

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

RSA-2141-2013(O&M)

Date of decision:-26.3.2019

Shri Gurudwara Sahib

...Appellant

Versus

Haryana Urban Development Authority and others

...Respondents

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

Present: Mr.Ravinder Singh, Advocate for
Mr.B.S. Sewal, Advocate for the appellant.

Mr.Pankaj Kundra, Advocate for
Mr.Deepak Sabharwal, Advocate
for the respondents.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Shri Gurudwara Sahib, Sant Ravi Dass Ji Maharaj through its Manager-cum-Chief Sewadar had brought a suit against defendants i.e. Haryana Urban Development Authority (hereinafter referred to as HUDA) through its Chief Administrator, Estate Officer, Naib Tehsildar - Bachan Singh as well as Salini Singh and Municipal Council, Panckkula craving for a grant of permanent injunction restraining the defendants from carrying out any demolition to the structure of Gurudwara Sahib and from interfering in the peaceful possession thereof.

As per the version of the plaintiff, the Gurudwara Sahib is in existence for last more than 50 years; that in the year 1949, Union Government of India had acquired the land at village Shehzadpur, Tehsil Kharar, District Ambala for the purpose of establishment of U.T., Chandigarh, thereafter inhabitants of village Shehzadpur shifted to village Haripur and constructed their residential houses there; that initially the entire land was occupied and used by Ujagar Singh, Sewadar of the Gurudwara Sahib along with his brothers as a BARA; however in the year 1952, the plaintiff and his brothers using the donations by the public and cooperation rendered by various people got constructed the Gurudwara building, which comprises of one big hall, three rooms of Sarai, one room for Sewadar, one LANGAR hall etc.; that it is enclosed by a boundary wall; that the Gurudwara is provided with electricity and water connections; that house of defendant No.4 Ms.Salini is adjacent to the Gurudwara building and on 20.2.2003, she started quarrelling with the sewadars of the Gurudwara since one of the devotees after taking LANGAR had started washing hands on the road in front of her house; that she lodged a report with defendant No.1 in that regard; that on 21.2.2003, defendants No.2 and 3 under orders of defendant No.1 carried out demarcation of the land without giving any notice to the plaintiff and demolished the western main gate of the Gurudwara, boundary wall adjoining to the part and some portion of the LANGAR hall with the help of demolition staff, police, Beldars and when the defendants started demolishing the main gate of Gurudwara, then many villagers and devotees of the Gurudwara assembled at the spot and then further

demolition was stopped by enforcement staff of HUDA, however the defendants while leaving the spot threatened the plaintiff that they shall come again and carry out the demolition, to which they have no right; that the matter was reported to the police against the defendants but police refused to take any action in the matter. The plaintiff then knocked at the door of Court by way of filing a civil suit.

On notice defendants appeared. Defendants No.1 to 3 filed a joint written statement whereas defendant No.5 came up with a separate written statement. Name of defendant No.4 was deleted vide order dated 30.1.2004.

In the joint written statement filed on behalf of defendants No.1 to 3, they had taken various legal objections in the form of challenging maintainability of the suit and locus standi of the plaintiff to file the suit in question further contending that no cause of action arose to the plaintiff to bring the suit and plaintiff had concealed the material facts from the Court; that the Civil Court had no jurisdiction to entertain and try the suit. On merits, such defendants contended that plaintiff wanted to encroach upon the HUDA land without any right or title; that HUDA had acquired the land for residential purposes and carved out the plots in the sectors; that some vacant land of the HUDA was lying adjacent to the Gurudwara and the management of the Gurudwara made an attempt to encroach upon the land, however due to timely intervention of HUDA authorities that encroachment was removed; that the plaintiff raised unauthorized construction over the public property and when the answering defendants came to know about the unauthorized construction

over the public property, they removed/demolished the constructed building; that as per Section 50 of the HUDA Act 1977, the Civil Court has no jurisdiction to try and entertain the present suit. Refuting the remaining allegations, such defendants prayed for dismissal of the suit.

In the written statement filed by defendant No.5, various legal objections were taken. On merits, refuting the assertions in the plaint, such respondent came up with a prayer for dismissal of the suit.

