

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

RSA No.4750 of 2014

Date of Decision: 06.03.2017

Amritsar Improvement Trust, Amritsar

... Appellant

Vs.

Ajit Singh Dhillon and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH**

Present:- Mr. S.C.Pathela, Advocate,  
for the appellant.

Mr. A.S.Narang, Advocate,  
for respondents No.1 to 3.

Mr. Manjit Singh Naryal, Addl. A.G., Punjab,  
for respondent No.9.

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**Amol Rattan Singh, J.**

**CM No.11137-C-2014**

By this application, condonation of a delay of 592 days in filing the accompanying appeal is sought by the appellant, Amritsar Improvement Trust.

Notice having been issued to the respondents on 07.04.2015, a reply thereto has also been filed by the respondents.

The reason for the delay in filing the appeal, is stated to be that after the judgment of the first appellate Court, dated 03.09.2012, became available, the Executive Officer of the Trust, one Shri Jiwan Bansal, had directed that a second appeal be filed against the judgments of the Courts

below and that the matter be put up to the dealing assistant/clerk for further action. However, the said assistant/clerk failed to take immediate action and in fact, “the file went astray”.

Thereafter, in June 2014, the matter was brought to the notice of the Chairman of the Trust by the current Executive Officer and consequently, first disciplinary action was initiated against the erring officials and alongwith, the papers for filing the appeal were handed over to counsel for the Trust, after which the appeal was prepared and filed.

Hence, the long delay of 592 days is stated to have occurred. The application is accompanied by the affidavit of the Chairman of the Trust.

2. In reply thereto, other than stating that the appeal has been filed with wholly false averments contained therein, and that the respondent-plaintiffs are the true owners of the suit land, it has also been stated that the Trust and its Chairman have committed acts of perjury for which the Chairman deserves to be prosecuted.

It has further been contended that the charge sheet issued to the employees of the Trust is only an eye-wash and that in fact, earlier the plaintiffs having applied for a no objection certificate to raise construction on the suit land, and such representation not having been decided, they had filed CWP No.8032 of 2015 before this Court which was disposed of with a direction to the Chairman to decide the representation by passing a speaking order. It has been stated that in that the appeal thereafter was preferred only after the respondent-plaintiffs applied for grant of the 'NOC'.

Consequently, it has been prayed that each days' delay not having been explained even in the application seeking condonation of delay, the application deserves to be dismissed.

3. Having considered the pleadings in that regard, as also the arguments addressed by learned counsel, it is first to be noticed that undoubtedly, it is very well settled that even Government and statutory bodies are required to explain each days' delay in filing any appeal. However, it is also equally well settled that the Government and statutory bodies being 'impersonal' bodies, delay in filing appeals needs to be more liberally condoned, if there is some justification seen by the Court for the same, for the reason that eventually it is public money/public property that is involved in such disputes. A judgment of the Supreme Court can be cited in this context, where a delay of more than 1000 days was condoned, in **Market Committee, Hodal v. Krishan Murari and others** (1996 LACC 100).

4. Whereas Mr. Narang, learned counsel for the respondent-plaintiffs, may be correct in contending that the accompanying appeal was only filed after the plaintiffs applied for a no objection certificate to construct on the suit property, I see no reason to disbelieve the appellant Trust to the effect that actually a decision to institute the appeal had been taken in the year 2012 itself by the person then holding the post of Executive Officer but the clerks/assistants who were dealing with the file, remained amiss in their duty to actually carry it forward.

Even presuming that eventually it was only the filing of the no objection certificate which brought the issue to the fore before the Chairman of the Trust, that would be no reason, in the opinion of this Court, to deny a statutory body dealing with public land, the benefit of at least hearing an appeal filed by it, by condoning the delay in such filing.

5. Consequently, this application is allowed and the delay of 592 days in filing the accompanying appeal is condoned.

**RSA No.4750 of 2014**

This is the second appeal of the defendant Amritsar Improvement Trust (hereinafter to be referred to as the Trust), after the suit filed by the respondents-plaintiffs (hereinafter to be referred to as the plaintiffs), seeking permanent injunction against the Trust from interfering with their possession of the suit property, was decreed in their favour and the first appeal filed by the Trust against that judgment and decree was dismissed by the learned Additional District Judge, Amritsar.

2. As per the case of the plaintiffs, they are owners in possession of property bearing Khewat No.61, Khatoni No.91, measuring 7 kanals and 6 marlas as per the *jamabandi* (record of rights) for the year 1999-2000, situated in the area of Guntala Sub Urban, Tehsil Amritsar-II, District Amritsar.

The property was earlier stated to have been owned by the Central Government and was purchased by the 8 plaintiffs, alongwith Surjit Singh, Ravail Singh, Raghuwinder Singh, Rupinder Singh and Harbhajan Singh. These named persons are further stated to have sold their shares in the property to the plaintiffs and as such, it was contended that the plaintiffs were the co-owners in joint possession of the suit property and that the Trust had no right, title or interest of any nature whatsoever, in it.

It was further contended that the property had never been acquired by the Trust, though its location was near property owned by the Trust, sold to various persons.

The plaintiffs are stated to have constructed a boundary wall and fencing around the suit property, forcible possession of which was earlier allegedly attempted to be taken by the Harkrishan Public School, with an

attempt to make illegal construction over it.

A representation was moved to the Trust at that time, due to which it was stated to have been “saved from the hands of Harkrishan Public School” but thereafter, it was averred that the Trust threatened the plaintiffs to illegally take possession of the property and allegedly, one day before the filing of the suit, officials of the Trust also “demolished certain part of property existing around the property in dispute without any rhyme and reason and took the law into their hands”.

Still further, it was contended that on request of certain 'respectables' who gathered at the spot, the plaintiffs were able to save their property from the clutches of officials of the Trust but with the Trust still threatening to take forcible possession and to interfere with the plaintiffs' own possession, the suit was filed on 27.01.2006 before the learned Civil Judge (Junior Division), Amritsar.

3. Upon notice issued to it, the Trust filed its written statement taking preliminary objections on grounds of maintainability, jurisdiction, limitation, mis-joinder and non-joinder of necessary parties etc.

It was further stated that a development scheme was launched by the State Government on 19.02.1973, notified under Section 41 of the Punjab Town Improvement Act, 1922 and an extension scheme was also promulgated under Section 24, read with Section 28 (2) of that Act. The said extension scheme covered an area measuring approximately 537 acres, bounded by the Ajnala Road, municipal boundary Fatehgarh Churian Road and Bye-pass Road situated beyond the municipal limit, but within the local area of the Trust. It was further stated that the specific area of the scheme was set forth in the “sub joined schedule” and thereafter an Award was made by

the State Government on 04.05.1974.

Further, it was contended in the written statement that possession of the land was taken by the Land Acquisition Collector (hereinafter to be referred to the LAC) on 14.05.1980 from the land owners, after which the said Collector handed over possession of the property to the Trust, which continued to remain in such possession.

Yet further, it was contended that the plaintiffs never raised any objection with regard to possession taken by the LAC, who had also “declared compensation” for the same.

