

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

Regular Second Appeal No. 3405 of 2018(O&M)

Date of Decision: September 20 , 2018.

Roop Chand

..... APPELLANT (s)

Versus

State of Haryana and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. R.S.Tacoria, Advocate
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Appellant-plaintiff is aggrieved of judgments and decrees dated 17.08.2013 and 26.09.2016 passed by the learned Additional Civil Judge (Senior Division), Safidon and the learned Additional District Judge, Jind, respectively, whereby the suit for declaration and injunction filed by him has been dismissed.

Brief facts necessary for adjudication of the case are that, a suit was filed by Roop Chand through his legal representatives as well as plaintiffs No.2 to 10 (not appellants before this Court) for a declaration to the effect that they are owners in possession of the suit property as detailed in the plaint. It was pleaded

that they were sought to be dispossessed from the suit property on the basis of an illegal mutation No.362 dated 25.11.2009 sanctioned on the basis of false and forged notifications No.8117 and 5470 both dated 05.03.1954 and alleged award dated 24.12.1954. The defendants/respondents resisted the suit on the ground that the suit land was acquired by the State Government and a Canal Rest House was existing on the spot. A portion of the suit land was in illegal possession of the plaintiffs for which proceedings under the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 had been initiated. It was further pleaded by the State that one Chattar Singh and others had also filed an application before the Assistant Collector 2nd Grade, Pillukhera for correction of Khasra Girdawari in respect to the land which had been acquired. The same was allowed vide order dated 21.11.1994. An appeal was filed by the State and the matter was remanded back by the Collector, Sub Division, Safidon vide order dated 29.07.1997. Chattar Singh filed an appeal before the Commissioner, Hisar Division, Hisar which was dismissed on 26.05.2000. A similar suit for declaration was filed by Chattar Singh which was dismissed by the learned Additional Civil Judge(Senior Division), Safidon on 02.09.2004. Appeal filed by Chattar Singh was also dismissed by the learned Additional District Judge, Jind vide judgment and decree dated 29.05.2007. RSA No.2374 of 2007 was also dismissed by this Court on 28.11.2008. It was thus pleaded that the land in question vested with the State after its acquisition and the plaintiffs have no concern therewith. Dismissal of the suit was prayed for.

Replication was not filed. From the pleadings of the parties

following issues were framed:-

1. Whether the plaintiffs are entitled for decree for declaration and permanent injunction on the grounds mentioned in the plaint? OPP
2. Whether the suit of the plaintiffs is not maintainable in the present form? OPD
3. Whether plaintiffs have filed false and frivolous suit? OPD
4. Whether civil Court has no jurisdiction to try and entertain the presnet suit? OPD
5. Whether suit of the plaintiffs is bad for want of advalorem Court fees? OPD
6. Whether the plaintiffs are estopped from filing the present suit by their own act and conduct? OPD
7. Whether the plaintiffs have got no cause of action and lo9cus standi to file the present suit? OPD
8. Whether suit of the plaintiffs is bad for non-joinder and mis-joinder of necessary parties? OPD
9. Relief.

The learned trial court dismissed the suit filed filed by the plaintiffs while holding that the land in question stood acquired vide the notifications as mentioned in the foregoing paras. Award was also passed. It is observed that mutation No.362 (Ex.P3) was sanctioned on the basis of decision dated 28.11.2008 passed by this Court in RSA No.2374 of 2007. Appeal preferred by the plaintiffs was also dismissed by the learned Additional District Judge, Jind vide judgment and decree dated 26.09.2016. Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellant submits that possession of the suit property is still with the appellant/plaintiff. Therefore, even if it is concluded that the land in question was validly acquired, specific rights have thereafter accrued to the appellant under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. It is thus prayed that this appeal be allowed.

I have heard learned counsel for the appellant and have gone through

the file.

Evidence on record clearly reveals that the property in question was acquired vide notifications dated 05.03.1954. Land measuring 5.34 acres had been acquired by the State for construction of the Canal Rest House and an award was duly passed by the Land Acquisition Officer, Pepsu, Patiala on 24.12.1954 in this regard. A person similarly situated as the plaintiff, namely, Chattar Singh had approached the civil court. His suit was dismissed and the decision was upheld by this Court in RSA No.2374 of 2007. The said order, no doubt pertains to land comprising in Khasra No.81/3 and not Khasra No.81/1 which is the subject matter of the present appeal, however, it cannot be disputed that Khasra No.81/1 was also acquired vide the same notifications. As per the revenue record i.e., the jamabandis for the year 1964-65 (Ex.P15 and P16), Khasra No.81/1 was recorded to be in possession of the Irrigation Department and gair-mumkin Rest House was also existing on the suit property. Proceedings under the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 were admittedly pending against the plaintiffs. There is indeed no illegality or infirmity in the impugned judgments and decrees.

It has been vehemently argued that specific rights have accrued to the appellant after coming into being of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. In my considered opinion, rights, if any, which may have accrued to the appellant under the aforementioned Act, cannot be the subject matter of the present appeal and cannot be adjudicated upon in the present proceedings. Needless to say that remedy of the appellant, if any, in this regard lies elsewhere.

I am of the considered opinion that there is no question of law much less a substantial question of law which arises for adjudication in this regular second appeal. Both the learned courts below have returned concurrent findings of fact 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 decrees dated 17.08.2013 and 26.09.2016 passed by the learned Additional Civil Judge(Senior Division), Safidon and the learned Additional District Judge, Jind, respectively, which warrant any interference by this Court.

There is a delay of 133 days in re-filing and 305 days in filing of this appeal. Keeping in view the fact that the matter has been decided on merits, the question of delay in re-filing and filing of this appeal has been rendered academic. Applications are accordingly disposed of.

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

(**LISA GILL**)
JUDGE

September 20 , 2018.
'om'

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