

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Regular Second Appeal No. 1208 of 2012(O&M)

Date of Decision: September 19 , 2019.

Om Parkash Bhargava

..... APPELLANT (s)

Versus

Haryana Urban Development Authority and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. I.K.Mehta, Senior Advocate with
Mr. R.K.Dogra, Advocate
for the appellant.

Mr. Abhilaksh Grover, Advocate
for respondent No.1.

Mr. Ashish Yadav, Addl.AG, Haryana.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Appellant/plaintiff is aggrieved of judgment and decree dated 29.10.2009 passed by the learned Additional District Judge, Faridabad whereby judgment and decree dated 28.05.2008 passed by the learned Civil Judge (Junior Division), Faridabad, has been reversed.

Brief facts necessary for the adjudication of the case are that, the appellant/plaintiff filed a suit for possession of a part of the land comprised in

Rectangle No.90, Khasra No.102/1 measuring 2 Kanals 5 Marlas, situated within the revenue estate of Faridabad (now Sector 19, Faridabad) while pleading that he is the owner of the said land in terms of the judgment and decree dated 20.08.1998 passed by the learned Additional District Judge, Faridabad. It is further pleaded that Khasra No.102 which was originally measuring 4 Kanals 13 Marlas was bifurcated into two Khasra Nos.102/1 (2-5) and 102/2 (2-8). At the time of acquisition of land by the Land Acquisition Collector, Faridabad for Sector 19, Faridabad, Khasra No.102/2 (2-8) was stated to be acquired for development of plots and Khasra No.102/1 (2-5) left unacquired due to the existence of factory premises, cold storage, offices and servant quarters of the plaintiff. Khasra No.102/1 (2-5) is claimed to have remained in possession of the plaintiff being its owner. Despite the injunction order passed by the court of competent jurisdiction, defendant No.1 – Haryana Urban Development Authority (for short, 'HUDA') without any right, title or interest, is pleaded to have allotted plots No.872, 874, 876, 878 and 882 in the said Khasra number, (total measuring 820 sq yards), to various allottees without permission and consent of the plaintiff. It is pleaded that the plaintiff was dispossessed of the area of 820 sq. yards by the defendants illegally and unauthorisedly, though he was still in possession of the remaining area of Khasra No.102/1 measuring 500 sq. yards i.e., plots No.879, 880 and 881 situated in Sector 19, Faridabad. It is further stated that the plaintiff requested the defendants to cancel the unauthorised allotment of plots as mentioned above, but in vain. Accordingly suit was filed, seeking a decree for possession of the property comprised in plots Nos.872, 874, 876, 878 and 882 (total measuring 820 sq.yards). In the alternate, it is prayed that the plaintiff be

given possession of an area equivalent to the encroached area in the unallotted land situated in Sectors 19/28, Faridabad.

Written statement was filed on behalf of the defendant-HUDA as well as the Estate Officer, Faridabad controverting the averments in the plaint. It is stated that the land of Murari Lal (father of the plaintiff) and others comprised in Khasra No.102/1 was acquired by the Estate Officer, HUDA vide award No.7 dated 21.09.1978 for Sector 28, Faridabad. Khasra No.102/2 was acquired vide award No.12 dated 04.12.1979 for Sector 19, Faridabad. It is further pleaded that some of the acquired part of Khasra No.102/1 fell in Sector 19, Faridabad. The actual possession of Khasra No.102/1 as well as the other acquired land was taken by the Urban Estate Department vide separate Rapat Roznamcha. Defendant-HUDA accordingly carved out different plots over the land comprised in Khasra No.102/1, and allotted the said plots to various allottees, most of whom have constructed their houses thereon. It is further pleaded in the written statement that the suit was barred by the principle of *res judicata*, as on an earlier occasion, judgment and decree dated 29.11.1997 was passed by the then Civil Judge (Senior Division), Faridabad against the plaintiff's father, Murari Lal. Appeal filed against the said judgment and decree was however allowed by the learned Additional District Judge, Faridabad on 20.08.1998. Regular Second Appeal against the said judgment is stated to be pending before this Court. Dismissal of the suit was sought.