Still further, it was stated that no notice under Section 98 of the Act of 1922 was served upon the Trust before filing the suit and that the plaintiffs were estopped by their act and conduct from filing the suit, as they had knowledge of the land having been already acquired under the Ajnala Expansion Scheme, and that other land adjoining the suit land had also been acquired.

The written statement also stated that the plaintiffs had actually received compensation for the acquired land and had even claimed alternative plots. The Award of the LAC had not been challenged and the property had never been exempted from acquisition.

Lastly, it was contended that the suit property having remained in possession of the Trust since 14.05.1980, the sale deeds set up by the plaintiffs to claim ownership over it had no legal value, as they were executed after the acquisition of the suit property under the development scheme, which was in public interest.

Thus, dismissal of the suit was prayed for.

4. A replication was filed by the plaintiffs reiterating the contents

of their plaint and denying those of the written statement, specifically contending that the suit land, belonging to the Central Government, was never acquired and hence, the Trust had no right, title or interest in it. The payment of compensation to the plaintiffs was also denied, as was the contention of the Trust that the sale deeds in favour of the plaintiffs pertained to some other property.

5. Upon the aforesaid pleadings, the following issues were framed by the learned Civil Judge:-

- “1. Whether plaintiffs are in possession of suit property? OPD
2. Whether plaintiffs are entitled to permanent injunction for restraining the defendant from dispossessing the plaintiffs from suit land illegally and forcibly? OPP
3. Whether suit is maintainable? OPP
4. Whether this court has got jurisdiction to entertain the present suit? OPP
5. Whether plaintiffs have not come to court with clean hands? OPD
6. Whether suit land has been acquired by defendant Trust? OPD
7. Whether suit of plaintiffs is within time? OPP
8. Whether suit of the plaintiffs is bad for mis-joinder and non-joinder of necessary parties? OPD
9. Whether suit of the plaintiffs is to be dismissed for want of notice under Section 98 of Punjab Town Improvement Act? OPD
10. Whether plaintiffs are estopped by their own act and conduct from filing the present suit? OPD
11. Whether the suit property has been exempted from acquisition? OPP
12. Relief.”

6. In support of their suit, the plaintiffs examined one Kanwaljit Singh as PW1, Sardul Singh as PW2 and plaintiff no.2, Vasdeep Singh, as PW3.

The defendant Trust examined one Davinder Kumar as DW1, after which it failed to conclude its evidence despite opportunities given during that period and consequently, its evidence was closed by an order of the Court.

7. The first witness for the plaintiffs, Kanwaljit Singh, testified that he had been appointed as an attorney by Surjit Singh, Ravail Singh, Raghuwinder Singh and Rupinder Singh, by which power he was authorised to sell the suit property, vide instruments of power of attorney dated 25.03.1983 and that he had executed the sale deeds in favour of the plaintiffs on behalf of the aforesaid vendors.

He further deposed that the sale deeds were scribed by one Arvinder Kumar, Deed-Writer and were read over to all concerned, after which they signed the documents.

The said instruments of power of attorney were proved by him as Exs.PW1/5 to PW1/8.

This witness is also shown to have proved on record a registered sale deed dated 10.01.2001, executed by Surjit Singh in favour of plaintiff no.1 Ajit Singh, as Ex.PW1/1 and similarly, three other registered sale deeds, the first dated 10.01.2001 and the others dated 11.01.2001, in favour of plaintiffs no.2, 3 and 4, as Exs.PW1/2 to PW1/4 respectively. These sale deeds were testified to have been executed by this witness as the attorney of Ravail Singh, Raghuwinder Singh and Rupinder Singh respectively, in favour of the aforesaid 3 plaintiffs.

In his cross-examination, PW1 is shown to have admitted that the land in dispute falls under the Ajnala Road Expansion Scheme of the Trust.

This witness further deposed that no objections were filed before the Collector, and the Award qua the land was never challenged “as same was never acquired by LAC”. A perusal of the cross-examination, pointed to by learned counsel for the appellant Trust, shows that he stated that the land falls under the scheme but that he did not know if the scheme was notified on 19.02.1973, or if the Award was announced on 04.05.1974.

However, he did deny that the possession of the land was taken on 14.05.1980, when the Trust acquired land for the scheme. He also stated that the property in dispute “was belonging to Central Govt.”

PW1 further admitted that 'their own land' was acquired by the Trust for the said scheme and that the disputed land was vacant, with the plaintiffs, however, having constructed a boundary wall around it. He further stated that they (plaintiffs) had not paid development charges of the disputed property as it was never acquired by the LAC.

The cross-examination further reveals that he stated that no development in the form of roads or street lights had been made by the Trust.

8. PW2 Sardul Singh testified to the effect that he had purchased the property from one Harbhajan Singh on behalf of his daughter, plaintiff no.8 - Gaganpreet Kaur. This witness also proved on record a registered sale deed dated 26.02.1998 executed by the said Harbhajan Singh in favour of Gaganpreet Kaur, which, he deposed, had been scribed by Suresh Kumar Chaudhary, Deed-Writer, duly read over to the parties and thereafter, signed by them.

In cross-examination, PW2 first denied knowledge of whether the suit property fell within the Ajnala Road Expansion Scheme, though he admitted that the adjoining property was covered by the said scheme and thereafter stated that the suit property did not fall within the scheme. Like PW1, he also denied that the possession of the property was taken by the LAC, but as per him, the Trust had not sold any adjoining property till date.

The witness further deposed that he had not got any site plan sanctioned for making any construction on the suit property and that it was vacant land around which a boundary wall had been constructed.

9. Plaintiff Vasdeep Singh, as PW3, also testified that the property was originally owned by the Central Government and purchased by the persons initially named, i.e. Surjit Singh etc., who had sold their shares in favour of the other plaintiffs. He proved on record a conveyance deed dated 18.03.1982 executed by the Central Government in favour of Ravail Singh, Raghuwinder Singh, Rupinder Singh, Harbhajan Singh, Narinder Kaur, plaintiff no.6, Sukhbir Kaur, plaintiff no.5 and Varinderpal Singh, plaintiff no.7, as Ex.PW3/1.

This witness also proved on record a copy of the Award passed by the LAC of the Trust, dated 04.05.1974, as Ex.PW3/2 and further proved *jamabandis* (record of rights) for the years 1979-80, 1984-85, 1989-90, 1994-95, 1999-2000 and 2004-05.

10. DW1, Davinder Kumar, who was a Junior Engineer in the Engineering Branch (presumably of the Trust with no specific name of his Organization given either in the judgment or in the evidence sheet), testified for the Trust, proving on record the copies of the lay out plans, Exs.DX1 and DX2, as also photocopies of receipts of compensation given to family

members of the plaintiffs (Exs.DX3, DX4 and DX8).

This witness also proved a notification dated 18.06.1992, by which the lay out plan was sanctioned as Ex.DX5. He also proved the notification issued under Section 43 of the Punjab Town Improvement Act 1922, (Ex.DX6), a copy of another notification dated 07.05.1984 as Ex.DX7 and the attested copy of a possession certificate prepared by the LAC on the spot, as Ex.DX9.

A copy of the Award (supplementary) dated 27.08.1974, one dated 11.11.1993 and another dated 04.05.1974, were also proved by this witness.

