

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

RSA No.1680 of 1999(O&M)

Date of Order: 07.03.2019

ATTAR SINGH AND OTHERS

..Appellants

Versus

CHANDER BHAN AND OTHERS

..Respondents

RSA No.1689 of 1999(O&M)

SUMITRA DEVI AND ANOTHER

..Appellants

Versus

CHANDER BHAN AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. M.L.Sarin, Senior Advocate, with
Mr. Ritesh Aggarwal, Advocate,
for the appellants.

Mr. Adarsh Jain, Advocate, and
Mr. S.K.Biriwal, Advocate,
for respondents no.1 to 16.

ANIL KSHETARPAL, J(Oral)

By this judgment, two appeals i.e. Regular Second Appeal
Nos.1680 and 1689 of 1999 shall stand disposed of as both arise from one
suit.

Defendants-appellants are in the regular second appeal against
the concurrent findings of fact arrived at by both the courts below.

In the considered view of this Court, questions of law which
require determination are:-

“1. Whether release of joint land from compulsory

acquisition by the developer (Haryana Urban Development Authority), a government owned agency, can be claimed by one co-sharer exclusively on the ground that he applied for allotment or it would be for the benefit of all co-sharers?

2. Whether it is permissible for the State Government or developing agency to release the land after having taken possession?”

Undisputed facts are that a large chunk of land was acquired which included joint land owned by the plaintiffs and defendant no.1. Pursuant to the aforesaid compulsory acquisition, compensation was paid and acquisition proceedings were completed. After acquisition, the land was utilised for the purpose for which the land was acquired, however, 11 marlas of land (the property in dispute) which was a part of the joint land could not be unutilised. Taking benefit of the aforesaid situation, defendant no.1 applied to the developing authority, Haryana Urban Development Authority (now known as Haryana Shehri Vikas Pradhikaran) for allotment of the aforesaid land i.e. 11 marlas of land on the ground that it is part of their residential houses. The Haryana Urban Development Authority after examination of the entire matter decided to return the land vide letter Ex.DW2/1. Pursuant thereto, the compensation received was deposited. It is claimed that only Karan Singh, defendant no.1-appellant deposited the compensation. Thereafter, on further demand, even development charges were deposited. It may be noted here that the agreement for release of the land which had taken acquired was executed on 31.08.1984, Ex.DW5/1.

Possession was also delivered to Karan Singh.

Now the dispute is “whether such release of land is only for the benefit of Karan Singh, who was only a co-sharer in the joint land?.

Plaintiffs who were also co-sharers filed the present suit for declaration with consequential relief of permanent injunction declaring that the release is for the benefit of all co-sharers and therefore, they are co-sharers in the plot to the extent of their share. It may be noted that during the pendency of the suit Defendant no.1 Karan Singh, appellant herein in one of the appeal had sold the property in favour of respondents no.14, 15 and 16, who are appellants in a separate appeal which is being disposed of by a common judgment. It may further be noted that during the pendency of the suit, Chief Administrator, Haryana Urban Development Authority has in supersession of the previous communication has clarified that the land was released in favour of plaintiffs and Karan Singh i.e. all co-owners.

Both the courts after appreciation of the evidence have found that the release of the land is for the benefit of all the co-sharers and, therefore, Karan Singh-defendant no.1, cannot claim exclusive ownership over the property in dispute.

Learned senior counsel appearing for the appellants has submitted that the appellant Karan Singh had applied for allotment of the land and therefore, return of land or agreement of release is to be treated as fresh allotment. He has further submitted that once the possession has been taken after completion of the acquisition, the developing authority has no right to return the land and, therefore, the release of land should be treated as allotment. He further submitted that it is only Karan Singh, who filed an application for allotment of the land and, therefore, the release of the land is to be treated as allotment only in favour of Karan Singh. He has further

referred to Section 15(3) of the Haryana Urban Development Authority Act, 1977 which provides that the authority may sell, lease or otherwise transfer whether by auction, allotment or otherwise any land or building belonging to it on such terms and conditions as it may, by regulation, provide. Hence, he submitted that once the authority was entitled to make allotment otherwise also, therefore, the letter returning the land or the agreement releasing the land from acquisition should be treated as allotment. He further submitted that the plaintiffs have failed to prove that they either applied for release of the land or they ever contributed in the amount deposited with the Haryana Urban Development Authority.

