

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-2776-2010(O&M)

Date of decision:-20.2.2019

Mehar Singh

...Appellant

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Arn timer Sood, Advocate
for the appellant.

Mr.Harkesh Kumar, AAG, Haryana.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Mehar Singh had brought a suit against defendants i.e. State of Haryana, Department of Irrigation, Chandigarh through its Secretary, Chief Engineer (Canals) Irrigation Department, Haryana and Collector, Panipat craving for grant of mandatory injunction directing the defendants to restore the land in dispute to the plaintiff as per policy of the State Government.

As per the version of the plaintiff, he was allotted 45 kanals 3 marlas of evacuee land in an auction conducted by Rehabilitation Department in the year 1965; that the land was banjar; that the plaintiff

spent a lot of money to make it fit for cultivation, however, Government had acquired land of village Sithana including land of the plaintiff for the purpose of setting up of brick kiln for laying the water canal in the year 1967 vide notification No.9301 dated 21.11.1967; that after completion of the canal, the brick kiln was closed and the land was lying vacant; that Government of Haryana took a policy decision vide standing order No.28 that the land acquired for establishing the brick kiln and for the purpose of laying of the canal, which was no longer required for the said purpose to be restored to the original owners or their heirs free of charge on their refunding the amount paid to them as compensation less 15% granted for compulsory acquisition. According to the plaintiff, he had written several letters to the concerned authorities but to no effect; he served a legal notice under Section 80 CPC upon the defendants for redressal of his grievances but in vain, as such, he filed the civil suit in question in the Court at Panipat.

On getting notice, the defendants appeared. Defendant No.3 did not file written statement, rather his defence was struck off. Defendants No.1 and 2 came up with a joint written statement contesting the suit, inter alia raising preliminary objections that the suit was not maintainable in the present form; that the suit was barred under provisions of Section 41(h) and 34 of the Specific Relief Act; that the Civil Court had no jurisdiction to entertain and try the suit; that the suit was time barred; that the plaintiff had no locus standi or cause of action to file the suit; that the plaintiff was estopped from filing the suit by his own act and conduct and suit was bad for non-issuance of notice under Section 80 CPC. On merits, these

defendants admitted that the land of plaintiff was acquired vide a notification and compensation was assessed and awarded to him vide award announced on 5.3.1968; that the plaintiff had accepted the compensation so awarded to him by Land Acquisition Collector; subsequently he had filed a Reference Petition under Section 18 of the Land Acquisition Act and learned Additional District Judge, Karnal vide judgment dated 19.6.1971 had enhanced the compensation, which was deposited by the State Government and the same was accepted by the plaintiff; that the Halqa Patwari had entered mutation with regard to transfer of land in favour of Department of Drainage on 5.3.1968. According to the defendants there was no such decision or policy of the Government to return the land after use and even otherwise State of Haryana had become owner of the lands and Government property could not be given back to the plaintiff under any circumstances. Refuting the remaining allegations, these defendants prayed for dismissal of the suit.

The plaintiff had filed replication controverting the allegations in the written statement, whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled to the mandatory injunction sought? OPP.
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD.
3. Whether the suit of the plaintiff is barred under Section 41(h) and

Section 34 of Specific Relief Act? OPD.

4. Whether the civil Court has got no jurisdiction to try the present suit? OPD.

5. Relief.

In order to prove his case, the plaintiff got his own statement recorded as PW1 besides tendering some documents.

On the other hand, the defendants had examined Sh.Rajesh Khatri, SDO Irrigation as DW1.

After hearing the learned counsel for the parties, the trial Court decided issue No.1 against the plaintiff, issue No.2 against the defendants, issue No.3 against the defendants and issue No.4 also against the defendants. Resultantly suit of the plaintiff was dismissed leaving the parties to bear their own costs. This was so done vide judgment and decree dated 19.8.2009.

The plaintiff was aggrieved by the said judgment and decree and he had filed an appeal before the Court of District Judge, which was assigned to Additional District Judge, Panipat, who vide judgment and decree dated 27.11.2009 dismissed the same.

Still feeling dissatisfied, the plaintiff has knocked at the door of this Court by filing the present regular second appeal, notice of which was issued and the respondents-defendants, who appeared through State counsel.

I have heard learned counsel for the parties besides going through the record and find that there is absolutely no merit in the appeal.

Certain facts in this case are admitted i.e. 45 kanals 3 marlas of land belonging to the plaintiff having been acquired by Government of Haryana for the purpose of setting up brick kiln for laying water canal vide notification No.9301 dated 21.11.1967; the compensation for acquisition of land having been assessed by Land Acquisition Collector and the same having been paid to the plaintiff; the plaintiff filing a land reference seeking enhancement of compensation, which was accepted by learned Additional District Judge, Karnal vide judgment dated 19.6.1971; the compensation being enhanced and the same having been paid by the State Government, resultantly acquired land being mutated in the name of the defendants. It being so, the plaintiff ceased to be owner of such land measuring 45 kanals 3 marlas. His only contention is that as per the policy of the State Government the acquired land, which had served its purpose and is presently lying unutilized was decided to be returned to original owners/their legal heirs subject to certain terms and conditions. Since acquired land of the plaintiff is also not being used by the State Government, the same is required to be returned to the plaintiff as per the policy of the State Government.

However, these contentions are being refuted by the defendants. The trial Court referring to Order No.28 para Nos.493 and 495 of the Land Administration Manual has come to the conclusion that Government Department is not under any obligation to restore the land which was no longer required to the original owner and it was the discretion of the Government Department to restore the land or not, which depends upon the facts and circumstances of each and every case. It has

further been observed that the plaintiff cannot claim the restoration of land as a matter of right. The plaintiff had relied upon Para No.87 of the Financial Commissioner's standing order No.28, which has been reproduced as under:

“That where an agricultural land or a pastoral land has been permanently acquired for the public purpose by any Govt.Department and it is no longer required for such proposal disposal of it shall be guided by the general consideration mention in para 493/495 of the Land Administration Manual.”

So the trial Court has properly interpreted the factual and legal position while coming to the conclusion that the plaintiff could not claim restoration of land as a matter of right and no direction could be issued by the Court to the concerned department to restore the land of the plaintiff more particularly when he had already received entire amount of compensation along with enhanced compensation awarded by the Court, in that way, he was not left with any right over the land in question. Learned Additional District Judge, Panipat, who had heard the appeal had agreed with such observations of the trial Court while dismissing the appeal. I do not see any reason to differ with the Courts below on this point.

Learned State counsel has referred to authority **Leelawanti and others Versus State of Haryana and others (2012) 1 Supreme Court Cases 66** wherein while dealing with the question whether State Government is under obligation to return acquired land to owners after purpose of acquisition accomplished, the Apex Court had observed that

Para 493 of Land Administration Manual, no where states so and in the case in question the acquired land was used for construction of feeder and return channel for thermal plant and after public purpose was fulfilled, land was transferred to HSEB and High Court had committed no error by declining appellant's prayer for issue of mandamus to respondent State to return acquired land.

I find that this authority is applicable to the facts and circumstances of the case. It may be mentioned here that as per Para 493 of Land Administration Manual as a matter of grace the Government is usually willing to restore agricultural land or a pastoral land to the persons from whom it was acquired on certain terms and conditions but what can be done as a matter of grace cannot be converted into legally enforceable liability of the Government and vesting of any right in the person, whose land had been acquired.

No other point was pressed or put forward on behalf of the appellants.

The judgments and decrees passed by both the Courts below are well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The same are upheld.

Finding no merit in the present appeal, the same stands dismissed with costs.

20.2.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No