

**C.M.No.2049-C of 2019 in/and
RSA No.4914 of 2016 (O&M)**

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

**C.M.No.2049-C of 2019 in/and
RSA No.4914 of 2016 (O&M)
Date of decision:28.3.2019**

State of Punjab and others

... Appellants

Vs.

Trust Mai Rajji and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Ms. Ambika Bedi, Assistant Advocate General, Punjab
for the appellants.

Mr. S.S.Salar, Advocate
for respondent no.1.

AMIT RAWAL J. (Oral)

C.M.No.2049-C of 2019

This Court, on 07.02.2019 issued notice of the present civil miscellaneous application, whereby, applicant/respondent no.1 had sought the indulgence of this Court for placing on record three documents Annexures R-1/1 to R-1/3 , khatoni consolidation, naksha hakdarbar (map of entitlement) and register of the proceedings of consolidation as additional evidence.

Learned State counsel on the last date of hearing sought time to file reply, but today, suffered a statement that no reply is required to be filed nor any objection qua additional evidence being revenue record.

Mr. S.S.Salar, learned counsel appearing on behalf of the applicant/respondent no.1 submitted that aforementioned documents would belie the additional evidence sought to be placed on record at the time of hearing regular second appeal, now allowed by the Hon'ble Supreme Court whereby khasra number 35 and 41 were not reserved from the common passage.

I have heard the learned counsel for the parties and of the view that aforementioned evidence would help in adjudication of the lis, basically as in rebuttal, to the evidence to be taken on record during proceedings of the Special Leave Petition.

Accordingly, the application is allowed.

RSA No.4914 of 2016 (O&M)

C.M.No.12803-C-2016

For the reasons stated in the application which is duly supported by an affidavit, delay of 39 days in filing the appeal is condoned.

C.M. stands allowed.

RSA No.4914 of 2016 (O&M)

The plaintiff sought the mandatory injunction seeking restraint against the defendants for demolition and removal of the constructed/mettled road from village Sampurangarh to Amargarh and Dhadogal to village Bagrian constructed through land of the plaintiff bearing khasra no.35, 15-0 forming part of the land measuring 18 kanals 11 marlas and also from khasra no.41/3-11, 35'15-0 situated at village

Sampurangarh, which was in violation of the prevailing provisions of the Land Acquisition Act with alternative prayer of compensation of acquisition of the land by assessing the market value

It was alleged that defendants constructed the road without any notice or compensation on acquisition. It was thus in violation of the provisions of Article 300-A of the Constitution of India.

Defendant no.3-Market Committee opposed the suit and stated that it had no role in the construction of disputed road. Other defendants filed the separate written statement and alleging that road from the village Dadhokal to Bagrian was constructed after demarcation in the presence of the then Sarpanch and respectable persons and relied upon report no.75 dated 12.7.2011 of Naib Tehsildar according to which disputed road was constructed accurately in khasra number 35/15-0 being gair mumkin rasta. The expenses incurred were approximately more than Rs.200 lakhs.

On receipt of replication, the trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled to be relief of mandatory injunction as prayed for?OPP
- 1A Whether the plaintiff is entitled for compensation in alternative as per market value as prayed for?OPP
2. Whether the present suit is not maintainable?OPD
3. Whether the present suit is bad for non-joinder and mis-

joinder of necessary parties?OPD

4. Whether the plaintiff has not come to the Court with clean hands and suppressed the true and material facts from the Court?OPD

5. Whether the plaintiff has no cause of action and locus standi to file the present suit?OPD-3

6. Whether the plaintiff is estopped by his own act and conduct from filing the present suit?OPD 1, 2, 4, 5

7. Whether the suit of the plaintiff is time barred ?OPD 1, 2, 4, 5

8. Relief.”

The plaintiff in support of the averments examined Jarnail Singh Patwari as PW1, Dilbag Ali Kanungo as PW2, Jaswinder Singh Nambardar as PW3 and Bhai Jujhar Singh Trustee as PW4 and brought on record the documents Ex.P1 to Ex.P18, sale deed, legal notice, postal receipts, jamabandi and copy of judgment and decree and resolution as Ex.PL.

On the other hand, defendants examined three witnesses and brought on record the report dated 23.6.2011, Ex.D1, form of tender, Ex.D2, letter dated 11.2.2002, Ex.D3, assessment letter Ex.D4, publication Ex.D5, certificate Ex.D6, bills Ex.D7, khasra girdawari for the year 2006 to 2015 Ex.DS, copy of judgment and decree dated 1.5.2003 Ex.PX, Ex.PY.

The trial Court on noticing the evidence brought on record

found that plaintiff was owner of khasra nos.35 and 41 and the department had taken the possession by constructing the metalled road without following the procedure of acquisition of land, partly decreed the suit of the plaintiff to be entitled relief of compensation and an appeal laid before the Lower Appellate Court on behalf of the State was dismissed, in other words, the judgment and decree of the trial Court was affirmed.

Ms. Ambika Bedi, learned Assistant Advocate General, Punjab appearing on behalf of the appellant submitted that against the decision rendered by this Court, the Hon'ble Supreme Court, vide order dated 18.05.2018 passed in Civil Appeal No.5684 of 2018 while allowing the appeal, also allowed the accompanied application for additional evidence subject to costs of Rs.10,000/- and remitted the matter to this Court. The order dated 18.05.2018 reads thus:-

“Leave granted.