In his cross-examination, DW1 denied knowledge of whether any notice was required to be given under Section 12 of the Land Acquisition Act, 1894, and further denied knowledge of whether possession had been taken of the property in respect of which the Award had been passed and compensation paid.

This witness admitted that as per the Award Ex.PW3/2, the suit property had not been acquired by the Trust. He however stated that the property was acquired after negotiations with the Central Government though he had not brought any record regarding such negotiations. The witness (thereafter) further denied knowledge of any compensation paid to the plaintiffs by the Trust and stated that the compensation given to the plaintiffs as referred to in his (DW1s') affidavit, did not relate to Khasra No.88/7.

Lastly, he also admitted that he had not brought any original record regarding taking over of possession of the suit land by the Trust.

Other than that, the witness stood by his examination-in-chief submitted vide his affidavit, which is seen to be essentially in terms of the

written statement of the Trust.

11. By way of rebuttal, the plaintiffs tendered *Khasra Girdawaries* for the years 2005 till 2009 as Ex.PX/1.

12. The learned Civil Judge at the outset recorded that though a perusal of the plaint revealed that no specific *Khasra* number of the suit property had been given by the plaintiffs, however, as per the evidence led, the suit property was contained in Khasra No.88/7, Khewat No.61, Khatoni No.91, measuring 7 kanals and 6 marlas of land. This reasoning was arrived at largely because, in the plaint, the land was described to be of 7 kanals and 6 malars and no other *Khasra* number in the documentary evidence led, was seen to be of that exact area. Specifically, the trial Court referred to the *jamabandi* for the year 2004-05 in this regard.

13. Coming next to the issue of whether the plaintiffs had been able to prove their possession over the suit property or not, it was first held that the conveyance deed dated 18.03.1982, EX.PW3/1, executed by the Central Government in favour of plaintiffs no.5, 6 and 7, Sukhbir Kaur, Narinder Kaur and Varinderpal Singh, alongwith Ravail Singh, Raghuwinder Singh, Rupinder Singh and Harbhajan Singh, stood duly proved by PW3, i.e. the second plaintiff.

(It is seen from the lower Courts' record that a conveyance deed/certificate is exhibited as Ex.PW3/1 but that deed, as per the date contained on its annexure, is actually dated 04.06.1982, referring to the restricted auction held on 18.03.1982. The said certificate is shown to be issued by the Managing Officer appointed in terms of the Punjab Package Deal Properties (Disposal) Act 1976).

Similarly, it was held that PW1 (Kanwaljit Singh) had proved on

record the general power of attorney executed by the aforesaid Ravail Singh, Raghuwinder Singh, Rupinder Singh and one Surjit Singh, in favour of this witness (PW1).

The 4 registered sale deeds dated 10.01.2001 and 11.01.2001, in favour of plaintiffs no.1, 2, 3 and 4, were also held to have been proved, as was a sale deed dated 26.02.1998, executed by Harbhajan Singh, in favour of plaintiff no.8.

It was further found that as per the *jamabandi* for the year 1979-80, the Trust was found to be in possession of the suit land but mutation no.3753, regarding execution of the conveyance deed (in favour of the plaintiffs etc.), Ex.PW3/1, was also found to be reflected in the same *jamabandi*. Similarly, in the *jamabandies* Exs.PW3/5 to PW3/8, for the years 1979-80 to 2004-05, mutations entered in respect of the aforementioned sale deeds, bearing no.13801, 13802, 13803, 13932 and 10770, were also seen to have been incorporated.

Yet further, as per the Khasra Girdawari also, Ex.PX/1, the Court held that the plaintiffs were found to be owners in possession of the suit land, duly corroborated with the *jamabandi* for the year 2004-05.

On the aforesaid findings, they were held to be in possession of the suit land.

14. The contention of the Improvement Trust that actually it had come to be the owner in possession of the suit property, was rejected on the ground that a perusal of the Awards, Exs.DX10 to DX12, did not disclose that the suit property was a part of those Awards.

It was further held that though the Trust had contended that it had taken possession vide a possession certificate prepared by the Land

Acquisition Corrector on 14.05.1989, Ex.DX9, however, such possession was not corroborated in the *jamabandies*, Exs.PW3/5 to PW3/8, or by the *Khasra Girdawari*, Ex.PX/1.

Yet further, it was held that the Trust had failed to examine any witness in whose presence or supervision the possession of the property was taken.

Thus, reiterating that acquisition of the suit property also did not stand proved from the Awards, Exs. DX10 to DX12, and there being no proof of possession also having been taken by the Trust, the suit of the plaintiffs was decreed and the Trust was restrained from interfering with their possession, or from dispossessing them from 7 kanals and 6 marlas of land comprised in Khasra No.88/7 of Khewat No.61, Khatoni No.91.

15. In the first appeal filed by the Trust, the learned Additional District Judge, Amritsar, after noticing the pleadings and issues framed, and the evidence led, also recorded a finding that nothing could be shown from the record that Khasra No.88/7, comprising of 7 kanals and 6 marlas, was ever acquired by the Government for the scheme of the Trust, and that simply because Ex.DX/9 showed that possession of the land had been taken, its acquisition still did not stand proved.

Referring to the Award dated 11.11.1993 (Ex.DX11) also, the learned first appellate Court held that the said Award also did not reveal that the suit land had been acquired, or that the plaintiffs had taken compensation for it.

It was reiterated by that Court also, that the *jamabandi* for the year 1979-80 showed that the land was earlier in the ownership of the Central Government but was mutated in favour of Surjit Singh and others, vide

Mutation No.3753 and had been subsequently sold vide a sale certificate dated 04.06.1982 (Ex.PW3/1) to Ravail Singh, Raghuwinder Singh, Harbhajan Singh, Narinder Kaur, Sukhwinder Kaur and Davinderjit Singh, for a sale consideration of Rs.1,05,000/-.

The factum of sale deeds having been executed in favour of the plaintiffs, duly exhibited, was also reiterated by the lower appellate Court, as was the fact that these had been duly reflected in the *jamabandi* (record of rights) for the year 1994-95, in respect of Khasra No.88/7.

16. Reliance upon Ex.DX4 by the Trust was also held to be of no help to it, in view of the fact that it showed compensation having been paid to Kanwaljit Singh and others, for acquisition of Khasra No.88/10 and 88/11 only. Therefore, again holding that a simple certificate showing possession taken by the Trust, of Khasra No.88/7, did not confer any title upon it, the findings of the learned Civil Judge were upheld by that Court also and the first appeal filed by the present appellant, Amritsar Improvement Trust, dismissed.

17. Before this Court, the matter had been argued, with learned counsel on both sides citing judgments in support of their contentions, the primary contention on behalf of the appellant Trust being that the land was acquired upon preparation of a scheme under Section 36 of the Punjab Town Improvement Act, 1922, with a notice thereafter issued under Section 38 of the aforesaid Act. The scheme was also sanctioned under Section 42 thereof and therefore, no subsequent sale or purchase of such land, as has been included in the scheme, would affect the ownership of the Trust over the suit land.

