

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 2755 of 2008 (O&M)

Date of Decision: 18.12.2018

Union of India

.....Appellants

Vs.

Smt. Hardevi and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Ms. Ranjana Shahi, Senior Panel Counsel
for Union of India.

Mr. Arun Jain, Senior Advocate, with
Mr. Aashish Gupta, Advocate,
for the respondents.

Mr. Bhag Singh, Advocate,

AMOL RATTAN SINGH, J. (ORAL)

This appeal has been filed by the Union of India, impugning therein the judgment and decree issued by the learned first appellate Court (Additional District Judge, Fast Track Court, Ambala), dated 03.05.2008, on an appeal filed before that Court by 143 plaintiffs whose suit had been dismissed by the trial Court.

Vide their suit, the respondents-plaintiffs had sought a decree for possession of the suit land, (stated to be touching the boundaries of village Chhabiana, Mahesh Nagar, village Babyal, in the East village Boh, Kalarheri, Tundla, Tundli, Dhankaur, Garnana, Barnala, Dhulkot and Revenue Estate of village Jandli, in the West, Ambala Jagadhri Road, on the northern side of Ambala Cantonment), with the site plan annexed with the plaint stated to be one showing

the status of the land as it was in the year 1843.

Vide their suit, the plaintiffs sought a decree for possession of the suit land after ejectment of the present appellant, i.e. the Union of India in the Ministry of Defence, New Delhi.

In short, vide the suit, ejectment of the defence forces in possession of the suit land in Ambala Cantonment, was sought.

It is seen that in the judgment of the learned first appellate Court, after discussing the pleadings as also the issues framed by the learned trial Court and the findings given by that Court, the first appellate Court has concluded its judgment with the following observations:-

15. This Court is of the view that once the respondent came up with a plea that compensation was paid to the forefathers of the appellants then it was for the respondents to lead some cogent and convincing evidence to prove the payment of compensation but absolutely no evidence was led by the respondent in this regard. This Court was inclined to accept the appeal and to decree the suit but considering the national interest in the subject matter of the suit, this Court will refrain from doing so but as is said and is mother of each and every agriculturist and each and every agriculturist has got attachment with the land and is entitled to compensation in case the land is acquired. It was incumbent upon the respondent to show and prove the payment of compensation but no evidence is there in this regard. The ends of justice would be completely met if Defence Secretary is called upon to adjudicate as to whether any compensation was paid at the time of alleged acquisition of the land for Ambana Contonment to the forefathers of the appellants and if no compensation was paid then to take steps for compensating the landowners of the successors of land owners. This Court would really appreciate if the Defence Secretary gives his verdict within one year of the passing of the judgment and in no eventuality the Defence Secretary will take more than one year and six months to

pronounce the judgment and if necessary to compensate the appellants.

16. As a sequel to the above, this appeal stands disposed of with the directions to the Defence Secretary to adjudicate the matter and to find out if the Government of India is a tenant in the suit land which prima facie appears to be or if any compensation was paid to the land owners for their holdings in the year 1843 and if no compensation was paid to the land owners for their holdings in the year 1843 then to take steps to make payment of the compensation to the land owners. The matter shall be decided by the Defence Secretary or he will depute some responsible officer to adjudicate the controversy in terms of the above findings. Copy of this judgment be sent direct to the Defence Secretary, Ministry of Defence, New Delhi, who shall call upon the appellants and other interest persons by issuing notice and will adjudicate the matter. Any aggrieved party from the decision of the Defence Secretary or to whom he may refer the matter will have the right to approach the court again. Decree sheet be drawn accordingly. Trial Court file be sent back and appeal file be consigned to record room.

Thus, having expressed its views on the matter, eventually that Court did not actually adjudicate upon the appeal and instead directed the Defence Secretary, Government of India, (i.e. effectively the respondent itself), to adjudicate upon the matter.

I do not see how such a direction could have been issued by that Court in an appeal arising out of a civil suit filed by the respondent-plaintiffs and whatever may have been the view of that Court, it was required to appraise the evidence led by the parties, and give reasoning to come to a final and firm conclusion as to whether the judgment and decree issued by the trial Court was sustainable or not.

Consequently, without going into the merits of the 2nd appeal, the impugned judgment and decree are set aside, with the matter remitted to the first appellate Court, to consider the Ist appeal instituted before it on merits, on the basis of the pleadings and evidence led by both sides, and thereafter come to a firm finding on the basis of such evidence, as to whether the suit of the plaintiffs has been correctly or erroneously dismissed by the trial Court.

Needless to say, if any application, either under Order 41 Rule 27 CPC or otherwise, had been already filed before that Court prior to its judgment as has been appealed against before this Court, those applications would be also dealt with on merits by that Court.

Naturally, if any applications are now filed before that Court, such applications would be dealt with wholly on their own merits, including the maintainability thereof.

December 18, 2018
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
No.