After hearing learned counsel appearing on behalf of the State of Punjab, we are clear that the documents in consolidation proceedings which the appellants want to produce are of vital importance in deciding the respondents' suit. Hence, we are of the opinion that those documents should be allowed to be produced under Order 41 Rule 27 CPC on payment of costs of Rs.10,000/-.

We, therefore, allow this appeal and set aside the impugned order. The appeal shall stand restored and be heard on merits

as expeditiously as possible.”

It was further submitted that additional evidence vide decision dated 19.07.1980 of the then consolidation officer leads to irresistible conclusion that khasra numbers 35 and 41 were kept as a path, thus, for all intents and purposes, the compensation awarded by the trial Court and affirmed in appeal was liable to be set aside in the absence of ownership. The plaintiff miserably failed to connect the property to be his own and thus, failed to discharge the onus as per the provisions of Section 101 of Indian Evidence Act. The other additional evidence i.e. proceedings register, scheme regarding common purposes, khatauni paimaise of trust, missal haqiat of consolidation. Annexure A-2 to A-6 are the testimony of the assertions in the written statement qua path on khasra numbers 35 and 41 measuring 15 kanals 0 marla and 3 kanals 11 marlas. Attention of this Court has been drawn to Annexure A-4, khatauni paimaise wherein after assigning new khasra numbers in kanals and marlas from bighas and biswas, both khasra numbers 35 and 41 were dedicated to the path for the purpose of drain and thus, urged this Court that judgments and decrees awarding compensation by resorting to the provisions of Land Acquisition Act are not sustainable in the eyes of law.

Per contra, Mr. S.S.Salar, learned counsel appearing on behalf of respondent no.1 has drawn the attention of this Court to the additional evidence allowed vide order of even date to establish that order dated 19.07.1980 was not final one as in the proceedings of 27.10.1980, Annexure

R-1/3, register of the proceedings of consolidation of village Sampurangarh, Revenue Estate no.175 Tehsil Malerkotla, District Sangrur, the aforementioned khasra number 35 and 41 were found to be in ownership of the plaintiff and as well as Annexure R-1/1 and Annexure R-1/2 i.e.khatauni consolidation and naksha hakdarbar, in other words, it was submitted that holding of the land of the respondent-plaintiff was 535 bighas and 18 biswas which after assigning the khasra number converted into kanals was 893 kanals 3 marlas and standard kanals after having deducted the “Besi Rasdi”, for common purpose, entitled to 772 kanals 13 marlas and this fact is fortified from the register of the proceedings wherein out of 882 kanals 18 marlas, price of land measuring 772 kanals 13 marlas, was determined.

In view of the aforementioned un-controverted evidence supported by other evidence already brought on record, it was submitted that irresistible findings of fact and law are perfectly legal and justified.

I have heard the learned counsel for the parties, appraised the judgments and decrees of the Courts below and of the view that following Substantial Question of Law arises for adjudication of the present appeal:-

“Whether the judgment and decree of the Lower Appellate Court is sustainable in case only additional evidence, already allowed to be taken on record establishes khasra nos.35 and 41 reserved for the passage dis-entitling the plaintiff from the compensation as ordered and impugned judgments and decrees

suffer from perversity?

From the discussion of the detailed additional evidence brought on record by the respective parties, during the proceedings in the regular second appeal, no doubt, vide Annexures A1 to A5, an attempt was made by the defendants i.e. khasra nos.35 and 41 were dedicated for the path for the purpose of drain but those proceedings were not final. Annexure R-1/3 is dated 27.10.1980 whereas, as per the Annexure R-1/2, the land measuring 535 bighas 18 biswas were converted to 893 kanals 3 marlas and standard kanals after the deduction were assessed to 781 kanals 10 marlas. The plaintiff was found to be entitled of 772 kanals 13 marlas. After determination of area, plaintiff was held entitled of the same very area of the khasra numbers 35 and 41.

There is no dispute with regard to the fact that mettled road has been constructed on khasra numbers 35 and 41 and also no resort to the acquisition proceedings before construction.

The provisions of Article 300A of the Constitution of India empower that no person can be deprived of the property without compensation. The same reads thus:-

300-A. Person not to be deprived of property save by authority of law-

No person shall be deprived of his property save by authority of law.”

On perusal of the evidence read in conjunction of the additional evidence, it is found that plaintiff is the owner of khasra nos.35 and 41 and

been deprived of the ownership and its utilization without any compensation in terms of money. The wisdom should have been dawn upon the State to prevent state exchequer from recurring element of interest in case the proceedings were timely resorted. The Land Acquisition Act, 1894 Act had been substituted with The **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013** conferring the land owners better benefits with double compensation etc.

Be that as it may, I would not be delving further on the applicability of the provisions, for, as on today there is no acquisition.

The findings of fact and law arrived at by the Court below even by taking into consideration the additional evidence of both the sides cannot be said to be suffering from illegality and perversity. The judgment and decree is upheld. The substantial question of law, above is answered in favour of the respondent-plaintiff and against the appellant-defendants.

Resultantly, the regular second appeal is dismissed.

(AMIT RAWAL)
JUDGE

March 28, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No