

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

RSA No.6171 of 2017 (O&M)

Date of Decision: January 17, 2018

State of Haryana and others

...Appellants

Versus

Ram Phal and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Pawan Kumar Handa, AAG, Haryana for
the appellants.

HARINDER SINGH SIDHU, J.

The appellants – defendants No.1 to 3 are in regular second appeal against the concurrent findings of the courts below.

Respondent No.1 had filed a suit for mandatory injunction with consequential relief of compensation against the appellant – defendant No.1 to 3 and the proforma respondents – defendants No.4 to 6 (the Haryana State Agricultural Marketing Board). It was alleged that the plaintiff was the owner in possession of land measuring 11 K 0 M situated in the revenue estate of village Phaphrana, Tehsil Assandh, Karnal. Demarcation was conducted and it was found that his land measuring 0 K 16 M had been encroached upon by the defendants for carving out a public road out of Killa No.16 and 25, which belonged to him.

Defendants No.1 to 3 pleaded that the road had been constructed by defendants No.4 to 6 and that the plaintiff had not raised any objection at the time of construction of the road and thereby, acquiesced in the same.

Defendants No.4 to 6 on the other hand contended that though the road had

been constructed by them, however, the same was transferred to PWD. They proved letters Ex.D1 and D2. As per Ex.D1, the Board was asked to handover possession of the road to PWD as per order of Hon'ble Chief Minister, Haryana. As per letter Ex.D2, the road was taken over by PWD on 4.4.2014. The date of completion of the road, as per Ex.D2 is December, 2013. It was pleaded that at present, the road is owned and managed by the PWD(B&R).

Initially, the suit was dismissed vide judgment and decree dated 26.10.2013. However, the same was set aside in an appeal filed by the plaintiff and the case remanded back to the Trial Court with a direction to assess the amount of compensation as per market value of the land.

Though, in the demarcation report relied on by the plaintiff the encroachment was to the extent of 16 Marlas of land, however, as per the second demarcation report dated 16.7.2013, it was clearly mentioned that the road had been constructed over land measuring 3½ Marlas of the plaintiff. This report was not disputed by any of the parties. The plaintiff claimed that compensation ought to be awarded to him by treating the land as commercial in view of the fact that some hotels had been constructed around it and he could also use it for a similar purpose. This contention has not been accepted and based on the characterization of the land in the revenue records, it was treated as agricultural land. DW2 Rameshwar proved the record Ex.DW2/A as per which the collector rate of agricultural land of village Phaphrana for 2013-14 was Rs.16,50,000/- per acre and the rate for the year 2014-15 was Rs.20,00,000/- per acre. Accordingly the Trial Court directed the defendants to pay Rs.43,750/- along with interest at the rate of

6% from December, 2003 till realisation.

The plaintiff as well as the defendants – appellants filed appeal against the judgment and order of the Trial Court, the plaintiff for enhancement of compensation and the defendants – appellants prayed for dismissal of the suit. Both the appeals were dismissed, whereafter, the present RSA has been filed by the defendant-appellants.

Learned counsel for the appellants contended that as the road was constructed by the defendants No 4 to 6 the compensation was payable only by the said defendants. It is not possible to agree with this contention. No doubt the road was constructed by defendants No.4 to 6, but it has been proved on record that the same had been transferred to PWD and it was taken over by it on 4.4.2014. In view of this defendant- appellants cannot disclaim liability to pay the compensation as decreed. At any rate the Haryana State Agricultural Marketing Board is a statutory Board amenable to directions and control of the State of Haryana and the liability inter-se is to be resolved between themselves. The plaintiff would be entitled to the compensation as per the decree.

A concurrent finding of fact has been recorded by the Courts below. No fault can be found therewith. There is no law point worth consideration involved in the present appeal. The appeal is thus dismissed.

January 17, 2018

gian

**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No