

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

RSA No. 2878 of 2015

Date of decision: 20.01.2017

Bharat Sanchar Nigam Limited

... Appellant

versus

State of Punjab and others

.... Respondents

**CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH
MALIK**

Present: Mr. K. B. Sharma, Advocate for
Mr. D.R. Sharma, Advocate for the appellant.

RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the impugned judgment and decree dated 20.11.2014 passed by the Additional District Judge, Bathinda, whereby first appeal of the plaintiff-appellant was dismissed, upholding the impugned judgment and decree dated 22.09.2011 passed by the learned trial Court dismissing the suit, the plaintiff has approached this court by way of instant regular second appeal.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of its impugned judgment are that the plaintiff/appellant BSNL (hereinafter referred as plaintiff) filed suit for recovery of ₹ 23, 60, 897/- against the defendants/respondents (hereinafter referred as defendants).

It is pleaded in the plaint that the plaintiff is a Corporation having its head Officer at New Delhi and its Head Quarter at Bathinda.

It is dealing in providing the telecommunication facilities to the people, at large. Its General Manager Sh. Harinder Singh is duly constituted attorney and authorised to institute the suit. The plaintiff approached and requested the defendant No.2 for providing area of 2400 Sq. Meters for construction of new Telephone Exchange in Bathinda. After some correspondence with the defendants, defendant No.3 issued allotment letter of land measuring 2400 Sq. yards at the rate of ₹ 2,000/- per sq. yards in 25.57 acre schema of improvement Trust Bathinda. On 22.04.1997, after demarcation the possession of the plot in question was taken by the plaintiff. After completing formalities, the copy of the drawing was submitted to Chief Town Planner Bathinda for approval of the construction of the building. Letter was also written to defendant No.3 for issuing Municipal approval but defendant No.3 instead of approving the drawing asked the plaintiff to deposit ₹ 3,24,000/- as extension fee and ₹ 1,92,000/- as enhancement. Plaintiff also sought some clarification regarding demand of this amount and after furnishing these clarification, the plaintiff was asked to start construction after approval of the site plan, The plaintiff made requests to defendant No.3 pleading that there is no wilful or intentional delay in getting the site plan approved as it takes long time for completing the process and requested to waive off the non construction charges but this request was rejected vide letter dated 28.12.2001. The plaintiff also requested the defendants to extend the non construction period upto 31.03.2003 by detailing the circumstances which have caused this delay but to no effect.

In nut shell the stand of the plaintiff is that despite detailed correspondence the defendant No.3 vide letter dated 12.09.2003 issued notice for depositing ₹ 9,93,600/- on account of non construction fee, ₹7,31, 794/- regarding drawing/composition fee and ₹ 10,560/- for road cutting value for water supply and sewerage connections. Under compelled circumstances the plaintiff deposited this amount of ₹ 17,35, 954/- vide cheque dated 30.09.2003. It is alleged that the defendant No.3 illegally and against facts and by using coercive method has forced the plaintiff to deposit the amount whereas under provision of article 285 of the Constitution of India the property of Union of India provided for exemption from all taxed, imposed by a State or any other authority.

On this backdrops of the facts, in compliance with the orders of Hon'ble High Court, passed in CWP No. 10090 of 2004, plaintiff has filed suit for recovery of ₹ 17, 35, 954/- with interest @ 12% per annum w.e.f. 30.09.2002 which is worked out as ₹ 6, 24, 943/-. Hence, this suit for total recovery of ₹ 23, 60, 897/-.

Having been put to notice, defendants appeared and filed their contesting written statement, raising more than one pre-liminary objections. After completion of pleadings of the parties, learned trial Court framed the following issues:

1. *Whether the plaintiff is entitled to recovery of ₹ 23,60,897/- as prayed for?*
2. *Whether the plaintiff is entitled to interest, if so at what rate?*
3. *Whether the suit has been filed by duly authorised*

and competent person ?