On the other hand, on behalf of the respondents-plaintiffs it had

submitted that the suit land was in the ownership of the Central Government and had been purchased by the predecessors-in-interest of the plaintiffs and some of the plaintiffs themselves from that Government, with a conveyance deed duly executed by the Government in favour of the purchasers on 18.03.1982 and therefore, with the Trust in any case at that time not having protested at all, to such purchase, the land cannot be said to have vested in the Trust.

After hearing learned counsel on both sides, judgment had been reserved in this appeal and at the time of dictating the judgment, it was seen by this Court, from the record of the lower Court, that Annexure-A annexed with the Award, Ex.PW3/2 before the learned trial Court, contained the khasra number of the suit land, i.e. 88/7, measuring 7 kanals and 6 marlas. Hence, since the said annexure gives the list of khasra numbers of the total land included in the scheme, including the khasra number aforesaid, this Court had formed an opinion that the land had been acquired by the Trust in 1974. It was also seen that in paragraph 13 of the judgment of the learned Civil Judge (Junior Division), Amritsar, it had been stated that that Court was of the considered view that the khasra number of the land in dispute was 88/7 in view of the fact that no other khasra number of exactly that measurement was seen in the area.

Thus, this Court seeing the aforesaid two situations, of the khasra number in question having held to be no.88/7 and that khasra number being present in the list of the total land included in the scheme promulgated by the Trust, a doubt had been expressed as to how both the Courts below had held that the suit plot was never acquired for the Trust.

Consequently, the matter had been put up for rehearing, so as to

seek clarification from both learned counsel in this regard, by reference to the record.

18. Pursuant to that order of this Court, dated 02.03.2017, on the next date, Mr. Pathela, learned counsel for the appellant-Improvement Trust, had submitted that the original record of acquisition of the land in question, including Rect.no.88, Killa no.7, is no longer available with the Improvement Trust, as the Award in respect thereof is of the year 1974.

However, he had produced in Court a typed copy of what is stated to be the exhibited Award, i.e. Ex.DX12.

19. The aforesaid document is not disputed by Mr. A. S. Narang, learned counsel for the respondents, to the effect that it is actually a copy of the Award which is on record as Ex.DX12 and Ex.PW3/2.

From that Award, Mr. Narang pointed to what the Land Acquisition Collector had specifically held, as follows:-

*“Land measuring 55K- 10M bearing Rectangle no.88, Killa no.7, Rect.no.112, Killa no.19/5, 7/1, 6/2, 6/2, 7/2, 8, 13, 14/1, 17/2, 18, 19/2, 19/3, 19/5/1, 4/2, 19/6, 19/4 and 19/7 belongs to the Central Government. This land cannot be compulsorily acquired. The Trust is, therefore, advised to acquire this land by negotiations with the Central Government if required for the scheme.”*

He thus submitted that, very obviously, the land in question, i.e. land comprised in Rectangle no. 88 Killa no. 7, measuring 7 kanals and 6 marlas, (though the specific measurement is not given in the above part of the Award), was left out from the acquisition, alongwith other land contained in Rectangle no.112.

20. However, Mr. Pathela had still contended that the aforesaid

recital does not amount to the land not having been acquired.

Upon query to learned counsel for the appellant-Trust as to whether any negotiations took place with the Central Government, as observed by the Collector, by which the land was either transferred to the Trust or subsequently acquired, he had submitted, on instructions from the official present in Court, from the Trust, to assist him, that no negotiations with the Central Government are available on the record of the Trust, in respect of acquiring the land of the Central Government.

He had however further submitted, that once a notification under Sections 36 and 41 of the Punjab Town Improvement Act. 1922, has been issued, the acquisition is deemed to be complete, after which the Land Acquisition Collector has no power to exclude the land from the process of acquisition. The LAC is, thereafter, only required to decide the compensation amount.

To substantiate the aforesaid contention, he relied upon a judgment of a Division Bench of this Court in ***Smt.Usha Arora and others Vs. State of Punjab and others, 2010(5) R.C.R. (Civil) 835***. It was held by the Lordship in the aforesaid judgment as follows:-

*“In the light of the above pronouncements, we have no hesitation in holding that the transfer of land in question by the lessee(s) or their predecessors in interest did not bind the Government or the Improvement Trust as the beneficiary of the acquisition. The transfers in question cannot therefore be made a basis by the transferee M/s R.P.Empires Pvt. Ltd. to challenge the validity of either the scheme or the acquisition proceedings initiated pursuant thereto. That is true not only for the purposes of filing of a fresh petition by the transferee but even for the purposes of substitution of transferee in place of the*

*original petitioners. CM No. 18707 of 2006 in Civil Writ Petition No. 10622 of 1999, C.M. No. 18565 of 2006 in CWP No. 10623 of 1999, CM No. 18714 of 2006 in CWP No. 10624 of 1999 and CM No. 18705 of 2006 in CWP No. 10625 of 1999 under which the transferee seeks substitution on the basis of transfers that are legally void cannot therefore be allowed nor can the challenge to the acquisition proceedings continued by the transferee on the strength of the transfers in its favour. At any rate, the transferee cannot acquire a title better than the one held by transferor. If the vendors of the properties who are petitioners in Civil Writ Petition Nos. 10622, 10623, 10624 and 10625 of 1999 had themselves lost the right to challenge the acquisition proceedings on account of inordinate delay, laches and acquiescence, it is difficult to see how a transferee claiming under them could claim a better right to do so.”*

Learned counsel further cited from two other judgments of the Supreme Court, in ***Sneh Prabha Vs. State of U.P., 1996(7) SCC 426*** and ***Ajay Krishan Shinghal Vs. Union of India, 1996 (10) SCC 721***, to the same effect.

He, still further, relied upon a judgment of the Supreme Court in ***V. Chandrasekaran and Anr. Vs. Administrative Officer and Ors. 2012(4) R.C.R. 588***, from which he referred to the following passage:-

*“9. In view of the above, the law on the issue can be summarized to the effect that a person who purchases land subsequent to the issuance of a Section 4 notification with respect to it, is not competent to challenge the validity of the acquisition proceedings on any ground whatsoever, for the reason that the sale deed executed in his favour does not confer upon him, any title and at the*

*most he can claim compensation on the basis of his vendor's title."*

Learned counsel also referred to Section 56 of the Act of 1922, in support of his contention.

21. Upon query as to whether the exclusion by the Land Acquisition Collector of the suit land, in the Award dated 04.05.1974, was disapproved by the State Government, and a notification, or even an order, was issued to the effect that the said land would also stand acquired, even in terms of Section 56, notwithstanding what is contained in the Award, Mr.Pathela very fairly submitted that there is no such document on record.

This Court had, therefore, expressed its opinion on the last date of hearing, that seeing the specific exclusion of the suit land from acquisition, in the Award itself, with no disapproval thereof by the State Government, and the land at that time (in 1974) in any case being in the ownership of the Central Government, it could not be held to have been acquired.

22. Thereafter, learned counsel for the appellant Trust having sought time to inspect the record to determine as to whether possession of the suit land was physically taken over by the Trust or not, the matter was adjourned till today.

23. Today, Mr. Pathela submitted that as per Ex.DX9, led as evidence before the learned trial Court, possession of the suit land, along with other land that was acquired, was taken over by the Trust on 14.05.1980 (erroneously recorded as 14.05.1989 in the judgment of the trial Court).

