

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.8015 of 2017 (O&M)

Date of Decision: January 29th, 2019

Tarsem Singh

...Petitioner

Versus

Balwant Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Vaibhav Sehgal, Advocate,
for the petitioner.

Mr. Vikas Bahl, Senior Advocate with
Mr. Rohan Jain, Advocate,
for the respondents.

AMIT RAWAL, J.

The present revision at the instance of the petitioner-plaintiff is directed against the impugned order dated 25.08.2017 (Annexure P-1), whereby the application filed under Order 6 Rule 17 CPC for amendment of the plaint owing to the occurrence of the subsequent events, has been dismissed.

Petitioner-plaintiff filed the suit against the respondent-defendants for possession as owner claiming specific performance of the agreement to sell dated 12.04.2006 in respect of land measuring 11 kanals 2 Marlas. However, when the suit was at the initial stage, part of the land measuring 4 kanals 17 marlas was acquired by the National Highway Authority of India for widening of the road. In view of such circumstances, the permission was sought to implead the aforementioned NHAI as party.

The trial Court declined the application. However, Civil Revision No.2291 of 2017 filed in this Court was disposed of vide order dated 04.04.2018 and the application for impleadment of the NHAI was allowed. However, during the pendency of the revision petition, petitioner-plaintiff had also filed an application dated 27.02.2017 (Annexure P-5) for amendment of the plaint on two counts, i.e., one with regard to refund of earnest money and the other deposits made by the petitioner with the defendants along with interest @ 18% per annum from the date of payment of earnest money and from the date of each deposit till payment. The other part of the amendment was for entitlement of compensation owing to the breach of the agreement. The trial court had allowed the application for alternative relief of refund of earnest money, but did not grant the amendment with regard to the compensation. The impugned order, thus, suffers from illegality, for, while dismissing the application, the trial Court though noticed the provisions of Section 21 of the Specific Relief Act, 1963 (for short, the Act) but did not interpret in correct perspective. In support of the aforementioned averments, referred to the judgment of Hon'ble the Supreme court in **Urmila Devi and others Versus, Deity, Mandir Shree Chamunda Devi Through Temple Commissioner and others, 2018(2) Supreme Court Cases 284**, which has been passed by relying upon the ratio decidendi culled out in **Jagdish Singh Versus Natthu Singh, 1992(1) SCC 647**.

In order to buttresses his argument, learned counsel submitted that it was too premature for the Court to opine whether the petitioner is entitled to compensation as the expression “in addition to” has been incorporated by amendment in the Act w.e.f. 09.09.2018. The trial Court should have kept the question open to adjudicate at the initial stage but

should not have pre-empted or taken away the right in the manner and mode. The amendment is a subsequent event which was not in the knowledge as the suit was already pending and all the more reasons should have been allowed.

Per contra, Mr. Vikas Bahl, learned Senior Counsel assisted by Mr. Rohan Jain, Advocate, representing the respondents submitted that both the judgments referred to above, pertained to acquisition of a plot, whereas in the instant case, acquisition is only for 4 kanals 17 marlas out of 11 kanals 2 marlas. The petitioner as plaintiff has a remedy under the Land Acquisition Act being an agreement holder, though as per the ratio decidendi culled out by Hon'ble the Supreme Court in **S.Kesari Hanuman Goud Versus Anjum Jehan and others, 2014(2) R.C.R. (Civil) 52= 2013 (12) SCC 64**, the agreement holder in respect of acquired land has no right to claim compensation. The attention of this court was also drawn to the prayer in the application to contend that it is not compensation as contemplated under the provisions of Section 21 of the Act, but under the Land Acquisition Act and, thus, prayed for dismissal of the revision petition with exemplary costs.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Sehgal.

It would be in the fitness of things to extract the second limb of prayer rejected by the trial court. The same reads thus:-

“Suit for compensation as may be determined by the Land Acquisition Authorities/NHAI authorities for acquisition of the land measuring 4K-15M out of land measuring 11 kanals

comprised in Khasra no.12//3/1/1, 3/1/2/1, 4, 8/1, 7/2, 8/2, 9//24, 12//5, 6, 7/1, 9//25, 13//11/2, 20, 13//1, 10, 19//23 and further in case, it is found that any more or less land has been acquired by the said authorities out of land measuring 11 kanals, then the compensation may be paid to the plaintiff according to the land acquired by the said authorities.”

Though the prayer made in the application is for claiming compensation to be determined by the Land Acquisition Collector being the agreement holder, but in fact the pith and substance of the application reveals that part of the agreement owing to the acquisition of land has become un-executable. Provisions of Section 21 of the Act enable the Court to award the compensation and also amendment of the plaint. For the sake of brevity, Section 21 of the Act reads as under:-

21. Power to award compensation in certain cases

(1) In a suit for a specific performance of a contract, the plaintiff may also claim compensation for its breach, either in addition to, or in substitution of, such performance.

(2) If, in any such suit, the court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.

(3) If, in any such suit, the court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

(4) In determining the amount of any compensation awarded under this section, the court shall be guided by the principles specified in section 73 of the Indian Contract Act, 1872.

(5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint:

***PROVIDED** that where the plaintiff has not claimed any such compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation.”*

It would be too farfetched to comment whether the compensation sought by the petitioner-plaintiff would be in terms of the Land Acquisition Act to be determined by direct and independent evidence in tandem with the provisions of the Act (supra). Since the suit is at the stage of evidence, both the parties, after amendment of plaint, may lead evidence in terms of the pleadings and rebut the same in accordance with law. It would, in my view, help the court in adjudication of the lis in a fair and legal manner.

In the judgments cited supra by Mr. Sehgal, at the stage of High Court, the land, subject matter of the agreement, was acquired. It is in these circumstances, the provisions of Section 21 of the Act were pressed into service.

For the reasons mentioned above, in my view, the impugned order is not sustainable being fallacious or without jurisdiction. The same is hereby set-aside. The application for amendment of the plaint is allowed. Petitioner-plaintiff is permitted to incorporate the amendment and impress for recasting of the additional issue and equally so, the defendants are given liberty to file the amended written statement and the trial Court shall decide the case in accordance with law as expeditiously as possible.

Revision petition stands allowed.

Any observation made above shall not be construed as
expression of opinion on the main suit.

January 29th, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No