

CR No.7914 of 2015 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR No.7914 of 2015 (O&M)

Date of Decision : 14.12.2018

RAJ KUMAR JAIN AND ANOTHER

....PETITIONERS

V/S

HARYANA URBAN DEVELOPMENT AUTHORITY AND OTHERS

....RESPONDENTS

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Shailendra Jain, Senior Advocate with
Mr. Satyendra Chauhan, Advocate
for the petitioners.

Mr. B.R. Mahajan, Senior Advocate with
Mr. Prateek Mahajan & Ms. Manpreet Ghuman, Advocates
for the respondents.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order dated 12.08.2015, whereby the execution petition of the petitioner(s)-decree-holder(s) in compliance of the judgment and decree dated 04.03.2011 (Annexure P-1) purportedly has been satisfied by issuing directions to the State to pay the compensation of land in question measuring 2565 sq. yards @ 1859.50 per sq. yards i.e. total amount of Rs.47,69,628/- alongwith simple interest @ 8% per annum from the date of the judgment and decree dated 04.03.2011 (P-1) till realization.

Mr. Shailendra Jain, learned Senior Counsel assisted by Mr. Satyendra Chauhan, Advocate, appearing on behalf of the petitioners submitted that in pursuance of the judgment and decree passed in suit whereby the

defendant had unauthorizedly taken the possession of the land, the trial Court granted the following relief:-

“ In view of the foregoing discussion particularly on issue Nos.1 to 3, the suit of the plaintiffs is decreed with costs. The defendants are directed to either pay the compensation of the amount equivalent to the total cost of the land in question prevalent in the area as on date or in the alternative given plots equivalent to the area of the land in dispute to the plaintiffs and other co-sharers in their new sectors developed in Sonapat where land has the same value as that of property in question. The Land Acquisition Department which unauthorisedly took the possession of the land in question and enjoyed its fruit for such a long time is also burdened with exemplary costs of Rs.20,000/- to be paid to the plaintiffs and other co-sharers as litigation charges and this amount would be recoverable by the department after its payment to the plaintiffs from the salaries/dues of the officials who were responsible for such illegal encroachment. The defendants are given three months time to implement the judgment in its letter and some failing which the plaintiffs would be at liberty to approach the Court for execution of the decree within three months after the period of three months given to the defendants for implementation. Decree sheet prepared accordingly. File be consigned to the record room after due compliance.”

The respondents-State opted for the first option and the trial Court believing the statement passed the order for allotment of the land @ 1859.50 per sq. yd. without noticing the documents Ex. R-4 that as on 04.03.2011, this area was developed and had a more potential in rate, therefore, there is an abdication. In other words, it is submitted that the Court below failed to advert

to the documentary evidence brought on record but the entire focus was on

AW-10, i.e. photocopy of the Collector Rate for the year 2011-2012, whereas the sale deed Ex.AW-1 to Ex.AW-9 periods w.e.f. 09.08.2011 to 21.11.2013, the Collector rate showed the rate of area but the order of the Executing Court is not consonance with the letter and spirit of the judgment and decree. Land Acquisition Officer, respondent No.4, examined RW-1-Ram Rattan, Patwari, who proved on record that the area/vicinity totally developed by the Municipal Committee and falls within residential area. Thus, the determination of the rate as per the impugned order could not be of the agriculture but as on date of the judgment and decree dated 04.03.2011 (P-1).

Mr. B.R. Mahajan, learned Senior Advocate assisted by Mr. Prateek Mahajan & Ms. Manpreet Ghuman, Advocates, appearing on behalf of the respondents submitted that there is no illegality and ambiguity, much less infirmity in the impugned order by drawing attention of this Court to paragraph No.14, whereby after noticing all the sale deeds relied upon by the petitioner(s) confined the rate @ 1859.50 sq. yards. The commutation of the land would be on the date of application when the actual possession was taken.

I have heard learned counsel for the parties and perused the paper book.

No doubt, the Executing Court cannot go behind the decree. In decree, State had been given two options. State had exercised the first option. Even with the first option, Court cannot confine for the sake of repetition, to the State for determination of value of the land as and when was the cause of action accrued but it has to be on the date of decree. In view of such situation, I am of the view that impugned order is not sustainable and thereby set aside.

The matter is remitted to the Executing Court to determine the entire controversy afresh by looking into the documentary evidence already brought

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on record and passed fresh order as expeditiously as possible within a period of four months from the date of receipt of the certified copy of the order.

Allowed.

**(AMIT RAWAL)
JUDGE**

December 14, 2018

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No