

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

**Regular Second Appeal No.4329 of 2010 (O&M)
Date of Decision: December 23, 2016.**

Major Singh and others

.....APPELLANT(s).

VERSUS

State of Punjab and another

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rakesh Chopra, Advocate
for the appellant (s).

SURINDER GUPTA, J.

Suit filed by appellants and Sarup Singh-respondent No.5 for declaration that they are absolute owners in possession of the suit land as fully described in the head note of the plaint, was dismissed by Additional Civil Judge (Senior Division), Fatehgarh Sahib and the appeal filed by them was also dismissed by the first Appellate Court.

2. Giving details of their title over the suit land as described in para A to I in the head note of the plaint, plaintiffs pleaded that they have purchased this land vide different sale deeds between the period from 31.03.1987 to 22.03.1988. They were also put in exclusive possession of the suit land by their vendors. Their possession was open, hostile, as a matter of right as owners, continuous, exclusive and without interruption. Plaintiff also claimed to be bona fide purchaser of suit land, alleging that at the time of purchase, suit land had not been mutated in the revenue record in

the name of defendants-Irrigation Department or any other Department of State of Punjab. In the alternate, they pleaded that they have become owners of the suit land by way of adverse possession. Earlier the plaintiffs filed suit against the State of Punjab through Collector, District Patiala (now Fatehgarh Sahib) and Secretary, Canal and Irrigation Department and State of Punjab. In that suit, the plaintiffs were allowed decree of permanent injunction. They filed appeal against the denial of decree of declaration while the defendants filed appeal against the decree of injunction allowed to the plaintiffs, which were heard together by Additional District Judge, Fatehgarh Sahib. In appeal, the plaintiffs were allowed to withdraw the suit with permission to file fresh one. Plaintiffs alleged that they are bona fide purchasers of the suit land and in alternate, they have attained title by way of adverse possession.

3. The defendants admitted possession of plaintiffs over the suit land, which was acquired by the Irrigation Department vide award No.131/LAO B.P. Patiala in the year 1958-59 after paying compensation to the then owner-Nagar Panchayat. It was averred that plaintiffs have no claim on this land as it was acquired after adopting due process of law. In the revenue record, Irrigation Department is recorded in possession of the suit land. The sale deed in favour of plaintiffs are illegal and have been got registered by keeping the authorities in dark. Acquired land was also mutated in favour of Irrigation Department, as such, plaintiffs are not bona fide purchasers.

4. In the replication, the plaintiffs re-asserted their claim and pleadings of the parties led to the framing of issues as follows:-

- (1) Whether plaintiffs are entitled to declaration prayed for ?OPP
- (2) Whether plaintiffs have become owners of suit property by way of adverse possession? OPP
- (3) Whether suit is not maintainable? OPD
- (4) Whether plaintiffs have no cause of action to file the suit? OPD
- (4A) Whether plaintiffs are bona fide purchaser of the suit property for consideration and in good faith without the alleged notice to the alleged claim of defendants? OPD
- (5) Relief.

5. To support their title over suit land, appellants-plaintiffs relied on sale deeds Ex.P1 to P9 got executed by them in the year 1987 and 1988 pertaining to land which was acquired in 1958-59 and compensation of which was paid to the land owners. These sale deeds were discarded by the Courts below on the ground that plaintiffs failed to prove that their vendors had legal, valid and effective title over the suit land at the time of sale. Regarding the sale deeds pertaining to the land mentioned with letter A in the head note of the plaint, learned trial Court observed that Jamabandi of this land was not produced to prove that Amar Singh, Surjit Singh and Pritam Singh, from whom this land was purchased vide sale deed Ex.P8, were owners of the suit land at the time of execution of the sale deed. Regarding the land mentioned with letter B, it was observed that in column No.5 of the jamabandi for the year 1988-89, it was mentioned that plaintiffs are in possession of the land purchased from Uttam Chand allottee but in fact no land was ever sold/allotted to Uttam Chand by the Custodian Department, who was recorded as owner of 1331/2920 share in the disputed

land.

6. This fact is not disputed that suit land was acquired by Irrigation Department by adopting due process of law vide award dated 24.02.1959 (Ex.D1) and compensation was paid to the owner of the suit land recorded in the revenue record. Mutation No.2143 of 1989 (Ex.D9) was sanctioned in the name of State of Punjab on the basis of award dated 24.02.1959. Learned trial Court observed that in the absence of any authority with the vendors of plaintiffs, the sale deeds Ex.P1 to P9 do not confer any right on them over the suit land.

7. The plea of the plaintiffs that they have become owners of the suit land by way of adverse possession, was held as not proved in the absence of any evidence to this effect. It was observed that award acquiring the suit land along with other land was duly published, as such, plaintiffs are not bona fide purchasers, particularly when they are residents of Harbanspura, the village where the suit land is situated.