Original record to that effect has also been produced in Court today.

24. Mr. A. S. Narang, learned counsel for the respondents, on the other hand submitted that if any possession at all was taken, it was obviously only symbolic possession, because the findings of the courts below are to the effect that as per subsequent revenue record, i.e. the jamabandis Exs.PW3/5 to PW3/11, the respondents are shown to be in possession over the suit land.

He has also relied upon a judgment of a co-ordinate Bench of this Court, in *Satinder Pal Singh Vs. State of Punjab, 1985 PLJ, 60*, to submit that once an Award is not pronounced with regard to the land in question, the Improvement Trust does not acquire title thereto. The relevant part of the said judgment is reproduced hereinunder:-

“5. After considering the entire matter, I am of the considered view that these cases are fully covered by decisions relied upon by the learned counsel for the petitioners and there is no distinguishing feature. It is true that the award was given on 31st March, 1965 and if compensation had been fixed for the land in dispute, the petitioners would have had no case. A reading of the award shows that compensation was not determined for 17 Bighas 6 Biswas 6 Biswansis, which includes the land in these writ petitions and the matter kept pending to be settled with the Central Government. For the substantial part of the remaining acquired land, award was given and payment was made to the landowners, where after the Trust took possession and carried out its scheme. However, so far as the aforesaid 17 Bighas 6 Biswas 6 Biswansis, the allottees continued in occupation of the same and till the beginning of 1984 the Trust took no action to give award, to pay compensation and to take possession of the land. Therefore, so far as 17 Bighas 6 Biswas 6 Biswansis are concerned, which form the distinct part of the acquired land the decisions relied upon by the learned counsel for the petitioners are fully applicable and the acquisition regarding this area cannot be allowed to stand and has to be quashed because on the

bases of notices under section 9 of the Land Acquisition Act, 1894, price which prevailed in 1960 is sought to be paid to the petitioners. The non-taking of action for nearly 24 years clearly shows colourable exercise of authority by the Improvement Trust as also to peg down its price, which according to the Full Bench and the Division Bench judgments is not permissible and the acquisitions have been quashed on account of delay. In certain cases delay of even three years was considered to be sufficient to quash the acquisition whereas in the present case there is delay of 20 years after issuance of notification under section 42 of the Act which is equal to section 6 of the Land Acquisition Act, 1894 and of 24 years after issue of notification under section 36 of the Act which is equal to section 4 of the Land Acquisition Act, 1894.

6. Schemes of the Act and Land Acquisition Act are such that the land vests in the Government free from all encumbrances under section 16 of Land Acquisition Act, only if award is made under section 11 of the Land Acquisition Act, 1894, compensation is offered to the claimants and after compensation is offered to the claimants, possession is taken. It is admitted position on the record that so far no award has been given with regard to the land which is in occupation of the petitioners and that they continued to be in its possession right upto date. Therefore, the stand of the Improvement Trust taken in its written statement that they have become owners is baseless. The Central Government continued to be its owner and after the conveyance deeds were executed in favour of the petitioners or their predecessors-in-interest, they became its owners and are persons interested to challenge the acquisition.”

25. Before going on to consider the arguments addressed before this Court, as also the judgments of the learned Courts below, it is necessary to notice that in the grounds of appeal filed, learned counsel has framed the

following questions of law:-

- i) Whether a decree of permanent injunction can be passed by the civil court restraining the true owner of a property from interfering in possession of the land in dispute?
- ii) Whether the suit of the plaintiff for permanent injunction was maintainable against the Improvement Trust qua a land which has acquired by the Trust for a development scheme and a notification under Section 42 of the Punjab Town Improvement Act, has been issued by the Government approving acquisition of the said land?
- iii) Whether the suit of the plaintiffs was liable to be dismissed for want of notice under Section 98 of the Punjab Town Improvement Act, 1922?
- iv) Whether the impugned judgments and decree granting a decree of permanent injunction, passed by the learned Courts below based on misreading of evidence is illegal and liable to be set aside?

With the issue raised by Mr. Pathela qua what is contained in Section 56 of the Act of 1922, a 5<sup>th</sup> question of law that would arise for consideration of this Court, would be as follows:-

- (v) Whether the suit land can be stated to have been deemed to be acquired by the Trust, the State Government never having sanctioned the exclusion of the suit land from the acquisition proceedings, in terms of Section 56 of the Act?

26. Thus, in the light of arguments addressed before this Court, it is now first necessary to reproduce the relevant statutory provisions from the Punjab Town Improvement Act, 1922, as have been referred to by learned counsel for the appellant Trust. Those provisions and others which this Court considers necessary to be looked at, read as follows:-

**“36. Preparation, publication and transmission of notice as**

**to improvement schemes, and supply of documents to applicants.**– (1) When a scheme under this Act has been framed, the Trust shall prepare a notice stating–

- (i) the fact that the scheme has been framed,
- (ii) the boundaries of the locality comprised in the scheme, and
- (iii) the place at which details of the scheme including statement of the land proposed to be acquired and a general map of the locality comprised in the scheme may be inspected at reasonable hours.

(2) The Trust shall–

(a) notwithstanding anything contained in section 78 cause the said notice to be published weekly for three consecutive weeks in the Official Gazette and in a newspaper or newspapers with a statement of the period within which objections will be received, and

(b) send a copy of the notice to the President of the municipal committee, and to the medical officer of health.

(3) The chairman shall cause copies of all documents referred to in clause (iii) of sub-section (1) to be delivered to any applicant on payment of such fees as may be prescribed by rule under section 74.

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**38. Notice of proposed acquisition of land.**– (1) During the thirty days next following the first day on which any notice is published under section 36 in respect of any scheme under this Act the Trust shall serve a notice on–

(i) every person whom the trust has reason to believe after due enquiry to be the owner of any immovable property which it is proposed to acquire in executing the scheme,

(ii) the occupier (who need not be named) of such premises as the trust proposes to acquire in executing the scheme.

(2) Such notice shall–

(a) state that the Trust proposes to acquire such property for the purposes of carrying out a scheme under this Act, and

(b) require such person, if he objects to such acquisition, to state his reasons in writing within a period of sixty days from the service of the notice.

(3) Every such notice shall be signed by, or by the order of, the chairman.

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**40. Abandonment of scheme, or application to State Government to sanction it.**– (1) After the expiry of the periods respectively prescribed under clause (a) sub-section (2) of section 36, by section 37 and by clause (b) of sub-section (2) of section 38, in respect of any scheme under this Act, the Trust

shall consider any objection, or representation received thereunder, and after hearing all persons or their representatives making any such objection or representation, who may desire to be heard, the trust may either abandon the scheme or apply to the [State] Government for sanction to the scheme with such modifications (if any) as the trust may deem necessary.

(2) Every application submitted under sub-section (1) shall be accompanied by—

(i) complete plans and details of the scheme and an estimate of the cost of executing it;

(ii) a statement of the reasons for modifications (if any) made in the scheme as originally framed;

(iii) a statement of objections (if any) received under section 36;

(iv) the representation (if any) received under section 37;

(v) a list of the names of all persons (if any) who have objected under clause (b) of sub-section (2) of section 38, to the proposed acquisition of their property and a statement of the reasons given for such objection; and

(vi) a statement of the arrangements made or proposed by the Trust for the re-housing of persons who are likely to be displaced by the execution of the scheme and for whose re-housing provision is required.

