

**RSA No.1671 of 2012 (O&M) and
other connected petitions**

-1-

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

**RSA No.1671 of 2012 (O&M) and
other connected petitions
Date of Order:22nd December, 2017**

Santokh Singh

..Appellant

Versus

Punjab State and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.S.Chauhan, Advocate,
for the appellant.

Mr. Pawan Sharda, Sr. DAG, Punjab.

ANIL KSHETARPAL, J.

C.M.No.15168 of 2017 in RSA No.1671 of 2012
C.M.No.26196 of 2017 in CR No.7512 of 2013
C.M.No.15170 of 2017 in RSA No.319 of 2013

These applications have been filed for permission to withdraw
the regular second appeals.

It has been submitted that the appellants have now filed writ
petition under Section 24 of the Right to Fair Compensation and
Transparency in the land Acquisition, Rehabilitation and Re-settlement Act,
2013 (hereinafter referred to as 'the Act') and hence the appellants should be
permitted to file the appeals.

In this case, this Court has found that public property acquired
by the State as per provisions of the Land Acquisition Act, 1894 has been
unauthorisedly occupied by the appellants. Learned first appellate court has
passed a decree without noticing the judgments passed in the connected
similar cases.

Still further the appellants in the various appeals were ordered

to be evicted under the Public Premises Act. However, the writ petition was allowed by this Court on the ground that no first appeal has been preferred against the decree passed by the trial Court, which was against the record.

The review applications have been filed by the State in those writ petitions. Hence, this is a case where appellants have been misusing the process of Court.

Taking into consideration these facts, the applications for permission to withdraw the appeals are rejected.

C.M.No.14157 of 2017 in RSA No.2103 of 2012

Prayer in this application is for permission to produce in additional evidence a copy of the judgment passed by the Civil Court in Civil Suit No.110 of 2000 titled as Krishna Devi vs. State of Punjab, decided on 01.12.2009.

It is pleaded that number of similar suits were filed by the different plaintiffs for claiming similar reliefs. In Civil Suit No.110 of 2000 titled as Krishna Devi vs. State of Punjab, decided on 01.12.2009, it was held that the land had been validly acquired and the plaintiffs are unauthorised occupants. This judgment has become final. This judgment has a bearing on the decision of the appeal. Notice of the application was given to learned counsel for the appellants. However, no reply has been filed.

Taking into consideration the facts available on the file, the application for additional evidence is allowed. The judgment passed by the Civil Court in Civil Suit No.110 of 2000 titled as Krishna Devi vs. State of Punjab, decided on 01.12.2009, is permitted to be produced in additional evidence.

Counsel for the private parties was offered opportunity to lead evidence in rebuttal, he has submitted that no evidence in rebuttal is to be lead.

C.M.No.15169-C-2017 in RSA No.318 of 2013

Prayer in this application is for bringing on record the legal representatives of

For the reasons mentioned in the application, which is supported by an affidavit, the application is allowed, subject to just exceptions. The legal representatives mentioned in paragraph 3 of the application are brought on record for the purpose of prosecuting this appeal only.

Amended memorandum of parties filed along with the application is taken on record.

Main case

This judgment shall dispose of Regular Second Appeal Nos.1671 of 2012, 2103 of 2012, 319 of 2013, Civil Revision No.7512 of 2013, Review Application Nos.373, 374, 382, 383, 384, 385, 387 of 2011 as also Civil Writ Petition Nos.13631, 14955, 14956, 14957, 14300, 14094 and 14959 of 2006.

In the considered opinion of this Court, the question of law which requires determination is “whether while dealing with the public property, courts have to play a pro-active role to ensure protection thereof from the unauthorised encroachments?”

This case has a checkered history and depicts a sorry state of affairs on the part of the government officials while defending the public property.

It is the case of the State of Punjab that land measuring 32.35 acres situated in villages Malekpur (Malikpur) and Bahader Lahri, Tehsil Pathankot, District Gurdaspur was acquired for a public purpose, namely, Beas River Model at Hydrolic Research Station, Malikpur, as per the provisions of Land Acquisition Act, 1894. It is also the case of the State of Punjab that entire compensation was paid and the award No.524, dated 30.08.1961 was announced.

The land was mutated in the revenue records in the name of Provincial Government vide mutation No.2304, dated 11.11.1964. However, the entries were not reflected in the jamabandi i.e., the revenue record subsequently.

Original copy of the mutation proceedings i.e., Parat Sarkar was lost. However, another copy of the mutation was available i.e., Parat Patwar and on that basis, the revenue record was corrected and updated later on. Once the revenue record was corrected, Provincial Government started asserting its right on the property. As many as 7 suits were filed by the unauthorised occupants. In most of the cases, it was pleaded by the plaintiffs that defendant i.e, the State of Punjab claims that the land has been acquired, pursuant to award dated 30.08.1961 and that acquisition proceedings should be declared illegal, null and void. It was prayed that decree for permanent injunction be passed protecting the possession of the plaintiffs in the cases.

