

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.2599 of 2016 (O&M)
Date of Decision:13.03.2019

State of Haryana and another

...Appellant(s)

Versus

Raghuvir Singh Saini and others

...Respondent(s)

RSA No.2551 of 2016 (O&M)

State of Haryana and another

...Appellants

Versus

Raghuvir Singh Saini

...Respondent(s)

RSA No.2552 of 2016 (O&M)

The Executive Engineer/PWD (B&R), Panipat

...Appellant

Versus

Raghuvir Singh Saini

...Respondent

RSA No.2904 of 2016 (O&M)

The Executive Engineer/PWD (B&R), Panipat

...Appellant

Versus

Raghuvir Singh Saini

...Respondent

CR No.1581 of 2016 (O&M)

State of Haryana and another

...Petitioners

Versus

Raghuvir Singh Saini

...Respondent(s)

CR No.1555 of 2016 (O&M)

State of Haryana and another

...Petitioners

Versus

Raghuvir Singh Saini

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.R.D.Sharma, DAG, Haryana
for the appellant/petitioner(s).

Mr.Chetan Mittal, Senior Advocate with
Mr.Kunal Mulwani, Advocate for the respondent(s).

ANIL KSHETARPAL, J.

By this order, RSA Nos.2551, 2552, 2599, 2904 of 2016 and
CR No.1581, 1555 of 2016 shall stand disposed of.

The question which arises for consideration is “whether the
State Government can be forced to acquire the land as per the Land
Acquisition Laws and pay compensation, although the State has now taken a
stand that the land owned by the plaintiff has neither been utilised nor it is
in possession thereof?”

This Court is conscious of the fact that the Department of the

State of Haryana had taken a stand before the courts below that they have laid road Panipat to Barsad in late 1950's and utilised the land of the plaintiff-respondent. However, in this Court, affidavit was filed by Executive Engineer, Provincial Division, PWD (B&R) Branch, Panipat that the land of the plaintiff-respondent has neither been utilised for laying down the road nor PWD Department is in possession thereof. The Senior Deputy Advocate General, Haryana, on 25.1.2019 made a statement to the same effect. However, keeping in view the fact that a contrary stand taken by the State of Haryana in the appeal which is against the case pleaded in the pleadings before the courts below, the Secretary of the concerned Department was requested to appear in person and apprise this Court about the correct position. In deference to the order passed, the Secretary of the concerned Department Shri Alok Nigam, Additional Chief Secretary, PWD (B&R), Government of Haryana, appeared before the Court on 29.1.2019 and stated that State of Haryana has not encroached upon any piece of land belonging to the plaintiff from the suit property and road is not passing through the land of the plaintiff.

The order dated 29.01.2019 is reproduced as under:-

The entire dispute between the parties is with respect to a piece of land which the plaintiff claims to be owner and it is asserted that the property has been utilized by the State of Haryana by laying down a road, therefore, the plaintiff has sought decree for possession with consequential relief of permanent injunction.

No doubt, before the trial Court, State of Haryana had claimed that the suit is time barred and it has become owner by way of adverse possession, however, on 25.01.2019, senior DAG, Haryana on the basis of affidavit of the Executive

Engineer had urged that the State of Haryana is not in possession of any land which may belong to the plaintiff in the impugned khasra number.

Keeping in view the fact that the road which is for public utility was in dispute, therefore, Secretary of the concerned Department was requested to come present and apprise this Court about the correct position. Today, in deference to the order, Sh. Alok Nigam, Additional Chief Secretary PWD (B&R), Government of Haryana is present in Court and has stated that State of Haryana has not encroached upon any piece of land of the plaintiff from the suit property. It has been stated that in fact road is not passing through the land of the plaintiff.

Keeping in view the stand taken by the State of Haryana, prima facie the suits filed by the plaintiff have been rendered infructuous.

Needless to observe that the plaintiff after getting the land demarcated would be entitled to take possession of the property owned by him.

At this stage, learned senior counsel appearing for the respondent prays for an adjournment to file the counter affidavit.

List in urgent on 04.02.2019.

No further request for an adjournment shall be entertained.

The plaintiff-respondent was granted opportunity to file a counter affidavit to prove that any part of the land belonging to the plaintiff-respondent has been acquired. Large number of documents have been filed by the plaintiff-respondent as well as by the State of Haryana. The counter affidavit filed by the learned senior counsel for the respondent is also taken on record.

The plaintiff-respondent had filed two suits for possession with

a consequential relief of permanent injunction claiming that he is owner of the property and entitled to possession because the land has been utilised for laying down a road leading from Panipat to Barsat without acquisition and therefore, he is entitled to possession. During the course of arguments before the courts below, plaintiff made an alternative prayer that let the land be acquired and compensation be paid.

PWD, a department of the State of Haryana, took a stand that the road was laid down in 1959-60 and the suit filed by the plaintiff is barred by time. It was further pleaded that the State of Haryana has become owner by way of adverse possession.

Both the courts decreed the suit without determining whether the State has utilised the land belonging to the plaintiff after keeping in view the stand taken by the parties and direction was issued to acquire the land in accordance with Land Acquisition Laws.

The stand taken in the appeal(s) is contrary to the stand taken by the State of Haryana before the trial court. However, in the considered view of this Court, the State of Haryana cannot be compelled to acquire the land and pay compensation in view of the changed now taken by the State of Haryana. No doubt, the appeals filed by the State of Haryana suffer from huge delay of approximately 1800 days, however, in the considered view of this Court, if the stand now taken by the State of Haryana before this Court is correct, the litigation initiated by the plaintiff has to fail. In such circumstances, the huge delay should not detain the Court in doing the substantive justice.

Keeping in view the facts and circumstances of the present cases, it is considered appropriate to remit the matter back to the learned

trial court permitting the State of Haryana and its agencies to file an amended written statement in consonance with the stand taken by them before this Court. Once the amended written statement is filed, the learned trial court would grant further opportunities to lead evidence and thereafter decide the suits.

In view thereof, the judgments passed by the courts below are set aside. The cases are remitted back to the learned trial court to re-decide the suits as referred to above.

Two revision petitions are arising from the orders passed by the executing court. Since the decree passed by the courts below have been set aside, therefore, the execution petitions itself have been rendered infructuous. The executing court would consign the execution petitions to the record.

Accordingly, all the regular second appeals as well as revision petitions are disposed of. Pending application(s), if any, shall also stand disposed of, in terms thereof.

The parties through their counsels are directed to appear before the learned trial court on 03.04.2019.

13.03.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No