(3) When any application has been submitted to the State Government under sub-section (1), the Trust shall cause notice of the fact to be published for two consecutive weeks in the Official Gazette and in a newspaper or newspapers.

**41. Power to sanction, reject or return scheme.**— (1) The State Government may sanction, either with or without modification, or may refuse to sanction, or may return for reconsideration, any scheme submitted to it under section 40.

(2) If a scheme returned for reconsideration under sub-section (1) is modified by the Trust, it shall be republished in accordance with section 36—

(a) in every case in which the modification affects the boundaries of the locality comprised in the scheme, or involves the acquisition of any land not previously proposed to be acquired; and

(b) in every other case, unless the modification is, in the opinion of the [State] Government not of sufficient importance to require republication.

**42. Notification of sanction of scheme.**— (1) The Provincial Government] shall notify sanction of every scheme under this

Act, and the Trust shall forthwith proceed to execute such scheme, provided that it is not a deferred street scheme, development scheme, or expansion scheme and provided further that the requirements of section 27 have been fulfilled.

(2) A notification under sub-section (1) in respect of any scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned.

[43. Alteration of scheme after sanction.— A scheme under this Act may be altered by the Trust at any time, with the approval of the State Government, between its sanction by the State Government and its execution.]”

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***56. Abandonment of acquisition in consideration of special payment.-*** (1) *Wherever in any locality comprised in any scheme under this Act the State Government has sanctioned the acquisition of land which is subsequently discovered to be unnecessary for the execution of the scheme, the owner of such land, or any person having an interest therein, may make an application to the trust requesting that the acquisition of such land be abandoned in consideration of the payment by him of a sum to be fixed by the trust in that behalf.*

*[Provided that no land shall be deemed to be unnecessary for the execution of the scheme, unless the State Government, after making such enquiry as it may deem fit, declares it to be so by a notification in the Official Gazette]*

(2) *The trust shall admit every such application if it—*

*(a) reaches it before the time fixed by the Collector, under section 9 of the Land Acquisition Act, 1894, for making claims in reference to the land, and*

*(b) is made by any person, who either owns the lands, is mortgagee thereof, or holds a lease thereof, with an unexpired period of seven years.*

*(3) The trust may admit any such application presented by any other person having an interest in the land.*

*(4) On the admission by the trust of any such application, it shall forthwith inform the Collector, and the Collector shall thereupon stay for a period of three months all further proceedings for the acquisition of the land, and the trust shall proceed to fix the sum in consideration of which the acquisition of the land may be abandoned.*

*(5) Within the said period of three months, or, with the permission of the trust, at any time before the Collector has taken possession of the land under section 16 of the Land Acquisition Act, 1894, the person from whom the trust has agreed to accept the sum so fixed may, if the trust is satisfied that the security offered by him is sufficient, execute an agreement with the trust either—*

*(i) to pay the said sum three years after the date of the agreement, or*

*(ii) to leave the said sum outstanding as a charge on his interest in the land, subject to the payment of interest at a rate to be agreed upon by such person and the trust until the said sum has been paid in full and to make the first annual payment of such interest four years after the date of the agreement :*

*Provided that the trust may, at any time before the Collector has taken possession of the land under section 16 of the Land Acquisition Act, 1894, accept immediate payment of the said sum instead of an agreement as aforesaid.*

*(6) When any agreement has been executed in pursuance of sub-section (5) or when any payment has been accepted in pursuance of the proviso to that sub-section in respect of any land, proceedings for the acquisition of the land shall be deemed to be abandoned.*

*(7) Every payment due from any person under any agreement executed under sub-section (5) shall be a*

*charge on the interest of that person.*

*(8) If any installment of interest payable under an agreement executed in pursuance of clause (ii) of sub-section (5) be not paid on the due date, the sum fixed by the trust under sub-section (4) shall be payable on that date, in addition to the said instalment.*

*(9) At any time after an agreement has been executed in pursuance of clause (ii) of sub-section (5), any person may pay in full the charge created thereby, with interest, at the agreed rate, up to the date of such payment.*

*(10) When an agreement in respect of any land has been executed by any person in pursuance of sub-section (5), no suit with respect to such agreement shall be brought against the trust by any other person (except an heir, executor or administrator of the person first aforesaid) claiming to have an interest in the land.*

*(11) When an agreement in respect of any land has been executed by any person in pursuance of sub-section (5), and any sum payable in pursuance of that sub-section is not duly paid, the same shall be recoverable by the trust (together with interest up to the date of realization at the agreed rate), from the said person or his successor in interest in such land in the manner provided by section 222 of the Municipal Act, and, if not so recovered the chairman may, after giving public notice of his intention to do so and not less than one month after the publication of such notice sell the interest of the said person or successor in such land by public auction, and may deduct the said money and the expenses of the sale from the proceeds of the sale, and shall pay the balance (if any) to the defaulter.”*

27. Coming then to the arguments addressed before this Court as also the judgments of the learned Courts below.

Having perused the record produced before this Court, it is

obvious that vide the Award dated 04.05.1974 the suit land was specifically left out from acquisition and even if, thereafter, possession is shown to have been taken along with large tracts of land acquired vide the said Award, such possession was obviously symbolic and in any case could not have been taken, with the Award specifically holding that the suit land belongs to the Central Government and therefore cannot be acquired, and separate negotiations with the Central Government would have to be undertaken. Admittedly no such negotiations were entered into, or at least no record thereof has been led by way of evidence at any stage before the Courts below, or even before this Court.

This is to be also seen in the light of the fact that DW1, a Junior Engineer in the Trust, first testified that the property was acquired after negotiations with the Central Government but thereafter stated that he had not brought any record pertaining to such negotiations.

Still further, he first stated that compensation had been paid to the respondents-plaintiffs by the Trust but thereafter stated that the compensation that was given did not relate to khasra no.88/7.

In fact, the learned lower appellate Court has specifically recorded a finding to the effect that a perusal of the record shows that the compensation paid to Kanwaljit Singh and others, was in respect of Khasra nos. 88/10 and 88/11 and not in respect of khasra no.88/7.

This Court is further of the opinion that as, admittedly, the suit land, i.e. khasra no.88/7, was in the ownership of the Central Government in 1974, no compensation in any case would have been paid to any other person and as such, the entire contention of the Trust to the effect that the plaintiffs/their predecessors-in-interest had been paid compensation for the

said khasra number, is wholly mis-conceived. It needs further notice that no compensation specifically paid to the plaintiffs even subsequently, has been pointed out from anywhere in the record by learned counsel for the Trust.

28. Thus, with the suit land excluded from acquisition by the Award itself, subsequently, in 1982, vide sale certificates Ex.PW3/1 and PW3/12, the predecessors-in-interest of the respondent-plaintiffs are shown to have purchased the land from the Central Government, in a restricted auction, which fact is not denied even by the appellant Trust.