In a separate written statement filed by defendants No.2 and 4 i.e., the Land Acquisition Collector, Faridabad and Collector Haryana State, District Faridabad raised similar objections. It is further added that the plaintiff with a

malafide intention, did not take the amount of compensation in respect of the land measuring 2 Kanals 5 Marlas pertaining to Khasra No.102/1, despite the same being deposited with the office of the Land Acquisition Collector. Dismissal of the suit was prayed for. No rejoinder was filed by the plaintiff. Following issues were framed from pleadings of the parties:-

- i) Whether the defendants are required to be directed to handover the suit property after removing encroachment made there upon by the allottees to the plaintiff? OPP
- ii) Whether the plaintiff is entitled to possession of the equal area of 850 sq.yards from the unallotted area in plots situated in Sectors 19 and 28 of HUDA, Faridabd? OPP
- iii) Whether the suit of the plaintiff is not maintainable? OPD
- iv) Whether the plaintiff has no locus standi to file the present suit? OPD
- v) Whether the plaintiff has not come with clean hands in the Court? OPD
- vi) Whether the suit is barred by principle of resjudicata? OPD
- vii) Relief.

Evidence was led by the parties in order to prove their respective claims.

Learned trial court on considering the facts and circumstances of the case decreed the suit while observing that doubtlessly the land comprised in Khasra No.102/2 stood acquired, however, it was held that land comprised in Khasra No.102/1 was not acquired by the authorities. It is further observed that though the trial court had dismissed the suit filed by the plaintiff's father on 29.11.1997, learned Additional District Judge, Faridabad vide judgment and

decree dated 20.08.1998 (Ex.P1) had decreed the suit regarding the ownership of the father of the plaintiff qua the suit property. It is observed that the Regular Second Appeal preferred by HUDA was dismissed by this Court and the defendants are not found in possession of the suit property. The suit, it is observed, is not barred by the principle of *res judicata* as a fresh cause of action arose to the plaintiff when the defendants encroached upon the land in question.

Appeal filed by HUDA was, however, allowed by the learned Additional District Judge, Faridabad vide which judgment and decree dated 28.05.2008 passed by the learned trial court was set aside and consequently, suit filed by the appellant/plaintiff was dismissed. It is specifically observed that the land comprised in both the Khasra Nos.102/1 and 102/2, is proved to have been acquired by the defendant-HUDA. It is further observed that the second suit for possession filed by the plaintiff is not maintainable in view of the earlier suit filed by Murari Lal, predecessor-in-interest of the plaintiff, which was decreed on 20.08.1998 (Ex.P1). In this view of the matter, the defendants' appeal was allowed.

Aggrieved therefrom, the present appeal has been filed by the plaintiff.

Learned counsel for the appellant vehemently argues that the learned Additional District Judge, Faridabad has grossly erred in reversing the well reasoned and logical judgment dated 28.05.2008 passed by the learned Civil Judge (Junior Division), Faridabad. It is submitted that once the earlier suit filed by the predecessor-in-interest of the appellant i.e., his father was decreed in his favour, the learned Additional District Judge has clearly erred in dismissing the

present suit filed by the appellant. There was a change in circumstances which necessitated the filing of the present suit inasmuch as respondent No.1-HUDA had carved out plots over the plaintiff's land and had started the process for allotting the same. Therefore, the present suit had to be filed, as a separate cause of action arose to the appellant/ plaintiff. Learned counsel for the appellant seeks to raise the following substantial questions of law for adjudication in this appeal:-

1. Whether there is a misreading of evidence on record inasmuch as , it is held that the land comprised in Khasra No.102/1 (2-5) stood acquired by the State authorities?
2. Whether the suit for possession should have been decreed in view of the earlier judgment and decree dated 20.08.1998 (Ex.P1) in favour of the plaintiff's father?

I have heard learned counsel for the parties and have gone through the file with their assistance.

The present suit relates to land measuring 2 Kanals 5 Marlas comprised in Khasra No.102/1. It is the categoric case of the appellant/plaintiff that land comprised in Khasra No.102/2 was acquired for development of the area for carving out plots etc., however, land comprised in Khasra No.102/1 was not acquired by the authorities due to existence of the factories, cold storage etc. However, learned counsel for the appellant is unable to deny that two awards (Ex.D1 and Ex.D2) were passed. As per Award No.7 (Ex.D2/Ex.DW1/A) dated 21.09.1978, 30.82 acres of land situated in village Faridabad was notified for acquisition for carving out Sector 28, Faridabad. Learned Additional District

Judge, Faridabad specifically observed that on page 10 of this award, compensation has been assessed in respect to the acquired land including the land comprised in Khasra No.102/1 belonging to Murari Lal, the plaintiff's father. As per Ex.PW7 i.e., the copy of the Jamabandi for the year 1969-70, Murari Lal is recorded to be the lessee in possession of the land comprising in Khasra Nos.92, 93 and 102. As per Ex.D1, an amount of ₹1,16,130/- besides, solatium was assessed for Khasra No.102/1. This award is duly proved on record by DW2 Vijay Pal, Patwari from the office of Land Acquisition Collector, Faridabad. DW2 Vijay Pal brought the record relating to Kabja Vasul and payment etc. related to this land. As per the Land Acquisition Collector, the amount of compensation from the acquisition of the land in question stood deposited in the office of Land Acquisition Collector, but Murari Lal never came to receive the same. Ex.D3 is award No.12 dated 04.12.1979 for the year 1979-80. Khasra No.102/2 in the said award, is mentioned to be land belonging to Murari Lal Bhargava, which was duly acquired. Acquisition of the said land comprised in Khasra No.102/2, in any case, has not been disputed.

