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

R.S.A No.123 of 2016(O&M)
Date of decision :21.08.2018

Haryana Forest Development Corporation Limited

...... Appellant

Versus

Rajbir Singh and others

.... Respondents

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Pritam Singh Saini, Advocate
for the appellant.

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LISA GILL,J

Present appeal has been filed by the appellant-defendant against the judgment and decree dated 25.03.2013 passed by the learned Civil Judge (Sr. Division), Ambala, whereby the suit filed by the plaintiff-respondent no.1 has been partly decreed as well as judgement and decree dated 15.05.2015 passed by the learned District Judge, Ambala, whereby the appellant's appeal has also been dismissed.

Brief facts necessary for the adjudication of the case are that respondent no.1-plaintiff filed a suit for mandatory injunction directing the defendants to pay an amount of ₹7,66,108/- as price of Poplar trees cultivated by the plaintiff in view of the schemes Ex.PW-1/E and Ex.PW1/F i.e. 'Nai Vriksh Kray Yojna'. It was pleaded that the appellant-Corporation and the State of Haryana were promoting the planting of trees by the farmers in the State. Special attention was given to Poplar trees by the defendants. Various advertisements, handbills etc., were circulated pursuant to the formulation of the said scheme. Assurance of a Government Support Price was also made out in the said scheme. State of

Haryana wanted to encourage poplar plantation in the State. In view of the assurances given by the appellant and the State, plaintiff-respondent no.1 planted Poplar trees in his agriculture land measuring 15 acres. It was further pleaded that the defendants regularly issued handbills, promising that whatever profits were earned by the appellant on account of sale of wood of trees, the same would be shared with the farmers w.e.f., 01.11.2001. Plaintiff-respondent no.1 vide letters dated 17.10.2002 and 23.11.2002 (Ex.PW1/J) informed defendant no.3-Area Manager, Haryana Forest Development Board Ltd., regarding the maturity of his trees and that the same should be purchased by the department. However, no action was taken by the appellant and other respondents. CWP No. 1570 of 2003 was filed by respondent no.1-plaintiff seeking a direction to the appellant and other respondents for purchasing the Poplar trees cultivated by the plaintiff at the rates adjusted by them in their various circulars w.e., 01.11.2001. Pursuant to directions passed by this Court in the said writ petition, trees in question were cut by the appellant after proper measurement. It was pleaded that 3000 fully grown Poplar trees were standing in the land of the plaintiff as per Khasra Girdawri for the year 2001. The said writ petition was disposed of on 03.03.2008 while noting that the amount in question recovered by selling the trees belonging to the petitioner, had been released to the petitioner. In regard to the dispute regarding the rates of the trees which were sold in view of the policy of the State, liberty was afforded to respondent no.1 to avail his remedy by filing a civil suit. Pursuant thereto, respondent no.1 approached the defendant with a request to calculate the price according to the scheme/handbills etc., but to no avail. Hence the present suit was filed.

Suit was resisted by the appellant and other defendants. It was denied that the appellant or the State was promoting the planting of trees/poplar trees by the farmers in the State of Haryana or that in pursuance thereof advertisements and circulars were issued over the last decades by giving special attention to Poplar trees. It was denied that any promise had ever been made or assurance given to the plaintiff for purchase of the trees in question at a given rate. He had in-fact planted the trees of his own volition and without entering in any contract with the defendant-appellant. The rates as prevalent in the market were afforded, but the plaintiff had refused. The amount received after auction of the land was duly given to the plaintiff.

Replication was not filed. From the pleading of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled to decree for mandatory injunction on the grounds mentioned in the plaint, as prayed for?OPP
2. Whether the suit is not maintainable in the present form?OPD
3. Whether plaintiff has no locus standi to file the present suit, if so its effect?OPD
4. Whether plaintiff is estopped from filing the present suit by his own act and conduct?OPD
5. Whether the plaintiff has concealed true and material facts from this Court?OPD
6. Whether plaintiff has no cause of action to file the present suit, if so its effect?OPD
7. Relief.

Both the parties led evidence in support of their respective claims.

Learned trial Court on considering the facts of the case and evidence on record partly decreed the suit filed by plaintiff-respondent no.1 directing the appellant to pay the remaining amount of ₹2,47,635/- along with interest at the rate of 6% per annum from June 2004 till realization.

Appeal preferred by the present appellant-defendant and General Manager, Haryana Development Corporation, Ambala Company Bagh, Forest Complex Ambala City, was dismissed by the learned District Judge, Ambala, vide impugned judgment and decree dated 15.05.2015.

Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant argues that both the learned Courts below have erred in passing the impugned judgments and decrees. It is contended that in-fact an agreement dated 15.12.2003 had been entered into between respondent no.1 and the appellant-Corporation. Application under Order 31 Rul2 27 CPC, was filed before the learned District Judge for placing on record the said agreement, but the same was dismissed in an illegal manner. It is contended that once the respondent-plaintiff had entered into the said agreement, there is no question of claiming any additional price. The amount was disbursed to him after the auction of the trees, in compliance with orders of this Court and no further amount remains to be paid to the said respondent-plaintiff. Corporation has been wrongly saddled with the liability of the amount in question. Learned trial Court, it is contended wrongly proceeded to determine the rates of the Poplar trees. It is thus prayed that the present appeal be allowed.