On the other hand, State of Punjab invoked jurisdiction under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 and sought possession from the unauthorised occupants.

Out of seven cases, Civil Suit Nos.66 and 110 of 2000 and

Civil Suit No.35 of 2008, were decided against the plaintiffs and in favour of the State. It was found by the Court that the land has been validly acquired and the plaintiffs in those cases were held not entitled to injunction against the true owners i.e. State Government.

However, the State of Punjab did not produce copy of the award and other appropriate evidence and hence Civil Suit No.65 of 2000, Civil Suit No.33 of 2000 and Civil Suit No.67 of 2000 were decided against the State of Punjab. In some of the cases, which have gone against the State of Punjab, the learned trial Court did not grant any declaration to the plaintiffs but decreed the suit only with respect to permanent injunction, whereas in some of the cases, the land acquisition award was declared to be illegal.

It would be very significant to note here that the judgment passed by the learned trial Court in Civil Suit Nos.66 and 110 of 2000 and Civil Suit No.35 of 2008 have become final. In Civil Suit No.110 of 2000 titled Krishna Devi v. State of Punjab, copy of the judgment is available on the file of RSA No.1671 of 2012 being decided by this judgment and it was held that the land vests with the Government pursuant to the acquisition of land as per the provisions of Land Acquisition Act, 1894 and plaintiffs are not entitled to any injunction.

In Civil Suit No.33 of 2000 titled Atma Singh v. State of Punjab, the first appellate Court has reversed the finding of the trial Court with respect to declaration that there is no acquisition proceedings, however, decree for injunction granted by the trial Court has been upheld. In this case, the State of Punjab is in appeal.

In the case of Bakshish Singh v State of Punjab, Civil Revision

No.7512 of 2013, similar suit filed was decreed only with respect to permanent injunction, however, relief of declaration that plaintiffs are owners in possession was declined.

Bakshish Singh filed first appeal. During the pendency of the first appeal, Bakshish Singh filed an application for permission to withdraw the suit with permission to file a fresh suit, as the plaintiff does not have any further apprehension of threat of forcible interference.

Learned first appellate Court after noticing that relief qua declaration has already been dismissed, declined the prayer for withdrawal of the suit with permission to file fresh one on the same cause of action, however, he was permitted to withdraw the appeal.

In the proceedings arising out of orders of eviction under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973, various writ petitions were filed in this Court, referred to above by the persons in possession. State officials did not bring to the notice of the High Court that against the decree passed by the trial Court in some of the cases first appeals, filed by the State of Punjab, were pending. The writ petitions were allowed by the High Court after noticing that the judgments of the trial court have become final and no appeal has been preferred. The State of Punjab have filed the review applications in the aforesaid writ petitions.

Few undisputed facts have emerged from the various documents available on the file. Vide notification dated 30.06.1960, State of Punjab published notification under Section 4 of the Land Acquisition Act read with Section 17 of the Land Acquisition Act, 1894 with respect to land measuring 32.35 acres situated in villages Malakpur and Bahadur Lahri, Tehsil Pathankot, District Gurdaspur. The acquisition proceedings

were concluded vide award No.524 dated 30.08.1961. Letter dated 05.06.1962 written by Land Acquisition Officer, Drainage Circle, Amritsar, to Sub-Divisional Officer, Hydraulic Sub Division, Malakpur establishes that Sub Divisional Officer, Malakpur, was directed to come to the Pathankot Civil Rest House for distribution of the compensation on 22.06.1962. The land was transferred in favour of the Provincial State Government on 11.11.1964 pursuant to the award passed by Land Acquisition Collector.

In the Civil Suits, which have gone against the State of Punjab, the Civil Courts have overlooked the judgment, which have become final, in the connected cases. The civil suits have been decided against the State of Punjab only on the ground that the copy of the award and the proceedings of the land acquisition have not been produced. At this stage, it shall be appropriate to notice that Civil Suit No.110 of 2000, copy whereof is available in the paper book, civil Court has found as under:-

