

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

RSA No.571 of 2012 (O&M)

Date of decision: 08.07.2020

Khazan Singh (deceased) thr LR and ors.

... Appellants

Versus

State of Haryana and ors.

... Respondents

**CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL**

Present : Mr. OP Goyal, Sr. Advocate with  
Ms. Lavish, Advocate  
for the appellants.

Mr. RKS Brar, Additional AG, Haryana.

Mr. Lokesh Sinhal, Advocate  
for respondent No.3.

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**REKHA MITTAL, J.**

**CM No.2116-C of 2020**

Prayer in this application is for impleading legal representative(s) (in short “LRs”) of Khazan Singh-appellant No.1.

In view of averments made in the application supported by an affidavit of Vishal Chaudhary and arguments advanced, application is allowed and Vishal Chaudhary is allowed to be brought on record as LR of Khazan Singh-appellant No.1 (since deceased), subject to just exceptions, for the purpose of present lis only.

Amended memo of parties is taken on record.

Disposed of accordingly.

### **Main Case**

Challenge in the present appeal has been directed against judgments passed by the Courts whereby suit filed by the appellants for declaration and consequential relief of permanent injunction was dismissed by the trial Court, recording findings only on issue No.4 pertaining to jurisdiction of the Civil Court and appeal filed against judgment of the trial Court was dismissed by the Additional District Judge, Gurgaon whereby the appellate Court affirmed findings of the trial Court on issue No.4.

The facts, in brief, are that land detailed in para 1 of the plaint was ordered to be acquired vide notification dated 15.05.1997 under Section 4 of the Land Acquisition Act (in short 'the Act'). Notification under Section 6 of the Act was published on 14.05.1998. The appellants filed objections under Section 5A of the Act. It is averred that no opportunity of hearing was granted to the appellants against objections filed by them. Feeling aggrieved, they filed three writ petitions bearing No.5838 to 5840 before the High Court. The High Court directed the appellants to make written representation to the office of Chief Administrator, HUDA at Panchkula with directions to the said officer to give proper hearing and decide their representation after making spot inspection. The appellants neither received any notice from Chief Administrator, HUDA, Panchkula nor an opportunity of hearing was afforded inspite of repeated requests. They received letter dated 06.09.2001

rejecting their representation. The copy of order dated 06.09.2001 was not supplied to them. They filed another three writ petitions bearing No.648 to 650 of 2003 disclosing unwarranted conduct of HUDA office. The High Court, vide order dated 09.03.2004 relegated the petitioners to their ordinary civil remedies, if so advised. The appellants filed the instant suit primarily on the allegations that construction in the shape of school, rooms etc. was in existence much prior to notification under Section 4 of the Act was issued and as per policy of the Haryana Government, land in which construction was in existence prior to notification under Section 4 of the Act cannot be acquired. It is further pleaded that existing construction has been demolished on the night dated 17.12.2002 without notice to the appellants. They have sought the relief that land in question as well as construction is liable to be released as per government policy. They also sought consequential relief of injunction.

The respondents/defendants filed their written statement. They raised preliminary objection *inter alia* that Civil Court has no jurisdiction; suit is bad for mis-joinder and non-joinder of parties; the appellants have not approached the Court with clean hands; they have no locus standi to file the suit and raised the plea of estoppel. It was asserted that prior to issuance of notification under Section 4 of the Act, the concerned Collector heard the objections and spot inspection was also conducted. The suit land was completely vacant at that time. The land was acquired vide award dated 13.05.2000.

The trial Court framed following issues for determination:-

1. Whether the construction of school building, school office, school residence and residential properties of the plaintiffs were of A class construction and were in existence much prior to issuance of notice under Section 4 and defendants had demolished the said construction on night of 17.12.2002 without notice of the plaintiff and without deciding written representation made by plaintiff to Chief Administrator, HUDA as alleged?OPP
2. Whether the said construction and the land on which construction was existing were liable to be released as per Government policy as alleged?OPP
3. If issue No.1 and 2 are proved, whether the plaintiffs are entitled for the relief of permanent injunction against the defendants as prayed for?OPP
4. Whether the civil Court has no jurisdiction to entertain and try the present suit as alleged?OPD
5. Whether the suit of the plaintiff is bad for mis-joinder and non-joinder of the necessary parties as alleged?OPD
6. Whether the plaintiffs have no locus standi to file the present suit, as alleged?OPD
7. Whether the plaintiffs are stopped from filing the present suit by their own act and conduct as alleged?OPD
8. Whether the suit of the plaintiffs is not properly valued for the purposes of Court fee and jurisdiction as alleged?OPD
9. Whether the suit of the plaintiff is hopelessly time barred and not maintainable as alleged?OPD
10. Whether the suit of the plaintiffs is bad for

concealment of true and material fact as alleged?OPD

11. Relief.

The parties were allowed to adduce evidence in support of their respective contentions.

