaration to the effect that the alleged notification whereby the defendant No. 1 had sought to acquire the land in the scheme known as 25.21 acre scheme, issued by the defendant No. 1 under section 36 of the Punjab Town Improvement Trust Act, 1922, seeking the acquisition of land of the plaintiff, is illegal, null and void and not binding upon the rights of the plaintiff and the plaintiff is still the owner in possession of ½ share of land measuring 4 Bigha 10 Biswas comprising in Khasra No. 1997min, situated on Bathinda Goniana Road, Bathinda and the defendants No. 1 and 2 have got no right, title or concern, whatsoever with the said land in any manner and have got no right to interfere in the peaceful possession of the plaintiff over the said land and also claimed the relief of permanent injunction restraining the defendants No. 1 and 2 from interfering or taking forcible or illegal possession of any portion of the suit land, i.e., ½ of land measuring 4 Bighas 10 Biswas, comprising in Khasra No. 1997min, situated at Bathinda Barnala Road, Bathinda and also restraining the defendants No. 1 and 2 from constructing any type of roads, or doing any other construction works in any manner as the defendants No. 1 and 2 are neither the owners nor in possession of the suit land.”

“It is submitted that the plaintiff and other co-sharers are in possession of their respective shares and they have raised their respective construction on the land of their share, in the suit land. The

defendant No. 1 issued a notification under section 36 of the Punjab Town Improvement Act, 1922 for the acquisition of the suit land, known as scheme as 25.21 acre scheme and through this notification, the defendants No. 1 and 2 had sought the acquisition of the land of the share of the plaintiff, as well as other co-sharers and the other co-sharers Anita Garg and Pawan Kumar challenge the said acquisition in the Hon'ble Punjab and Haryana High Court, Chandigarh by filing Civil Writ Petition no. 2600 of 1984, on the ground that they are co-sharers in possession of the suit property and the notifications issued by the defendant Improvement Trust, Bathinda were arbitrary and were liable to be struck down and the said civil writ petition was contested by defendant No. 1.”

It is submitted that the Improvement Trust, Bathinda acquired land measuring 7 Bighas 10 Biswas out of Khasra No. 1997 of Khata No. 668 which falls in 25.21 Scheme. The suit land never acquired by the Trust. It is further submitted that the defendants No. 1 and 2 has not acquired the land of the share of the plaintiffs but the share of Anita Garg and Pawan Kumar acquired by the Trusts from 7 Bigha 10 Biswas of land of Khata No. 668 of Khasra No. 1997. The land measuring 4 Bighas 10 Biswas falls in Khatauni No. 691. The CWP No. 2600 of 1984 filed by the defendants No. 3 and 4 qua their share only in the land measuring 7 Bigha 10 Biswas and the said civil writ petition was contested by the defendants No. 1 and 2. It is further submitted that the Land Acquisition Collector, took the possession of land measuring 7 Bighas 7 Biswas out of 7 Bigha 10 Biswas of land comprising in Khasra Nos. 1997 of Khatauni No. 668.”

“6. In order to prove his case, the plaintiff Atma Ram himself appeared as PW1 and has also examined PW2 Ravinder Kumar [examined in chief only]. PW3 Gora Lal EO Improvement Trust and thereafter the evidence of the plaintiff was closed by order vide order dated 07.10.2008.

7. In order to rebut the case of the plaintiff, the defendants examined DW1 Gurmail Singh Clerk Record Room, DC Office, Bathinda, DW2 Surinder Singh Qanungo, Halqua, DW3 Paramjit Singh, ATP Improvement Trust, Bathinda. ...”

“13. Firstly, the point regarding declaration is taken up. At the out set, it is to be observed that the notification sought to be challenged by the

plaintiff was issued by the State of Punjab, but State of Punjab has not been made a party in the present suit. Further more the notification was quashed by the Hon'ble High Court vide order passed in CWP No. 2600 of 1984. The defendants No.1 and 2 have filed LPA and the Hon'ble High Court vide order passed in LPA has stayed the operation of the order of CWP No. 2600 of 1984. The order passed in LPA No. 467 of 1990 has been produced on record as Ex. D2 since the matter is already subjudice before the Hon'ble High Court and the plaintiff having failed to implead the State of Punjab as party in the present suit, which had issued notification to acquire the land, therefore, the plaintiff is not entitled to seek the relief regarding declaration that the notification be declared illegal, null and void.”

“15. The perusal of the cross-examination of PW1 Atma Ram plaintiff goes to show that the plaintiff has admitted that he is not in possession of the suit land. Since the plaintiff admits that he is not in possession of the suit land, therefore, the relief of permanent injunction can not be granted to the plaintiff. There is another aspect from which the matter can be viewed. The plaintiff is seeking to restrain the defendant from interfering in possession of half share of the plaintiff from land measuring 4 Bighas 10 Biswas, comprising in Khasra No. 1997 min. The plaintiff has failed to pin point as to which portion, out of the land measuring 4 Bighas 10 Biswas comprising in Khasra No. 1997 min is in his possession. Thus, the injunction sought by him is vague. The remaining evidence led by the parties is not required to be discussed, since the plaintiff has admitted that he is not in possession of the suit land, therefore, he is not entitled to the injunction and issue No.1 is hence decided against the plaintiff.”

It is thus crystal clear from the above judgment that the petitioner Atma Ram had specifically raised the issues about the location of the land belonging to him and further that his land was not acquired and that he was in possession of his land and that without making any acquisition, the Trust was attempting to obtain the possession of the subject land. Petitioner Atma Ram tendered his evidence before the trial court and the Trust also examined its witness to rebut the evidence. He also sought a

declaration that the notification about land acquisition be declared null and void and illegal. The civil court clearly recorded a finding that the petitioner had not made the State of Punjab as a necessary party to the suit and therefore, the suit was required to be dismissed. The submission that this would not be a finding on merit and therefore the petitioner would be entitled to maintain the writ petition, in our opinion, is preposterous. The dismissal of suit on the ground that necessary party was not joined to the suit, does not entitle a person either to file another suit or a writ petition. That apart, the issue raised by the petitioner that his land was not acquired or that it was different from the one that was acquired, which is repeatedly raised in this writ petition, was also raised by him before the civil court. In para 15 of the judgment above, the civil court clearly held that the plaintiff (petitioner Atam Ram) failed to pinpoint as to which portion out of 10 bigha 7 biswas comprised in khasra No.1997 is in his possession. In our opinion, the civil court had decided the disputed questions of facts as to which portion was acquired and which portion was not acquired, by recording evidence and the court held that the petitioner had failed to prove his case. We are afraid, we can at all endeavour to go behind the civil court judgment and into the said disputed questions of fact over again in the present jurisdiction.

It is interesting to note that the petitioner never challenged the said judgment of the civil court and allowed it to remain binding on him even as on date. We really wonder as to how we will be able to tinker with the said judgment of the civil court as contended before us by learned

Counsel for the petitioner.

We, therefore, find that the petitioner filed the present petition after having lost before the civil court and such a multiplicity of litigation cannot be permitted. In the result, we find no merit in the present writ petition. We, therefore, make the following order:-

ORDER

(i) CWP No.17888 of 2010 is dismissed.

(ii) No order as to costs.

[Surya Kant]
Judge

[A.B. Chaudhari]
Judge

August 31, 2016.
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Whether speaking/reasoned

Yes

Whether reportable

Yes