“10. After hearing both the learned counsel for the plaintiff and learned GP for the defendants and after going through the documents placed on file opinion derived that before filing the present suit the plaintiff was quite in the knowledge of the award dated 3.8.1961 and the sanction of mutation no.2304 dated 11.11.64. The plaintiff adopted to simultaneous procedure by challenging the mutation no.2304 before the SDM, Pathankot and also filed the present suit to declare the award to be null and void where as the award was passed in the year 1961 and the same was challenged by

the plaintiff after the lapse of more than 39 years and the notification with regard to the acquisition of land has been proved on file as Ex.D.14 and the payment of the project with regard to Malikpur was paid vide letter issued by Land Acquisition Officer, Amritsar Ex.D.4. The plaintiff herself admitted that she came into forcible possession in the year 1996 whereas as per the pleading of the plaintiff the plaintiff as well as his predecessor were already in possession of the suit land since the year 1964. The plaintiff further alleged that she purchased the suit land by executing the sale deed Ex.P1 to Ex.P4 from the earlier owners whereas the plaintiff remained failed to prove categorically the extend of the ownership of the earlier owners and simply by placing the jamabandi for the year 1994-95 which does not include the mutation no.2304 shows the malafide of the plaintiff whereas the jamabandi produced by the defendants Ex.D.15 contain the mutation no.2304 in favour of provincial Govt. in whose favour the mutation has been sanctioned after verifying the record by the revenue authorities although the no. of person filed their revision against the said sanction of mutation but the same was no help to the Court of Divisional Commissioner, Jalandhar and it is well settled law that no injunction can be granted against the true owners. Although it has been alleged that the plaintiff is in possession but it has

not been denied that the plaintiff is in illegal possession of the suit land on the basis of the sale deed. The plaintiff further remained failed to examine to any office predecessor to denied the fact that they not received an amount of Rs.27,691-63 as compensation and neither the plaintiff has examined any other person to prove his actual physical possession over the suit land and he has only examined himself as solitary witness and further relied upon entry of the jamabandi for the year 1994-95 but after perusing the same jamabandi produced by the defendants Ex.D.15 and Ex.D.16 it transpired that the same is incomplete hence the contention raised by the plaintiff itself became contradictory when the plaintiff has not approached the Court with clean hands and further seek injunction against true owner in whose favour mutation has already been sanctioned and upheld, hence the contentions of the plaintiff are not reliable at all and considering the plaintiff into illegal possession over the suit land the issues are decided against the plaintiff and in favour of the defendants.”

As noticed earlier, the aforesaid judgment has become final.

Before this Court, State of Punjab has filed applications for permission to produce on file copy of the notification under Section 4 of the Land Acquisition Act, dated 30.06.1960. A copy of the letter dated 05.06.1962 written by the Land Acquisition Officer to Sub-Divisional Officer, Hydraulic Sub Division, Malakpur for bringing the amount awarded

in cash for its disbursal to the farmers and letter dated 21.06.1962 written by Director, Land Reclamation, Irrigation and Power Research Institute, Punjab Amritsar, to Sub Divisional Officer, Hydraulic Sub Division, Malkpur forwarded various land acquisition awards including award dated 30.08.1961.

No doubt, copy of the award has not been produced on the file of the Courts in any of the proceedings. However, there are documents available on the file, which establish that State of Punjab had in fact acquired the land in question, as per the provisions of Land Acquisition Act, 1894. The reasons are:- (i) proceedings under the Land Acquisition Act were initiated by issuing notification under Section 4 read with Section 17 of the 1894 Act in the year 1960; (2) passing of the land acquisition award No.524 dated 30.08.1961 is admitted as the plaintiffs have challenged the award. In Civil Suit Nos.66 and 110 of 2000 and Civil Suit No.35 of 2008, Civil Court as a matter of fact have found that valid land acquisition proceedings were finalised and these judgments have become final as there is no appeal or revision. The land was mutated in favour of the State of Punjab vide mutation No.2304 dated 11.11.1964. It is well settled that there is presumption of correctness to the official actions. In the year 1964, there was no dispute between the parties.

From a reading of the letter dated 05.06.1962, it clearly proves that arrangement was made for disbursal of the compensation. In the case of Krishna Devi, who was a similarly situated plaintiff, she admitted in the evidence that she came into the forcible possession of the land in the year 1996. This is exactly the case of the State, in all the cases. In most of the cases, the Civil Court had upheld the land acquisition proceedings but

decreed the suit qua injunction. The Courts have found that the acquisition proceedings are in accordance with law and plaintiffs have failed to prove their ownership.

Question as framed in the opening para is answered in favour of the State.

In view of the discussion made above, the Regular Second Appeal No.2103 of 2012 is allowed, whereas Regular Second Appeal Nos.1671 of 2012, 319 of 2013 and Civil Revision No.7512 of 2013 are dismissed. Review Application Nos.373, 374, 382, 383, 384, 385, 387 of 2011 filed by the State of Punjab in Civil Writ Petition Nos.14955, 13631, 14956, 14957, 14959, 14094 and 14300 of 2006 are allowed.

Hence writ petition Nos. Nos.14955, 13631, 14956, 14957, 14959, 14094 and 14300 of 2006 having been filed against orders passed by the authorities under the Public Premises Act are dismissed.

22nd December, 2017
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No