I have heard learned counsel for the appellant and have gone through the record of this case, which was requisitioned.

Perusal of the record reveals that the scheme in question was indeed floated by the appellant as is apparent from the perusal of Ex.PW1/E. It is specifically mentioned in the said scheme that the Corporation came into being in the year 1989 with the main aim of securing proper price of trees for the cultivators, so, that they can be saved from the clutches of the middleman. Opening words of the scheme read as under:-

> "Haryana Forest Development Corporation Limited, came into being in the year 1989. Corporation was constituted with the main aim that the individual cultivators of trees can get the correct price of their produce, so that they are saved from the clutches of the middlemen and on getting a guarantee of the correct price thereof, they are encouraged to plant more and more trees."

There is a clear incentive to the cultivators to adopt the scheme and obtain more revenue by growing trees. It is not denied that respondent no.1 was constrained to file CWP No. 1570 of 2003 seeking a writ, order or direction for directing the appellant, Corporation and other respondents including the State of Haryana to purchase the poplar trees cultivated by him at the rates declared by respondents no.2 and 3 circulated w.e.f. 01.11.2001. It is further not in dispute that the Poplar trees cultivated by respondent no.1 were felled by the appellant, pursuant to specific orders passed by this Court in CWP No. 1570 of 2003. The said trees were auctioned and amount in question released to respondent no.1. CWP No. 1570 of 2003 was finally disposed of by this Court on 03.03.2008 while observing as under:-

> "On 6.11.2007, it was stated before this Court that the money lying deposited in the bank belongs to the petitioner, as it had been recovered by selling the trees belonging to the petitioner. Accordingly it was directed that the amount lying in the bank, in terms of the order passed by this Court on 28.10.2003, be released to the petitioner.
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> Mr. Subhash Ahuja, Advocate, appearing for respondent Nos.2 and 3 states that the money has already been released to the petitioner and accordingly the present writ petition is rendered infructuous. This fact is disputed by learned counsel for the petitioner. He says that there is a dispute in regard to the rates, at which trees were to be sold, in view of the policy of the State Government or the right of the petitioner to sell those trees to the State Government. If the petitioner, on account of any policy or otherwise, has suffered any damage due to any reason, which is open to challenge, he would be at liberty to avail his remedy by filing a civil suit. The disputed question of fact, as to the rates or the liability about selling the trees, can not be gone into in the writ petition. The petitioner would also be at liberty to move an application seeking condonation of delay by explaining that he was prosecuting his writ petition before this Court.
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> The writ petition is accordingly disposed of. The liberty is left with the petitioner to file a civil suit for seeking any damage or other relief that may be available to him under law."

Thereafter, the present suit was filed by respondent no.1-

plaintiff.

Learned trial Court has determined the rates after observing that the appellant is bound by the terms of the scheme, Ex.PW1/C. The rates of the trees were released by the Corporation itself as reflected in Ex.P-3. DW-1-Man Singh, Accountant of the Office of General Manager, Haryana Forest Development Corporation Limited, Forest Complex Ambala City, in his cross-examination admitted that the department was directed to cut the trees standing in the fields of the plaintiff and to determine the rates. Plaintiff came to the department on 27.03.2008 for determination of the rates, but the same was not fixed as the market rates were fluctuating. Open auction was conducted in the year 2004. DW-1-Man Singh, specifically stated that the rate received in the open auction was not as per the government rates. It was less then the market rate and the agreed rate. It is thus rightly held by the learned Courts below that the appellant is liable to pay the sum of ₹2,47,635/-.

Argument raised on behalf of the appellant that application under Order 41 Rule 27 CPC was wrongly dismissed, is clearly devoid of any merit. Perusal of the record reveals that stand of the Corporation before the learned trial Court was that no agreement was ever entered into between the Corporation and the plaintiff-respondent no.1. Learned counsel for the appellant had even sought to point out to the methodology for the sale of the trees to suggest that an agreement was required to be entered into between the parties in respect to the price of the trees. Therefore, in terms of the scheme in question, the plaintiff was not entitled to any relief whatsoever. The amount received after auction of the trees was duly paid, therefore, it was pleaded that he is not entitled to anything beyond the same. However, in a curious manner, an application under Order 41 Rule 27 CPC, was moved before the learned First Appellate Court to bring on record agreement dated 15.12.2003 purportedly entered into between the Corporation and respondent no.1-plaintiff regarding fixation of the rates of the trees.

In my considered opinion, learned First Appellate Court has rightly dismissed the said application while observing that there is not even a whisper about the agreement dated 15.12.2003 in the pleadings of the appellant. Moreover, there is nothing on record as to why and for what reason this document was not brought to light at any earlier point of time and how in a mysterious manner, it has suddenly come to light. It is relevant to note that the said agreement was never even placed before this Court in CWP No. 1570 of 2003, which was admittedly decided on 03.03.2008. In regard to the conduct of the department in this case, less said the better.

Learned counsel for the appellant-defendant is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgments are well reasoned judgments rendered after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and decree dated 25.03.2013 and 15.05.2015 passed by the learned Civil Judge (Sr. Division) Ambala and learned District Judge, Ambala, respectively, which warrants any interference by this Court.

Present appeal is, consequently, dismissed with no order as to cost.

21.08.2018 **(LISA GILL)**
s.khan **JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No