

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

**Regular Second Appeal No. 2310 of 2010 (O&M)
Date of Decision: September 30, 2016.**

Improvement Trust, Malerkotla

.....APPELLANT(s).

VERSUS

Tahir Hussain and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sandeep Khunger, Advocate
for the appellant (s).

Mr. G.N. Malik, Advocate
for the respondents No.1 to 13, 15 and 16.

Mr. J.S. Toor, Advocate
for respondent no.19.

SURINDER GUPTA, J.

Heard.

2. Plaintiffs-respondents filed suit seeking relief of injunction to restrain defendants-appellants from taking possession of their shops which are situated on the land bearing *khasra* no.804 and 805 acquired by the Improvement Trust. The suit was dismissed but the first appellate court decreed the suit and restrained the defendants-appellants from taking possession of the disputed property except in due course of law.

3. Admittedly, plaintiffs-respondents are in possession of the disputed plots which were leased out to them by the Municipal Council, Malerkotla and they had constructed shops over there. Later on, the land

to be in possession of the suit land. The possession of plaintiffs-respondents over the suit land before the acquisition was legal and valid and they are not encroachers over the acquired land.

4. Keeping in view the all these facts, first appellate court has committed no error of law while recognising the title of the defendants-appellants and possession of plaintiffs-respondents over the suit land and decreeing the suit restraining the defendants-appellants from taking possession of disputed shops except in due course of law. I find no legal or factual infirmity in the judgement passed by the first Appellate Court calling for interference.

5 As per decree passed by first Appellate Court, the defendants-appellants are at liberty to take possession of the disputed shops in accordance with law, however, it is unfortunate that instead of proceeding in accordance with law the defendant-appellant, which is a statutory authority, has preferred to file this appeal perhaps with a view to create a ground to extend period of possession of plaintiffs over disputed property and to help them. In case it had proceeded to take possession of the disputed shops in accordance with law, it would not have wasted seven years after decision by the first Appellate Court. Apparently, this appeal was filed not to secure the right and interest of appellant, but of the plaintiffs.

6. No substantial question of law requiring determination arises in this appeal which has no merits. Dismissed.

September 30, 2016

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**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No