

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

RSA No. 2756 of 2019 (O&M)

Date of decision : May 30, 2019

Bhag Singh

.....Appellant

Versus

State of Punjab and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Ms. Sumati Jund, Advocate
for the appellant.

LISA GILL, J.

Appellant – plaintiff is aggrieved of judgment and decree dated 25.04.2018 passed by the learned Civil Judge (Junior Division), Rupnagar as well as judgment and decree dated 21.02.2019 passed by the learned Additional District Judge, Rupnagar.

Appellant – plaintiff filed a suit for declaration to the effect that he is the owner in possession of the residential house and shops as detailed in the plaint as well as the site plan attached alongwith. It is pleaded that the land, on which the residential house and shops as above are constructed, was acquired by the defendant – department i.e. Ropar Improvement Trust in the year 1988. Award was passed on 11.04.1991 (Ex.P3). It is pleaded that by misusing their powers the defendants wrongly and illegally had got the mutation of the land in question sanctioned, in the year 2006-07 vide mutation No. 2062. The said mutation is incorrect and is liable to be set aside as compensation for the structures on the land in question has not been given to him. The defendants sought to forcibly and illegally dismantle the structure in question. Hence, the suit was filed.

Respondent – defendants contested the suit while raising

various preliminary objections. It is stated that the plaintiff did not approach the Court with clean hands and had suppressed material facts. It is stated that the property in question was acquired by the Improvement trust. The award in this respect was passed on 11.04.1991 by the Land Acquisition Collector. The amount of compensation was deposited in the office of the Land Acquisition Collector by the Improvement Trust after pronouncement of the award for disbursement of the same to the land holders. The plaintiff, it is stated, was a co-sharer of a small portion of the acquired land. The plaintiff alongwith the other co-sharers has already received the compensation amount as per their share. Possession of the acquired land was taken through the Collector.

After passing of the award, it is stated that the plaintiff also filed a reference under the Land Acquisition Act for enhancement of compensation regarding the property in question. Compensation was enhanced by the Tribunal. It is further stated that a writ petition was filed by the plaintiff alongwith the other co-sharers challenging the award, which was disposed of by this Court and the matter has attained finality after the decision of the Hon'ble Supreme Court in this respect. It is stated by the respondents – defendants that the plaintiff wanted to start litigation afresh by filing the present suit in the year 2016. He tried to raise construction on the vacant portion for which he had already received the amount of compensation. Defendants further reserved their rights to file a suit for mesne profits for use and occupation of some portion of the property owned by the trust. Dismissal of the suit was prayed for.

Following issues were framed by the learned trial Court on the basis of the pleading:-

1. Whether the plaintiff is entitled to a decree for declaration to

the effect that the plaintiff is owner and in possession of the residential house and shops marked as ABCDEFGH ground floor and house marked as IJKL 1st floor mentioned in the plaint?OPP.

2. Whether the plaintiff is entitled to a decree for permanent injunction restraining the defendants from forcibly, wrongly and illegally interfering in any manner and dispossessing the plaintiff from the said house and shops and also alienating in any manner, transferring and creating any sports of charge over it wrongly and illegally?OPP
3. Whether the plaintiff has no locus standi to file the present suit?OPD
4. Whether suit of the plaintiff is not maintainable in the present form and liable to be dismissed? OPD.
5. Whether the plaintiff has come to the Court with clean hands and has suppressed the material facts from the Courts?OPD
6. Whether the plaintiffs are estopped by their own conduct from filing the present suit?OPD
7. Whether the suit is bad for non-joinder and mis-joinder of necessary parties?OPD
8. Relief.

Evidence was led by both the parties.

Learned trial Court dismissed the suit filed by the plaintiff – appellant while observing that the plaintiff has already availed compensation awarded on account of acquisition of the land. Furthermore, the plaintiff did not place on record any of the decisions passed in the reference petition or the civil writ petitions filed by him before this Court or the Hon'ble Supreme Court of India. It is further observed that at best the plaintiff is entitled to seek damages/compensation for the construction of the structure as claimed to be constructed by him. The relief sought in the suit, it is observed, could not be granted. Appeal filed by the appellant was

dismissed by the learned Additional District Judge, Rupnagar vide judgment dated 21.02.2019. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that the appellant has continued in possession of the property in dispute. It is submitted that residential house and the shops in question were in place at the time of acquisition of the land in the year 1988. Once the respondents did not assess or deposit the compensation in respect to the structures on the land, the plaintiff – appellant is entitled to declaration as sought i.e. to the effect that the plaintiff – appellant is the owner in possession of the residential house and shops as detailed in the plaint. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 25.04.2018 passed by the learned Civil Judge (Junior Division), Rupnagar as well as judgment and decree dated 21.02.2019 passed by the learned Additional District Judge, Rupnagar, be set aside and suit filed by the appellant be decreed throughout.

I have heard learned counsel for the appellant and have gone through the file with her able assistance.

Undisputed fact is that land in question was acquired and the award in this respect was passed by the Improvement Trust, Ropar way back in April, 1991. Learned counsel for the appellant is unable to dispute that the plaintiff was a co-owner of a part of the acquired land. The plaintiff – appellant, admittedly, received the compensation deposited by the defendants in respect to the acquisition of the land in question, alongwith the other co-sharers. Plaintiff – appellant also filed a reference for enhancement of the compensation awarded by the Land Acquisition Collector, which was enhanced by the Tribunal. The appellant – plaintiff

alongwith co-sharers sought further enhancement of the compensation and approached this Court. The matter has attained finality after the decision of the Hon'ble Supreme Court. Learned counsel for the appellant has argued that the appellant had also sought the defendants to be restrained from dispossessing the plaintiff from the land in question. It is a matter of record that none of these documents including the writ petitions or the orders passed therein have been placed on record. However, learned counsel for the appellant candidly states that the said writ petition challenging the award of 1991 was dismissed, though she is unable to furnish a copy of the same even today. Learned trial Court has rightly observed that the plaintiff has been unable to lead any specific evidence in this regard. PW1 in his cross examination has admitted that he has agitated for enhancement of compensation right up to the Hon'ble Supreme Court but he has not challenged the mutation in question earlier and that the award in question has attained finality and has not been set aside by any court of competent jurisdiction. Both the learned courts below have rightly observed that the relief for declaration to the effect that the appellant is the owner in possession of the property in question cannot be granted, keeping in view the passing of the award dated 11.04.1991, acquiring the land and further proceedings for enhancement of the compensation being finalised.

At this stage, it is, however, relevant to note that it is mentioned in award dated 11.04.1991 by the Land Acquisition Collector that the Improvement Trust, Ropar has requested the Executive Engineer PWD, Ropar for assessment of certain structures, which were present on the acquired land and in that case supplementary award can be made/passed, accordingly. It is noticed that the learned trial Court has already observed

that it is open to the plaintiff to seek damages/compensation regarding the structure, if at all it was proved to be existing at the time of the acquisition but the declaration as sought cannot be granted.

In my considered opinion, no question of law much less a substantial question of law is involved in this appeal.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 25.04.2018 passed by the learned Civil Judge (Junior Division), Rupnagar as well as judgment and decree dated 21.02.2019 passed by the learned Additional District Judge, Rupnagar, which calls for any interference by this Court in second appeal.

There is a delay of 04 days in filing of RSA No. 2756 of 2019. Keeping in view the fact that the matter has been decided on merits, the question of delay in filing of this appeal has been rendered academic. Application is, accordingly, disposed of.

No other argument has been addressed.

Accordingly, this appeal is dismissed with no order as to costs.

May 30, 2019
rts

(Lisa Gill)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No