

In the High Court of Punjab and Haryana at Chandigarh

RSA No.71 of 1993

Date of decision: September 20, 2018

State of Punjab and others

..... Appellants

Versus

Rajinder Pal and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Navdeep Chhabra, Deputy Advocate General,
Punjab.

Mr. Rupinder Khosla, Senior Advocate with

Mr. Sarvesh Malik, Advocate for respondent No.2.

Mr. A.P. Kaushal, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

This Regular Second Appeal has been filed against concurrent findings of fact arrived at by the Courts below by the State of Punjab. Plaintiff filed a suit for permanent injunction claiming that his house comprised in 14 marlas land was not part of acquired land by the defendants-appellants. Defendants contested the suit and pleaded that the house of the plaintiff was constructed on the land comprised in khasra No.166, which was acquired vide award No.363 dated 31.03.1976 whereby entire land including the house constructed thereon measuring 33 kanals 07 marlas. However, it was pleaded that award with respect to structure built has not been announced. Both the

Courts below merely on the basis of oral statement of Ashok

Kumar, Patwari decreed the suit without trying to find out whether house is located in khasra No.166 or not.

On 16.03.2018, this Court allowed the application for additional evidence, which proved that even supplementary award with regard to the structure built has been announced. The order passed on 16.07.2018 is extracted as under:

“Arguments partly heard.

Since the dispute with respect to public property was involved, therefore, this court granted opportunity to the State of Punjab to produce on file relevant record to establish that the entire land including the constructed house owned by the plaintiff was acquired. As per Ex.D1, jamabandi for the year 1972-73, plaintiff was owner of 33 kanals and 7 marlas of land in total including khasra no.166, area 9 kanals and 6 marlas. From examination of Ex.D2, it is clear that payment of 33 kanals and 7 marlas was paid to the plaintiff through cheque.

Both the courts relying upon an oral evidence, have recorded a finding that the house constructed by the plaintiff has not been acquired. The original record was requisitioned from the office of the Land Acquisition Collector.

Learned counsel for the plaintiff-respondents has also supplied an attested copy of the supplementary award announced on 04.03.1991 with respect to the compensation payable on account of construction. It is apparent that in the list of persons who are entitled to the compensation on the basis of assessment report of the super structure, plaintiff-respondent was held entitled to a sum of Rs.29,275/-. The aforesaid supplementary award is admitted in additional evidence in exercise of powers under Order 41 Rule 27 CPC and is exhibited as Ex.C1.

Learned counsel for the respondents prays for a short accommodation to establish that whether plaintiff-respondents were owner of any other land on which house had been constructed or not.

On request adjourned to 30.07.2018.

Counsel for the respondents undertake that he would not seek further adjournment.”

This Court suo moto took the supplementary award in additional evidence finding that encroachment on the public property is apprehended. After allowing the additional evidence, learned counsel for the respondents prayed for short accommodation to find out whether plaintiff-respondents were owners of any other land on which house had been constructed. However, no evidence was produced on 01.08.2018.

Learned counsel for the respondents came up with a plea that although he has not been able to get any documents but his instructions are that house is not part of khasra No.166 and it is a part of Abadi of the village. This Court on 01.08.2018 directed concerned Kanungo to remain present in the Court. Kanungo of the area was directed to carry out the demarcation so that the Court can conclusively decide whether house in question was part of khasra No.166 or not. Sh. Shishi Chander, Kanungo has filed the report wherein he has concluded that house is part of khasra No.166. The report submitted is taken on record as Ex. C-1.

In view of the aforesaid facts, which have come to the notice of this Court, it is apparent that the entire foundation of the suit was based on falsehood. The Courts below also choose to decide the cases only on the basis of oral admission.

It is well settled that once the land underneath the house is acquired, the acquisition is complete. There is no limitation for giving supplementary award under the Land Acquisition Act, 1894. In the present case, supplementary award

has been given. Still, said authorities did not choose to produce the aforesaid supplementary award before the Courts below resulting into factually incorrect order. Supplementary award was passed in the year 1991 whereas his appeal was decided on 08.08.1992.

Keeping in view the aforesaid facts, the judgment passed by both the Courts below is set aside.

Appeal is allowed.

(ANIL KSHETARPAL)
JUDGE

September 20, 2018

jt

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No