As regards possession stated to have been taken by the Trust, it has been found by the Courts below, that though a possession certificate Ex.DX/9 does include the khasra number in question, however, the said possession is not borne out by the revenue record in terms of the subsequent jamabandies, Exs.PW3/5 to PW3/8, as already noticed.

It is seen that the first mutation entry showing the transfer of the land from the Central Government to Surjit Singh, Ravail Singh and Raghuwinder Singh etc., is in the jamabandi for the year 1979-80. Thereafter, right from the mutation entry in the jamabandi for the year 1984-85 till 1999-2000, the aforesaid purchasers, Surjit Singh etc. are shown to be owners of the suit land. In the jamabandi for the year 2004-05, the names of the respondents-plaintiffs, i.e. Ajit Singh etc. are shown in the column of ownership.

It needs further to be observed here that though the auction in favour of the auction purchasers, in the year 1982, is shown to be a restricted auction, there is no issue raised at any stage that the land could not have been further sold by the auction purchasers in violation of the terms of the auction.

Obviously, in any case, that issue, if at all there was any, could only have

been raised by the original owner and vendor of the land, i.e. the Central Government, which is not seen to have made any objection at any stage, not being a party to this litigation.

29. Coming then to the argument of Mr. Pathela, learned counsel for the Trust, that once the suit land was notified to be acquired under Sections 36 and 42 of the Punjab Town Improvement Act 1922, thereafter even if by the Award the Collector had excluded the specific khasra number that constitutes the suit land from the acquisition proceedings, he had no authority to do so and as such the land would be deemed to have been acquired.

The judgments cited by him, whether of the Division Bench of this Court in *Smt. Usha Aroras'* case (supra) and of the hon'ble Supreme Court in *Sneh Prabha*, *Ajay Krishan Shinghal* and *Chandrasekaran* cases (supra), all pertain to the right of a person who has purchased any land after notification under Section 4 of the Land Acquisition Act, 1894, has been issued. It has been held that other than claiming compensation qua such land, (as a person interested therein), such person has no right to even challenge the acquisition proceedings.

I do not see how those judgments apply to the present case in any manner, inasmuch as, the purchase of the suit land, by the predecessors-in-interest of the respondents-plaintiffs, from the Central Government, is in 1982, whereas vide the Award dated 04.05.1974, the acquisition proceedings were declared by the Land Acquisition Collector himself, to not apply to the suit land, (alongwith the other land vesting in the Central Government).

That Government, i.e. the Central Government, having thereafter sold it by auction to the predecessors-in-interest of the plaintiffs (and 3 of the plaintiffs themselves), 8 years after the Award, with some of the respondents-

plaintiffs being purchasers from the other auction purchasers, vide sale deeds executed in the year 2001, the ratio of those judgments do not apply in the present case in any manner.

30. As regards Mr. Pathelas' contention that once the land had been notified for acquisition under Sections 36 and 41 of the Punjab Town Improvement Act, and therefore, without sanction of the Government, such proceedings could not have been abandoned, even as per Section 56 of the said Act, that is an issue to be looked at carefully.

A perusal of Section 56 (reproduced earlier) does show that the power to declare that any land notified for inclusion in a scheme is no longer required for the scheme and acquisition proceedings be abandoned qua that land, undoubtedly vests in the State Government. Hence, to that extent Mr. Pathela would seem to be correct that the Land Acquisition Collector himself would have no jurisdiction to abandon acquisition proceedings qua any land which had already been notified for such acquisition, for the purpose of executing a scheme.

However, upon specific query to learned counsel, as to whether the State Government had ever raised any objection to the auction proceedings by the Central Government, till even the time of filing of the suit, i.e. 2006, which is 32 years after the Award was pronounced, he had fairly submitted that no such record was available. Upon yet another query as to whether the revenue record led by way of evidence can be shown to be fabricated by the plaintiffs, or prepared in connivance with the revenue authorities, he has also stated that no such enquiry has been conducted by which it could be said that it is fabricated record.

Hence, in view of the fact that right since 1974 till the time that

the Central Government actually auctioned the land in 1982, it continued to be reflected in the revenue record in the name of the Central Government, after which the ownership was reflected in the name of the auction purchasers and lastly in favour of the respondents-plaintiffs, it would obviously show that neither the State Government, nor the appellant-Improvement Trust, at any stage after the Award was pronounced in 1974, even objected to the ownership of the successive owners, i.e. the Central Government (original owner), the auction purchasers and those respondents-plaintiffs who were vendees of some of the auction purchasers.

31. Therefore, with the revenue record continuously showing that it was not the Amritsar Improvement Trust or the State Government, but the Central Government and its vendees and even subsequent vendees thereafter, who were the owners in possession of the suit land, I see no strength in the argument raised even on the basis of Section 56 of the Act of 1922. Very obviously, the State Government at least tacitly approved of the Award dated 04.05.1974 and therefore never raised any objection to non-acquisition of the land notified to be acquired, again very obviously for the reason that the land at that point of time actually belonged to the Central Government. Hence, if the State Government or the Trust were really interested in acquiring the land for the purpose of the scheme even after the Award had been pronounced, either objections should have been raised to the effect that the Collector had exceeded his jurisdiction in abandoning the Central Governments' land from the acquisition proceedings, or thereafter negotiations with that Government should have been entered into, to acquire it even after 1974.

Neither of the two steps having been taken to ensure that the suit land was acquired for inclusion in the scheme notified, after the LAC had

pronounced the Award, it has to be held, in the opinion of this Court, that the suit land was left out of the acquisition proceedings vide the Award dated 04.05.1974 with no order of the State Govt. superseding that part of Award and therefore, the auction by the Central Government held in favour of the auction purchasers, including some of the respondent-plaintiffs, on 17.05.1982/04.06.1982, were valid proceedings and consequent thereupon, with there being no objection shown to be raised by the Central Government, to the sale by some of the auction purchasers of their share in the suit land, to the respondent-plaintiffs, such sales are also valid and the appellant-Trust has no right or interest in the suit land after 04.05.1974.

32 (a). Therefore, to answer the questions of law framed in paragraph 25 of this judgment, as regards Questions no.(ii) and (iv), it is held as follows.

The suit for permanent injunction filed by the respondent-plaintiffs was wholly maintainable, with this Court also having come to the same conclusion as the Courts below, that the land eventually never stood acquired by the appellant-Trust, even in terms of Sections 42 of the Punjab Town Improvement Act, 1922, with the land specifically having been held by the Collector to be not acquired, with no overriding order or notification of the State Government to such exclusion.

Thus, the Courts below did not err in appraising the evidence led before them and as such, the decree of permanent injunction issued by those Courts in favour of the respondent-plaintiffs, are very much sustainable.

32(b). As regards Question no.(i), it is held that a decree of permanent injunction can be passed even against a true owner, restraining him/her from

interfering in the possession of another person over a piece of land in dispute, if the true owner is interfering in such possession otherwise than in due course of law.

In the present case however, the aforesaid principle in any case does not apply, because as has been held, the appellant Trust is not the true owner of the suit property, whereas the respondent-plaintiffs are and were so, much prior to the filing of the suit in this *lis*.