8. The first Appellate Court affirmed the findings recorded by learned trial Court.

9. Learned counsel for the appellants-plaintiffs has not assailed the findings of the Courts below on plea raised by the plaintiffs that they have become owners of the suit land by way of adverse possession or they are bona fide purchasers of the suit land. His sole argument is that the respondents-defendants have not become owner of the suit land as its possession is still with appellants-plaintiffs. Making reference to provisions of Section 16 of Land Acquisition Act, 1894 (later referred to as the Act No.1 of 1894) he has argued that the title of acquired land vests in the

Government free from all encumbrances only when it has taken its possession. In this case, possession is admittedly with the plaintiffs, as such, defendants are not owners of the suit land and plaintiffs continues to have absolute title over it. In support of his contention, learned counsel for the appellants-plaintiffs has relied on the observations in ***Udmi Ram Vs. State of Punjab and another*** 1970 *Current Law Journal* 78 and ***Jaipal Singh and others Vs. State of Haryana and another*** 1981 P.L.J. 391.

10. This plea of the appellants-plaintiffs is not disputed that they are in possession of the suit land. Neither the acquisition of the suit land nor the payment of compensation to the real owners is in dispute or has been challenged by appellants-plaintiffs or their predecessors-in-interest. The appellants-plaintiffs came in picture in the year 1987-1988 when they got executed several sale deeds in their favour from private persons with regard to the suit land, which had already been acquired.

11. Title of acquired land vests in the State free from all encumbrances on taking of possession as per Section 16 of Act No.1 of 1894, which reads as follows:-

“16. Power to take possession. *When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon vests absolutely in the Government, free from all encumbrances.*

12. After repeal of Act No.1 of 1894 w.e.f. 01.01.2014 vide S.O.3729(E) dated 19.12.2013, similar provision with certain modifications has also been incorporated in The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 under Section 38, but the same do not require any discussion here as

the acquisition in this case and possession of acquired land was taken under the provisions of Act No.1 of 1894.

13. On acquisition of land, payment of compensation and sanction of mutation in favour of State, acquired land vests in the State, however, absolute title free from all encumbrances vests in State only after the actual possession of the land has been taken.

14. The question which is relevant in this appeal is as to whether possession of acquired land was taken by the State?

15. DW1 D.R. Singla, SDO has stated that in the revenue record, Canal Department is recorded as owner of the suit land and the sale deeds in favour of appellants-plaintiffs were executed at the back of the Revenue Department. He has further stated that the possession of the department over the suit land, which was acquired in the year 1953-54 from *Gram Panchayat*, is since long and appellants-plaintiffs have now forcibly occupied the suit land after getting the sale deeds executed in their favour.

16. Before proceeding further, it will be relevant to have a look at the award (Ex.D1) of the suit land. In this award, it is specifically mentioned that possession of the acquired land was taken over by the concerned Department in February, 1952. The Collector had discussed this fact repeatedly in the award and specifically in para 8 as follows:-

“8. As mentioned above notifications for acquisition of land were issued in the beginning of 1952. In the first instance, papers were prepared for payment of compensation for temporary occupation. S. Balwant Singh, Collector, L.A. assessed compensation on a/c of temporary occupations for three years in April, 1954. It means that possession was taken over by the department

about the date of notification U/s 4 which is January, 1952. X.EN has written to me saying that the date of possession be assumed as June, 1954. I regret, I am unable to agree with the X.EN on this point. The date of taking over possession is being treated as Jan.52 and classification mentioned above is also based on the nature of the soil as it existed prior to date of possession.”

17. While discussing as to from which date, the suit land will absolutely vest in the State, the Collector recorded in para 10 of the award as follows:-

“10. The land aforesaid will vest absolutely in the Govt. free from all encumbrances from February, 1952.”

18. As already discussed, this award has attained finality as it has not been challenged by the appellants-plaintiffs. The citations referred by learned counsel for the appellants-plaintiffs are not applicable to the facts and circumstances of this case. In case of ***Udmi Ram Vs. State of Punjab and another (supra)***, the issue was relating to the payment of compensation of the acquired land. In that case, after acquisition of land, compensation had not been paid for five years and in execution proceedings, State took the plea that execution was pre-mature as it had not taken possession of acquired land. It was observed by this Court that a combined reading of Section 16 and 48 of Act No.1 of 1894 show that there is no transfer of title of the land till the possession is taken under Section 16. Till then, the land remains with the owner and the liability of the State to pay compensation is not attracted.

19. In case of ***Jaipal Singh and others Vs. State of Haryana and another (supra)***, the observations of Division Bench of this court were also

based on provisions of Section 16 of Act No.1 of 1894 and it was observed that vesting of title with the Government is only after taking of possession.

20. Perusal of award (Ex.D1) clearly states that possession of the suit land was taken in the year 1952 and this land absolutely vests in the State w.e.f. February, 1952. Once the land absolutely vest in the State under Section 16 of Act No.1 of 1894, title of the State becomes absolute and plaintiffs, who have purchased the land from 1987 to 1988, stood debarred from claiming any title over the suit land on the basis of their possession.

21. It is ironical that despite acquisition of the land and conclusion of acquisition proceedings about 57 years back, the State and the concerned Department have not been able to manage its properties and the suit land is now in possession of the appellants-plaintiffs. The land in suit is a public property and a duty is cast upon the State to take immediate steps not only to recover possession of the suit land but also mesne profits for its use and occupation from the person(s) in its unauthorised possession.

22. As a sequel of my above discussion, I find no merits in this appeal.

Dismissed in limine.

December 23, 2016
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***