

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

**RSA No.171 of 2017 (O&M)
Date of Decision.24.01.2019**

Amarjit Kaur (D) through LRs

...Appellant

Vs

The Chief Administrator, HUDA and another

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vikas Bahl, Senior Advocate with
Mr. Nitish Garg, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The present regular second appeal is directed against the concurrent finding of fact whereby the suit of the appellant-plaintiff for declaration and permanent injunction has been dismissed by the trial Court and affirmed in appeal by the lower Appellate Court.

In the suit filed on 12.08.2005, memo bearing No.10778 dated 18.07.2005 issued by the respondents-defendants under Section 18(1)(b) of the HUDA Act, 1977 for demolition of 19 shops constructed at village Majri, Tehsil and District Panchkula was challenged to be illegal, null and void and not binding, *inter alia*, on the premise that plaintiff had been residing in the village Majri and was in owner in possession of 21 shops, out of which two shops bearing No.20 and 21 had already been sold and remained owner of 19 shops. On 14.7.1988, officials of HUDA had visited the shops with police force for demolition but shown the demarcation report dated 15.03.1986 to the Estate Officer, HUDA, Panchkula and requested for not undertaking the demolition. Civil Suit No.10 of

1988 titled as “Amarjit Kaur Vs. Chief Administrator, HUDA and others” claiming injunction from interfering into the possession was filed wherein vide order dated 21.11.1992, trial Court appointed Kanungo as local commissioner. He submitted his report dated 17.12.1992 to the effect that shops belonging to the plaintiff were not situated in the land acquired by the Department of HUDA.

The defendants proceeded against ex parte without filing objection. The suit was decreed vide judgment and decree dated 08.02.1996 restraining the defendants from interfering into possession of the plaintiff except in due course of law. The judgment and decree aforementioned attained finality after dismissal of the application under Order 9 Rule 13 CPC.

Defendants opposed the suit by raising legal objection regarding estoppel, concealment, cause of action and jurisdiction of the Civil Court. It was alleged that land measuring 4 kanals 6 marlas comprised in khasra No.21/1 situated in village Majri was acquired vide award dated 27.03.1974. Plaintiff was encroacher to the extent of 2 kanals 9 marlas. In pursuance of directions passed by this Court in CWP No.16576 of 2004, the land in question was demarcated w.e.f. 19.4.2005 to 21.4.2005 with the assistance of the revenue officials and acquiring knowledge that plaintiff was in unauthorized possession, the memo, as noticed above, was issued. Many affected persons filed writ petitions in this Court and vide order dated 18.7.2005/21.07.2005, directions were issued treating the aforementioned orders to be show cause notices, giving 15 days time to the affected parties to reply and produce whatever evidence.

However, till the said orders were to be passed, dispossession of the petitioners was stayed. It was further directed that in case the petitioner failed to file reply, the writ petition was deemed to have been dismissed and instead of seeking remedy in the pending writ petition, instituted the present suit.

Since the parties were at variance, the trial Court framed following issues:-

- “1. Whether the impugned notice dated 18.7.2005 is illegal and void and the plaintiff is entitled to the relief of injunction as prayed for? OPP*
- 2. Whether the suit is not maintainable in the present from nor the plaintiff has locus standi to file the same? OPD*
- 3. Whether this Court has no jurisdiction to entertain and try the present suit? OPD*
- 4. Relief.”*

Plaintiff in support of the pleadings examined herself as PW1 but her testimony remained incomplete as she could not step into the witness box, owing to her demise. Her son Jaswinder Singh stepped into the witness box as PW2 and tendered evidence Ex.P1 to P11 and Mark A1, photocopy of impugned memo. On the other hands, defendants examined DW1 Sunder Lal from the office of Estate Officer, HUDA and tendered documents Ex.D1 and D2 i.e. copy of award dated 27.3.1974 and demarcation report dated 21.4.2005.

The trial Court on the basis of aforementioned evidence

dismissed the suit and appeal filed against the same also met with the same fate.

Mr. Vikas Bahl, learned Senior Counsel assisted by Mr. Nitish Garg, learned counsel appearing on behalf of the appellants drew attention of this Court to an application for additional evidence for bringing on record plaint dated 26.7.1988, written statement dated 13.09.1988 and demarcation report dated 28.11.2016 as Annexures AX1 to AX3, as they are germane to the final adjudication of the case.

On merits, it was submitted that whole approach of the Courts below was erroneous, as the demarcation report dated 21.04.2005 revealed that no notice qua the demarcation was ever given to the appellants. The judgment and decree dated 08.02.1996, which was exhibited as Ex.P3 and P4 would also reveal that on 15.03.1986, demarcation of the suit property was made by the revenue authorities in the presence of revenue officials and even local commissioner was appointed, who submitted his report dated 17.12.1992. The suit property was found to have not been acquired by HUDA in the acquisition proceedings held in 1974. The identity of the property remained a mystery. In such circumstances, the memo was liable to be quashed. The reply dated 28.07.2005 in pursuance of receipt of impugned notice was submitted taking all these objections.

The report dated 17.12.1992 Ex.P6 did not speak about khasra numbers but specifically stated that the suit property did not fall within the acquired land and never challenged by the respondents. Reliance on the award Ex.D1 by the Courts below is

perverse, as it is with regard to agricultural land not shops. The latest demarcation report deciphered that disputed land was never acquired, thus, urges this Court for setting aside the impugned judgments and decrees.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit. Concededly, the appellants-plaintiffs are not the owners of the land or having any title. Encroachers, who unauthorizedly occupies or had been in occupation of the land belonging to HUDA, cannot be granted any discretion of interim relief or interference by the Courts. Assuming for the arguments sake, land was not acquired, location of the shop is of Majri chowk, which is already congested owing to the encroachment. It is settled law that a person, who seeks equity must do equity. Additional evidence, in such circumstances, would pale into insignificance. Though attempt was made in the suit to show that plaintiffs were owners but no such evidence had been led. Previous judgment and decree Ex.P3 and P4 do not confer ownership on the plaintiff, thus, possession was recognized. It is settled law that a person who is long and settled possession cannot be dispossessed except in due course of law, which has been adopted by HUDA by issuing impugned memo. A person cannot create impediment and hindrance, once machinery for vacation of unauthorized occupation has been set in motion. The demarcation was done as per direction of this Court, which revealed that the same was done in the presence of officials of the Department and several persons including the plaintiffs were found to have encroached upon the land in Khasra

Nos.21/1 and 21/2 whereas khasra No.21/1 was acquired.

In view of aforementioned facts and circumstances, I do not find any illegality and perversity in the concurrent finding of fact and law rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed. Consequently, the application for additional evidence is also dismissed.

(AMIT RAWAL)
JUDGE

January 24, 2019

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No