In respect to judgment and decree dated 29.11.1997, it is rightly observed by the learned Additional District Judge, Faridabad that the plaintiff cannot derive any benefit therefrom. Murari Lal, father of the plaintiff, had instituted a suit for possession by way of partition of the disputed property comprised in Khasra No.102/1. It was specifically pleaded in the said suit that Khasra No.102/2 was acquired, but Khasra No.102/1 was left out from the acquisition proceedings. The earlier suit was filed only against HUDA without impleading the Land Acquisition Collector and the Collector, Faridabad as

parties. HUDA in the said proceedings had taken a similar stand. It is a matter of record and learned counsel for the appellant is unable to deny that Khasra No.102/1 stood acquired vide Award No.7 dated 21.09.1978 by the then Land Acquisition Collector for Sector 28 and Khasra No.102/2 stood acquired vide Award No.12 dated 04.12.1979 for setting up of Sector 19, Faridabad. It is further not in dispute that in the earlier judgment dated 20.08.1998, reference is made by the then learned Additional District Judge only to Award No.12 dated 04.12.1979 to conclude that Khasra No.102/1 was not acquired. It is to be noted that there is no reference of Award No.7 dated 21.09.1978 at all, whereas it is proved that Khasra No.102/1 was acquired vide Award No.7 dated 21.09.1978. It is further a matter of record that RSA No.3943 of 1998 filed by the HUDA was dismissed due to non-production of some of the notifications. Order dated 11.05.1999 in RSA No.3943 of 1998 reads as under:-

“Number of opportunity was given to the learned counsel for the appellant to produce notifications issued under Sections 4 and 6 of the Land Acquisition Act showing that land measuring 4 kanals 13 marlas, situated in Khasra No.102 was acquired. Despite opportunities, the same have not been placed on record and therefore, I have no alternative but to dismiss the appeal.

Dismissed.”

The land in question, needless to say, stood vested in the Government by virtue of operation of the specific provisions of the Land Acquisition Act, 1894 much prior to the filing of the previous suit by the father of the plaintiff. Therefore, the plaintiff or his father has no title over the property in question. Moreover, it is a matter of record that though HUDA was a party in the

earlier suit, the Land Acquisition Collector was not impleaded as party for the reasons best known to the predecessor-in-interest of the plaintiff. No benefit can accrue to the appellant for the failure of HUDA to bring forth the relevant documents which admittedly related to the Land Acquisition Collector, which was not impleaded as a party. The learned Additional District Judge, Faridabad has rightly set aside judgment and decree dated 28.05.2008 passed by the learned trial court.

Another contention raised on behalf of the plaintiff is that Khasra No.102/1, if at all acquired, was for Sector 28, Faridabad and not for Sector 19. The plots which have been allotted out of the said Khasra number, are situated in Sector 19 which in itself shows that Khasra No.102/1 was not acquired. Said argument is rejected being untenable and unsubstantiated by the evidence on record. The plaintiff cannot derive any benefit by saying that though the land was acquired for particular Sector, it was utilized for a different Sector/purpose. Even if a part of the acquired land finally and ultimately falls within the area of Sector 19 developed by HUDA, it is not any indicator of the said land not being acquired. It is a settled position of law that as soon an award is passed under Section 11 of the Land Acquisition Act, 1894, the acquired property vests in the Government with its symbolic possession free from encumbrances. The plaintiff, it is observed by the learned Additional District Judge, Faridabad, has not approached the court with clean hands. Learned counsel for the appellant is unable to point out anything on record to negate this observation. The appellant is clearly not entitled to the relief as claimed. The substantial questions of law framed are thus answered in favour of the defendants and against the

appellant/plaintiff.

No other argument has been raised.

Learned counsel for the appellant/plaintiff is unable to point out any infirmity, illegality or perversity in the impugned judgment and decree dated 29.10.2009 passed by the learned Additional District Judge, Faridabad, which warrants any interference by this Court. The same is accordingly upheld.

Present appeal being devoid of any merit, is dismissed with no order as to costs.

September 19 , 2019.
'om'

(LISA GILL)
JUDGE

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