

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

RSA No.3750 of 2010 (O&M)

Date of decision: 29.8.2016

Mukhtiar Singh and others

... Appellants

Versus

Haryana Urban Development Authority and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Adarsh Jain, Advocate,
for the appellants.

Mr.B.S.Ichhewal, Advocate, for
Mr.J.P.Bhatt, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is aggrieved of the dismissal of the suit whereby the relief of permanent injunction from forcible and illegal dispossession and interference had been declined by both the courts below.

Mr.Jain learned counsel appearing on behalf of the plaintiff submits that the plaintiff purchased the property in auction on 15.10.1961 measuring 2K-10M bearing Rectangle No.68, Killa No.7/2. The forefathers had been in possession of the property for the last more than 80 years. The aforementioned land had been in the name of Gram Panchayat Sihi but the aforementioned mistake was rectified vide mutation No.1813 and it was recorded as "Shamlat Deh Hasab Rasad Kabza Araj". The plaintiffs have every right to retain possession. It is in this background the suit was filed. It was stated that notification under Section 4 of the Land Acquisition Act had

been issued on 14.4.1974. Vide notification bearing No.1139 dated

14.4.1974, the said land was released and vide notification No.1164, the same very land was acquired. The possession had also been rejected by the learned lower court. Even the matter was taken in the first appellate court by filing appeal under Section 96 of CPC and while dismissing the suit, directed the appellants to pay ₹ 10,000/- till the land was subsequently acquired. The aforementioned direction could not have been given by the lower appellate court as nothing prevented to take possession of the land in accordance with law. He further submitted that since compensation has not been deposited in the Court, therefore, he would be entitled to seek release of the land as per Section 24 (2) of the The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and thus, urges this Court to set aside the impugned judgments and decrees.

Mr.B.S.Ichhewal, learned counsel appearing for the respondents submits that the suit was not maintainable once the land was acquired in view of the law laid down by the Hon'ble Supreme Court in **State of Punjab v. Amarjit Singh**; 2011 (14) SCC 713. The concurrent findings cannot be interfered with.

I have heard the learned counsel for the parties and appraised the paper-book and of the view that there is no merit or force in the submission of Mr.Jain particularly for the benefit under Section 24(2) of the Act, the civil court does not have jurisdiction to grant relief in view of the law laid down by the Hon'ble Supreme Court. Once the land had already been acquired vide notification No.1164 of 14.4.1974, possession as per Section 16 of Act deemed to be transferred in the name of the beneficiary.

interference muchless any substantial question of law arises. The direction by the lower appellate court for payment is not justified as per the provisions of Section 16 of the Act which reads thus : -

“16. Preparation of Rehabilitation and Resettlement Scheme by the Administrator.—(1) Upon the publication of the preliminary notification under sub-section (1) of section 11 by the Collector, the Administrator for Rehabilitation and Resettlement shall conduct a survey and undertake a census of the affected families, in such manner and within such time as may be prescribed, which shall include—

(a) particulars of lands and immovable properties being acquired of each affected family;

(b) livelihoods lost in respect of land losers and landless whose livelihoods are primarily dependent on the lands being acquired;

(c) a list of public utilities and Government buildings which are affected or likely to be affected, where resettlement of affected families is involved;

(d) details of the amenities and infrastructural facilities which are affected or likely to be affected, where resettlement of affected families is involved; and

(e) details of any common property resources being acquired.

(2) The Administrator shall, based on the survey and census under sub-section (1), prepare a draft Rehabilitation and Resettlement Scheme, as prescribed which shall include particulars of the rehabilitation and resettlement entitlements of each land owner and landless whose livelihoods are primarily dependent on the lands being acquired and where resettlement of affected families is involved— (i) a list of Government buildings to be provided in the Resettlement Area; (ii) details of the public amenities and infrastructural facilities which are to be provided in the Resettlement Area.

(3) The draft Rehabilitation and Resettlement scheme referred

to in sub-section (2) shall include time limit for implementing Rehabilitation and Resettlement Scheme.

(4) The draft Rehabilitation and Resettlement scheme referred to in sub-section (2) shall be made known locally by wide publicity in the affected area and discussed in the concerned Gram Sabhas or Municipalities.

(5) A public hearing shall be conducted in such manner as may be prescribed, after giving adequate publicity about the date, time and venue for the public hearing at the affected area: Provided that in case where an affected area involves more than one Gram Panchayat or Municipality, public hearings shall be conducted in every Gram Sabha and Municipality where more than twenty-five per cent. of land belonging to that Gram Sabha or Municipality is being acquired: Provided further that the consultation with the Gram Sabha in Scheduled Areas shall be in accordance with the provisions of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (40 of 1996).

(6) The Administrator shall, on completion of public hearing submit the draft Scheme for Rehabilitation and Resettlement along with a specific report on the claims and objections raised in the public hearing to the Collector.”

In view of the said statutory provision, learned lower appellate court not to have called the plaintiff to pay damages as noticed above. Accordingly, the findings of the lower appellate court qua deposit of damages is set aside and rest of the findings are affirmed.

Regular second appeal stands dismissed.

(AMIT RAWAL)
JUDGE

August 29, 2016
Paritosh Kumar

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No