On the other hand, learned counsel for the respondents has pointed out that in the application for allotment submitted by Karan Singh-defendant no.1, the words used were “that the property in dispute is part of their existing houses”. He submitted that Karan Singh was the only applicant and refers to our existing houses which obviously mean that the houses of all the co-sharers who were joint were referred to. He further submitted that the Haryana Urban Development Authority never choose to allot the land to Karan Singh, appellant as Ex.DW2/1 i.e. letter dated 13.01.1984 clearly makes a reference to the return of the land compulsorily acquired. He has further drawn attention of the court to Ex.DW5/1, the agreement which also prove that the land was released and not allotted.

This court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below and the record.

The entire arguments of learned counsel for the appellants are based upon the fact that the land measuring 11 marlas has been allotted to

Karan Singh-defendant no.1, which is against the record. As per Ex.DW2/1, a communication dated 13.01.1984, the land was returned and not allotted. Still further as per the agreement Ex.DW5/1 executed by Karan Singh with the State of Haryana dated 31.08.1984, it is apparent that the land has been released from acquisition. Further the Chief Administrator, Haryana Urban Development Authority has also in supersession of previous communication (dated 13.01.1984) vide letter dated 12.12.1988 clarified that the land has been released in favour of the plaintiffs as well as Karan Singh-defendant no.1 instead of only Karan Singh.

Argument of learned counsel for the appellants that such release of the land should be treated as fresh allotment does not have substance. The allotment of the land is an entirely different concept as compared to return/release of unutilised area to the original owner by the developing authority. In view of the overwhelming evidence, it is apparent that the joint land was released not allotted to Karan Singh alone.

As regards argument of learned counsel that the developing authority or the State Government had no jurisdiction to order release of the land after completion of the acquisition on delivery of possession is just to be noticed and rejected when none of the party is challenging the legality of the release of the land. An authority which has acquired a large track of land after utilisation had found that some part of the land remained unutilised, in such circumstances, it was Karan Singh who had made an application to the Haryana Urban Development Authority and it was accepted.

Still further release of the land has never been questioned by

any of the party. Hence, the reliance placed by learned senior counsel on various judgments passed by the Hon'ble Supreme Court interpreting the powers of government under Section 48 of the Land Acquisition Act, 1892 are wholly misplaced because in appeal this court is not examining correctness of the release of the land. In this appeal, this court is called upon to decide as to whether the release of the land is in favour of all the co-sharers or it is an allotment in favour of Karan Singh.

Similarly, reference made by learned senior counsel to Section 15(3) of the Haryana Urban Development Authority Act, 1977 would not advance the case of the appellants in view of the fact that the land has never been allotted to defendant no.1.

It is undisputed that when the large track of land was acquired, plaintiffs and defendant no.1 were co-sharers in the joint holding. It was an undivided land. The joint land owned was subject matter of compulsorily acquisition as per the provisions of the Land Acquisition Act, 1894. There is no evidence that the land in dispute i.e. 11 marlas was exclusive property of Karan Singh. On being released the 11 marlas land would continue to be joint land and it cannot said that it is exclusive ownership of defendant no.1. Partition of the property is permissible either through court or by way of private partition. In the present case, defendant no.1 has not alleged that partition took place by any of the recognized mode.

No doubt, originally application was submitted by Karan Singh who was one of the co-owner. The entire amount may also have been deposited by Karan Singh. However, since Karan Singh has never prayed for recovering the proportionate amount and hence this was not subject matter of issue before the courts below, therefore, the court is not in a

position to record any firm finding that whether the proportionate amount was contributed by the plaintiffs or not? However, in any case, any amount paid by one of the co-sharer, if at all paid, would be for the benefit of everyone subject to right of recovery.

In view of the aforesaid discussion, there is no ground to interfere with the concurrent findings of fact arrived at by the courts below.

Both the regular second appeals are dismissed.

March 07, 2019
nt

(ANIL KSHETARPAL)
JUDGE

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