

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 4605 of 2009 (O&M)

Date of Decision: 26.05.2016

State of Haryana through Collector, Jhajjar and Others

... Appellant(s)

Versus

Rampiari and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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

Present: Mr. Karan Sharma, Deputy Advocate General,
Haryana, for the appellant(s).

Mr. Keshav Pratap Singh, Advocate
for respondents No.1 and 3 to 5.

Shekher Dhawan, J.

Present regular second appeal, filed by the defendant-State, against concurrent findings of facts having been recorded by the Courts below in a suit for declaration and consequential relief of permanent injunction.

For the sake of convenience, parties are being referred to as per their status before the Court of first instance.

Relevant facts of the case that plaintiffs had filed suit for permanent injunction against defendant-State that land measuring 5 kanals 16 marlas comprised in killa No. 23/1 was neither acquired by the State of Haryana nor any notification for its acquisition was ever issued by the State

referred to as “the Act”). Plaintiffs have not received any compensation nor any award was pronounced. Despite requests, the grievance of plaintiffs has not been redressed and as such necessity of the suit.

Defendant-State contested the suit *inter alia* taking the plea that the suit land was acquired vide award No. 45 dated 14.5.1981 (Ex.D2) pertaining to village Kasni for construction of Bandh (Dam) and compensation was awarded by the Land Acquisition Collector, Jhajjar to the plaintiffs and the suit of plaintiffs is without any merit and the same be dismissed.

On these facts, the Court of first instance settled the issues and parties were put to trial. After recording of evidence by both the parties and appreciation thereof, the Court of first instance decreed the suit of plaintiffs. Defendant-State preferred first appeal but remained unsuccessful and as such present regular second appeal before this Court.

Learned State counsel, at the time of arguments, could not lay his hands on any notification having been issued under Sections 4 & 6 of the Act or any document showing that payment of compensation was infact made to the respondents herein against the acquisition of land in dispute. However, learned State counsel submitted that payment was actually made to the plaintiffs by the Land Acquisition Collector, Jhajjar. But the respondent have denied the said fact.

Learned counsel for the respondents submitted that present regular second appeal against concurrent findings of facts recorded by the Courts below is not maintainable and same be dismissed.

Having considered the submissions made by learned counsel for

the parties and appraisal of the record of the case, this Court is of the considered view that the present regular second appeal is against the concurrent findings of facts having been recorded by the Courts below. There is absolutely no substantial question of law involved in the instant appeal. Admittedly, no notification under Sections 4 & 6 of the Act with respect to the land in dispute has been issued by the State nor there is any material or evidence available on the file which reveals that plaintiffs were paid compensation in respect of suit land at any point of time. The Courts below have rightly decided the controversy and present appeal is not maintainable.

In *Deity Pattabhiramaswami v. S. Hanymayya and Others AIR 1959 SC 57*, the Hon'ble Apex Court observed that the provisions of Section 100 CPC are clear and unambiguous. There is no jurisdiction to entertain a second appeal on the ground of findings of fact. In *Commissioner, Hindu Religious & Charitable Endowment v. P. Shanmugama & Others JT 2005(1) SC 201* and *Biswanath Ghosh (Dead) by LRs and Others v. Gobinda Ghosh alias Gobindha Chandra Ghosh & Others AIR 2014 SC 1582*, the Hon'ble Apex Court has taken a view that second appeal cannot be entertained if there is no substantial question of law involved therein.

Accordingly, present appeal is not maintainable as per the provisions of Section 100 of the Code of Civil Procedure, 1908 and the same stands dismissed.

(Shekher Dhawan)
Judge