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

1. Whether the plaintiff is entitled to the relief of permanent injunction, as prayed for? OPP.
2. Whether the civil Court has got no jurisdiction to try and entertain the present suit in view of Section 50 of the HUDA Act, 1977? OPD.
3. Whether the suit of the plaintiff is not maintainable in the present form? OPD.
4. Whether the plaintiff has concealed the true and material facts from this Court? OPD.
5. Whether the plaintiff has no locus-standi to file the present suit? OPD.
6. Whether the suit of the plaintiff is bad for non-joinder and misjoinder of the necessary parties? OPD.
7. Relief.

In order to prove their case, the plaintiff examined Sh.Ujagar

Singh as PW1, Sh.Harbans Singh as PW2, Sh.Ram Niwas as PW3, Sh.Ranjit Singh as PW4 besides tendering some documents.

On the other hand, the defendants examined Sh.Sunder Lal, Patwari as DW1 besides tendering documents.

After hearing learned counsel for the parties, the trial Court decided issue No.1 in favour of the plaintiff and against defendants No.1 to 3, issue No.2 against defendants No.1 to 3, issues No.3 and 5 in favour of the plaintiff, issues No.4 and 6 against the defendants being not pressed. Resultantly, suit of the plaintiff was decreed restraining the defendants from demolishing the structure/constructions which had already been raised on 5 marlas of land by plaintiff over the land bearing Khasra No.81. The defendants were further restrained from interfering into peaceful possession thereof. However, the plaintiff Gurudwara was not found entitled to any injunction qua other land bearing Khasra Nos.79, 80, 80/1. This was so done vide judgment and decree dated 20.8.2010.

Feeling aggrieved by the said judgment and decree, the defendants No.1 to 3 had filed an appeal in the Court of District Judge, Panchkula which was assigned to Additional District Judge, Panchkula, who vide judgment and decree dated 4.3.2013 allowed the appeal and set aside the judgment passed by the trial Court and dismissed the suit of the plaintiff.

Being dissatisfied with the judgment and decree passed by the First Appellate Court, the plaintiff knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted, the impugned judgment and decree passed by the First Appellate Court be

set aside.

On getting notice of regular second appeal, the respondents/defendants have appeared before this Court through counsel.

I have heard learned counsel for the parties besides going through the record.

A perusal of the judgment and decree passed by the trial Court goes to show that the trial Court had accepted the claim of the plaintiff with regard to its possession over 5 marlas of land comprised in khasra No.81, whereas rejecting its claim qua other khasra numbers i.e. khasra Nos.79, 80, 80/1. Whereas the lower Appellate Court has rejected the claim of the plaintiff qua khasra No.81.

After hearing the learned counsel for the parties and going through the record, I find that the Additional District Judge, Panchkula fell in error in doing so. A perusal of the khasra girdawari for the period March 2000 to September 2002 Ex.P4 goes to show that plaintiff Gurudwara is shown to be in possession of 5 marlas of land. Even DW1 Sh.Sunder Lal, Patwari, a witness who had appeared on behalf of the defendants had admitted in his cross-examination that Gurudwara is constructed on 5 marlas of land through he had added that the land had been left by HUDA in favour of *HARIJAN DHARAMSHALA*. Thus, existence of Gurudwara over 5 marlas of land comprised in khasra No.81 stands established and it further comes out that this piece of land had not been acquired by HUDA. Learned counsel for the respondents referring to letter written by Estate Officer, HSVP, Panchkula which he has placed on file, has submitted that 5 marlas of land out of khasra No.81 had not been

acquired, though mutation on the basis thereof had been entered. Thus plaintiff Gurudwara having been found to be in established possession of 5 marlas of land out of khasra No.81, the possession being corroborated by electricity bill Ex.P2 and photographs, the defendants can certainly not interfere in possession of the plaintiff illegally and forcibly except in due course of law. Such relief has been granted by the trial Court to the plaintiff. The Civil Court has got jurisdiction to deal with cases in which relief of permanent injunction is prayed for. Under the circumstances jurisdiction of Civil Court is not barred as alleged by the defendants.

Therefore, the judgment passed by Additional District Judge, Panchkula is not sustainable. The same is set aside. Resultantly, the judgment and decree passed by the trial Court are restored by way of acceptance of the appeal with costs.

26.3.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No