32(c). Coming then to Question no.(iii), as to whether the suit of the plaintiffs was liable to be dismissed for want of notice under Section 98 of the Act of 1922, the said provision is reproduced hereinunder:-

**“98. Notice of suit against Trust, etc.–** (1) No suit shall be instituted against the Trust or any trustee, or any person associated with the Trust under section 13 or any member of a committee appointed under section 14 or any officer or servant of the Trust, or any person acting under the direction of the Trust or of the chairman or of any officer or servant of the Trust, in respect of an act purporting to be done under this Act, until the expiration of two months next after notice in writing has been, in the case of a Trust, left at its office, and in any other case delivered to or left at the office or place of abode of the person to be sued, explicitly stating the cause of action, the nature of the relief sought, the amount of compensation claimed and the name and place of abode of the intending plaintiff, and the plaintiff shall contain a statement that such notice has been so delivered or left.

(2) If the Trust or other person referred to in sub-section (1) shall before the action is commenced have tendered sufficient amends to the plaintiff, the plaintiff shall not recover any sum in excess of the amount so tendered and shall also pay all costs incurred by the defendant after such tender.

(3) No action such as is described in sub-section (1) shall unless it is an action for the recovery of immovable property or for a declaration of the title thereto, be commenced otherwise than within six months next after the accrual of the cause of action:

(4) Provided that nothing in sub-section (1) shall be construed to apply to a suit wherein the only relief claimed is an injunction of which the object would be defeated by the giving of the notice or the postponement of the

commencement of the suit or proceedings.”

A perusal of the aforesaid provision shows that no suit against the Trust or any of its members or officers etc. can be instituted unless a notice of at least two months has been given to the Trust or its member/officer/servant etc., by the person intending to institute such suit.

Further, as per sub-section (3) of Section 98, even thereafter, no action would commence against the Trust other than for recovery of immovable property or for a declaratory title thereto, for at least six months from the time that the cause of action arose.

However, sub-section (4) of Section 98 provides an exception to the condition of a notice being issued, in terms of sub-section (1), and by extension, since sub-section (3) is related to sub-section (1), to the condition stipulated in sub-section (3) also.

The said exception contained in sub-section (4) is to the effect that no notice as stipulated in sub-section (1) would be necessary to be issued, where the only relief claimed against the Trust or its members and officers etc. is an injunction, the object of which would be defeated by issuing a notice of two months.

The suit out of which this second appeal arises, i.e. Civil Suit no.568 of 27.01.2006, admittedly having been filed by the respondent-plaintiffs only seeking a decree of permanent injunction restraining the appellant Trust from interfering with the possession of the plaintiffs from the suit property, the learned Courts below rightly came to the conclusion that no notice under Section 98(1) was required to be issued prior to the institution of the suit, even in terms of Section 98 (4) itself.

Hence, that question is also answered in favour of the

respondent-plaintiffs.

32(d). Coming last then to Question no.(v) framed.

Though Section 56 otherwise stipulates that it is only the Government which can abandon any process of acquisition qua any land notified for such acquisition for the purpose of the execution of a notified scheme, and that is a mandatory provision, the said provision is not found to be applicable in the present case, with Government never having objected to the Collector having declared in his Award dated 04.05.1974, that the suit land and other land belonging to the Central Government, cannot be compulsorily acquired by the said Award. Further, no objection ever having been raised even in 1982, to the auction of the suit land by the Central Government, or at any time thereafter, despite the revenue record continuously reflecting the Central Government and subsequent owners as such owners in that record, the State Government obviously approved the exclusion of the suit land in the Award, it being land belonging to the Central Government at that time.

Hence, it is held that even in terms of Section 56 of the Act of 1922, the appellant Trust cannot be held to be the owner of the suit land.

It is specifically observed here that though the suit filed by the respondent plaintiffs was only one seeking permanent injunction against the appellant-Trust, and not for a declaration, however since the entire defence of the Trust has been that actually it was the owner of the property, that issue naturally had to be looked into by the Courts below, as also this Court.

33. Consequently, in the light of the aforesaid detailed discussion, I see no reason to interfere with the judgments and decrees of the Courts below and therefore, this appeal is dismissed, with costs of Rs.11,000/-.

March 6, 2017  
dinesh

(AMOL RATTAN SINGH)  
JUDGE

|                           |     |
|---------------------------|-----|
| Whether speaking/reasoned | Yes |
| Whether Reportable        | Yes |

**CM No.5191-C of 2015**

By this application, the respondents in the aforesaid appeal, i.e. the plaintiffs in the suit, seek prosecution of Shri Sandeep Rishi, PCS, Chairman of the Amritsar Improvement Trust, alleging in the application that he has perjured before this Court. The allegation against the Chairman is made on the basis of the fact that in the grounds of appeal filed before this Court, the appellant Trust, while reproducing a part of the Award dated 04.05.1974, has reproduced it as follows:-

“Land measuring 55K - 10M bearing Rectangle no.88, Rect. no.112, Killa no.19/5, 7/1, 5/2, 6/2, 7/2, 8/13, 14/1, 17/1, 18, 19/2, 19/3, 19/5, 19/6 and killa no.19/7 belong to Central Government. This land cannot be compulsorily acquired. The Trust therefore, acquired this land by negotiation with Central Government if required for the Scheme.”

The contention is that the actual reproduction is as what has been reproduced by this Court in this judgment, as follows:-

“Land measuring 55K - 10M bearing rectangle no.88, Killa no.7, Rect.no.112, Killa no.19/5, 7/1, 5/2, 6/2, 7/2, 8, 13, 14/1, 17/2, 18, 19/2, 19/3, 19/5/1, 4/2, 19/6, 19/4 and 19/7 belong to Central Government. This land cannot be compulsorily acquired. The Trust is, therefore, advised to acquire this land by negotiations with the Central Government, if required for the Scheme.”

Undoubtedly, the reproduction given hereinabove and earlier in this judgment is as per what is contained in the Award dated 04.05.1974 and what has been reproduced in the grounds of appeal, missed out the two words “advised to”, immediately before the words “acquired this land”

Hence, Mr. Narang, learned counsel for the applicants-

respondents contended that the Trust, through its Chairman, has deliberately misled this Court to try and show that actually negotiations were held with the Central Government and thereafter, the suit land acquired.

However, Mr. Pathela, learned counsel for the Trust points to the reply filed by the Trust, duly accompanied by the affidavit of the Chairman, wherein it has been stated that due to a typographical mistake in the grounds of appeal, at the instance of counsel for the Trust, the aforesaid two words were missed out and there was no deliberate intention to mislead this Court.

Mr. Pathela submits that it would be further fortified by the fact that in any case, the Chairman would be fully aware that the aforesaid mistake would be determined by this Court simply by calling for the records, which of course has determined as already discussed in detail while dismissing the appeal.

Keeping in view the aforesaid explanation, Mr. Pathela even having admitted in Court that the said mistake had occurred while dictating the grounds of appeal, I find no reason to direct that the Chairman be prosecuted by initiating proceedings under Section 340 Cr. P.C.

Of course, it is also to be noticed that the Chairman in any case, is acting in as an official capacity and therefore, would have no personal axe to grind by misrepresenting as above.

Consequently, this application is dismissed.

**March 6, 2017**  
*dinesh*

**(AMOL RATTAN SINGH)**  
**JUDGE**