4. *Whether the plaintiff has locus standi to file the present suit?*
5. *Whether the suit of the plaintiff is maintainable?*
6. *Whether the suit is within time?*
7. *Whether the plaintiff has concealed the material facts and has not come to the Court with clean hands?*
8. *Whether the plaintiff is estopped by his own act and conduct to file the present suit?*
9. *Relief.*

With a view to substantiate their respective stands taken, both the parties produced their documentary as well as the oral evidence. After hearing learned counsel for the parties and perusing the record, learned trial court came to the conclusion that plaintiff has failed to prove its case. Accordingly, the suit for recovery filed by the plaintiff-appellant was dismissed by the learned trial Court vide impugned judgment and decree dated 22.09.2011. The plaintiff filed its first appeal which also came to be dismissed by the learned first appellate court, vide impugned order and decree dated 20.11.2014. Hence, this regular second appeal at the hands of the plaintiff.

Heard learned counsel for the appellant and perused the record.

A bare combined reading of the both the impugned judgments and decrees would make it crystal clear that the plaintiff-

appellant miserably failed to prove its case. Since the appellant was plaintiff, onus was on it to prove its case by leading cogent evidence. Onus to prove issues Nos. 1 to 5 was rightly put on the plaintiff-appellant but it could not discharge its onus, in accordance with law. Having been left with no other option, the learned trial court was well within its jurisdiction to pass impugned judgment and decree, dismissing the suit of the plaintiff-appellant.

Learned first appellate court reconsidered the relevant facts as well as the evidence available on record and after due appreciation of the same, cogent findings recorded by the learned trial Court were not found suffering from any patent illegality or perversity. Accordingly, the learned first appellate court rightly dismissed the first appeal of the plaintiff by recording its own cogent findings which have been found based on sound reasons. Having said that, this court feels no hesitation to conclude that since the concurrent findings of facts recorded by the learned courts below, have not been found suffering from any patent illegality or perversity, the impugned judgments and decrees deserve to be upheld.

The relevant observations made by the first appellate court in para 12 of its impugned judgment, which deserve to be noticed here, read as under:

12. The controversy lies in very narrow compass. The plaintiff was allotted land measuring 2400 sq. yards for construction of building. The plaintiff has not raised construction within the prescribed period. The defendants

have claimed non construction charges and other consequential charges. The defendants have also placed on record copy of letter Ex.D26. Vide this letter the representation of the plaintiff for waiving off non construction charges was referred to Local Govt. Department of Punjab Chandigarh but the representation of the plaintiff was rejected vide letter dated 10.09.2003 (Ex. P33). The plaintiff has not challenged the validity of this order. In these circumstances the plaintiff is not entitled to refund of the amount deposited by him. In these circumstances I do not find any illegality in the findings recorded by the learned trial court on the above said issues.

During the course of hearing, when asked to point out any patent illegality or perversity in the concurrent findings of facts recorded by both the learned courts below, learned counsel for the appellant had no answer and rightly so, it being a matter of record. It has also gone undisputed before this court that the plaintiff-appellant, being the beneficiary of the land, it was liable to pay the compensation on account of acquisition of this piece of land allotted to the appellant, including the enhanced amount of compensation. Only that is what was charged from the appellant.

Learned counsel for the appellant could not refer to any material or evidence available on record, in support of his contentions raised, which may absolve the appellant from its liability to pay the compensation for the acquired land allotted to it. Having said that, this

can be safely concluded that since the findings of facts recorded by both the learned courts below are well justified on facts as well as in law, the same deserve to be upheld for this reason also.

Further, learned counsel for the appellant could not refer to any question of law much less substantial question of law in the present appeal, which is sine qua non for entertaining the regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 CPC. In this regard, reference can be made to direct judgment of the Hon'ble Supreme Court in Narayanan Rajendran vs. Lekshmy Sarojini 2009 (5) SCC 264.

No other argument was raised.

Considering the peculiar facts and circumstances of case noted above coupled with the reasons aforementioned, this court is of the considered view that since the learned Courts below did not commit any error of law, while passing the impugned judgments and decrees, the same deserve to be upheld. Instant appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground for interference has been made out.

Resultantly, with the above said observations made, present appeal stands dismissed, however with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

20.01.2017

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Whether speaking/non-speaking: Yes/No

Whether reportable : Yes/No