

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

RSA No.3862 of 2014 (O&M)
Date of decision: 13th March, 2018

Jhagru & others

... Appellants

Versus

District Forest Officer & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Rishab Lohan, Advocate for the appellants.

Mr. P.K. Jangra, Addl. Advocate General, Haryana
for the respondents/State.

FATEH DEEP SINGH, J.

Plaintiffs Jhagru, Jhandu and Ram Kumar, all brothers, filed against defendants District Forest Officer, Hisar and others, who all happen to be instrumentalities of the Haryana Government, a suit for declaration to the effect that land measuring 19 Kanals 11 Marlas detailed and depicted in the head note of the plaint, situated in village Mada, Tehsil Narnaund, District Hisar, was owned and possessed by the plaintiffs and they were in its continuing cultivating possession since the very beginning and that the land has been wrongly recorded as Gair Mumkin Nala in the jamabandi for the year 1987-88, and prayed a decree of restraint against the defendants from taking possession of the land in dispute forcibly and illegally on the basis of incorrect entries in the revenue records.

The stand of the defendants is that the land in question is non-cultivable and part of it is Gair Mumkin Nala owned by the Department of Irrigation, Haryana Government and which Nala is still in running condition and therefore, denied each and every averment of the plaintiffs. The trial Court framed following issues:

“Issue No.1: Whether the plaintiffs are owners in possession of the land as alleged and the entry of watercourse in revenue record is illegal, null & void? OPP

Issue No.2: Whether the plaintiffs are entitled for injunction as prayed for? OPP

Issue No.3: Whether the plaintiffs have no locus standi and cause of action to file the present suit? OPD

Issue No.4: Whether the civil Court has no jurisdiction to entertain and try the present suit? OPD

Issue No.5: Whether the suit is bad for want of notice under Section 80 of CPC? OPD

Issue No.6: Whether the suit is not maintainable? OPD

Issue No.7: Whether the plaintiffs have suppressed the true and material facts from the Court? OPD

Issue No.8: Whether the suit of the plaintiff is estopped by their own act and conduct to file the present suit? OPD

Issue No.9: Relief.”

The plaintiffs examined Ram Kumar as PW1 who proved his affidavit Ex.PW1/A followed by Ram Niwas PW2 who tendered his affidavit Ex.PW2/A and proved documents Ex.P1 to Ex.P6. On the other hand defendants examined Chander Bhan, SDO, Water Works as DW1 who on the basis of affidavit Ex.DW1/A brought about case of the defendants seeking corroboration from Rajesh Kumar, State Forest Officer DW2, who testified on the basis of his affidavit Ex.DW2/A. The defendants proved documents Ex.D1, Ex.D2/A, Ex.D2/B, Ex.D2/C, Ex.D3, Ex.D4 and Ex.D5.

Through judgment and decree dated 08.06.2010 the Court of learned Civil Judge (Junior Division), Hansi decreed the suit of the plaintiffs. The State filed appeal against this order and through impugned judgment dated 31.05.2014 the Court of learned Additional District Judge, Hisar allowed the appeal and set aside the judgment of the trial Court. It is in these circumstances the unsuccessful plaintiffs have come up in this regular second appeal.

Heard Mr. Rishab Lohan, Advocate for the appellants; Mr.P.K. Jangra, Addl. Advocate General, Haryana on behalf of the respondents/State and perused records of the case.

It is not disputed and rather is proved through DW1 that on 16.12.1961 the land in question was acquired for the construction of a pump house along the drains running through it. Therefore, with this acquisition the Government issued notification on 17.03.1987 that all such Government forest land and waste land where drains and channels

run, shall be under the control of Irrigation Department and as is there, the Department of Irrigation has not been arraigned as a party by the plaintiffs who were the owners on the strength of this notification and were the likely party to whom prejudice could be caused by any finding arising out of the suit. It is, as is contended by learned counsel for the plaintiffs, that allotment of this land has been done on 04.05.1983 by virtue of Annexure P4 being a land declared surplus under the Haryana Ceiling on Land Holdings Act, 1972.

The contentions raised by learned counsel for the plaintiffs/appellants that there is no such entry in the revenue record, does not cuts much ice, since acquisition was done way back in the year 1961 and the land in question is well covered by the Government notification to be owned and possessed by the Irrigation Department and the allotment on the strength of which the plaintiffs have laid their claim, came way back on 04.05.1983, much after this acquisition by the State Government for a public purpose. So to the mind of this Court, no right, title or interest permeates in favour of the plaintiffs arising out of such acquisition. Merely because a mutation which is only for the purposes of assessment of land revenue, was not entered rightly or wrongly, does not robs the State of its land by such a motivated, connived and wrong act of its officials. More so, being a facility for public at large, the same cannot be circumvented by such a wrong allotment which is a purely administrative function of the concerned functionaries i.e. the allotment authority. Moreover, at the time of this allotment, no right vested in the allotment

authority to have allotted this Government property and any such act is in itself void ab-initio. The impugned judgment of learned Additional District Judge has categorically taken cognizance of the written stand of the Government that the land falling in Khewat No.337/320 Khatoni No.446 to 451 measuring 19 Kanals 11 Marlas is a Gair Mumkin Nala which is owned by Haryana Government and the same is running on the site at present and the same was acquired after due payment of compensation, upon which a Nala was dug and put to public use. When this is the categoric and specific stand of the State, how the learned trial Court has misconstrued this documentary evidence and the stand of the State, much to its prejudice and such a wrong order by the authority does not bestow the ownership rights upon the plaintiffs. How the trial Court has ignored the Award and mutation which was sanctioned upon acquisition of land in the year 1961?

It has been rightly concluded in the impugned findings that the prescribed authority and the Irrigation Department are two different legal entities and cannot legitimize such an allotment in favour of the plaintiffs. Merely because certain amount has been deposited by the plaintiffs does not bestow upon them a claim over this property when the same apparently on the face of it is a gross misuse of the powers by the concerned authority. The appellate Court below has rightly relied upon the revenue records comprising of the jamabandi to hammer home the point that the same falls in the area of Nala under the jurisdiction of Irrigation Department and that it was let out to the Forest Department for

environmental purposes of plantation of trees and therefore the rightful Department under whom the same vests cannot be abrogated of its right over the same. The learned first appellate Court has rightly set aside the findings of the trial Court and has come to a totally justifiable conclusion and there appears to be no illegality and perversity in the findings of the learned first appellate Court which stand upheld. The appeal being without any merit stands dismissed. Records be sent back.

(FATEH DEEP SINGH)
JUDGE

March 13, 2018

rps

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