The trial Court took up issue No.4 at the first instance and by relying upon judgments of Hon'ble the Supreme Court **State of Bihar Vs. Dharendra Kumar, 1995(4) SCC 229** and **Laxmi Chand and others Vs. Gram Panchayat, Kararia and ors., 1996(7) SCC 218** has held that civil Court has no jurisdiction to decide the present matter, hence, suit is not maintainable. In view of findings on issue No.4, the Court did not record any findings on issues No.1 to 3 and 5 to 10 with the observations that findings on the aforesaid issues cannot be given as the civil Court lacks jurisdiction to decide the present dispute. As has been noticed hereinbefore, the Court in appeal affirmed findings of the trial Court on issue No.4 and eventually dismissed the appeal with no costs.

Counsel for the appellants has assailed consistent findings recorded by the Courts by raising few submissions. It is argued that on the basis of rival contentions raised by the parties, the trial Court framed as many as 11 issues for determination and permitted the parties to adduce evidence in support of their respective claims. It is vehemently argued that the trial Court never passed an order treating issue No.4 as preliminary issue, therefore, the trial Court seriously erred by taking up issue No.4 at the first instance and disposing of the suit without deciding other issues in

respect whereof the parties have already adduced evidence. For this purpose, reference has been made to the provisions of Order 14 Rule 2(2) of the Code of Civil Procedure (in short 'CPC'). Reliance has also been placed upon judgments of Hon'ble the Supreme Court **Foreshore Co-operative Housing Society Ltd. Vs. Praveen D. Desai (dead) thr Lrs and ors. along with connected cases, 2015(2) RCR (Civil) 442, Ramesh B. Desai and ors. Vs. Bipin Vadilal Mehta and ors., 2008(1) RCR (Civil) 921**, judgments of this Court **Punjab Digital Inds. System Ltd., Mohali Vs. Presiding Officer, Labour Court, Patiala, 2004(1) RCR (Civil) 758, Scorpions International Vs. M/s Saraf Agencies Ltd., 2001(3) RCR (Civil) 798**, judgment of Bombay High Court **Bhaskar Baraku Tehsildar Vs. Gangaram Supadu Tehsildar, 2001(4) RCR (Civil) 771** and Full Bench decision of Himachal Pradesh High Court **Prithvi Raj Jhingta and anr. Vs. Gopal Singh and anr., 2007(3) RCR (Civil) 407**.

To assail findings of the Courts on the question of jurisdiction of Civil Court, it is vehemently argued that in the suit though there is reference to notifications issued under Sections 4 and 6 of the Act but the appellants have not challenged validity or legality of the notifications, as such, judgments of Hon'ble the Supreme Court in **Dhirendra Kumar's case (supra)** and **Laxmi Chand and others's case (supra)** do not get attracted. It is argued that the Courts without appreciating the real controversy brought-forth in the suit that land of appellants is liable to be released from acquisition as construction of school and certain rooms was

in existence prior to issuance of notification under Section 4 of the Act, committed a serious error rather perversity by determining issue No.4 against the appellants/plaintiffs. In addition, it is argued that appellants initially filed writ petitions No.5838 to 5840 before the High Court and the same were decided with certain directions to the Chief Administrator, HUDA. The representation made by the appellants was rejected vide order dated 06.09.2001 but without granting them opportunity of hearing in compliance with directions of the High Court. Later, they filed writ petitions bearing No.648 to 650 of 2003 but the same were disposed of with the observations that pleadings reveal a large number of disputed questions of fact and the appellants were relegated to their ordinary civil remedies. It is argued that in the given scenario, there was no option with the appellants except to file a civil suit for redressal of their grievance. Counsel would inform that till date neither the appellants have received compensation nor possession of disputed land has been recovered by the respondents.

With regard to entitlement of the appellants to seek release of their land from acquisition on account of construction being existing there, he has relied upon judgment of this Court **Mrs. A Rathore Vs. State of Haryana, 1993(1) RRR 79.**

Counsel representing the respondents, on the contrary, has supported the judgments impugned with the submission that the trial Court has rightly relied upon judgments of Hon'ble the Supreme Court in

**Dhirendra Kumar's case (supra)** and **Laxmi Chand and others's case (supra)** to uphold plea of the respondents/defendants that civil Court does not have jurisdiction to decide the dispute raised by the appellants. It is argued that in the concluding lines of para 4 of the plaint, it has been averred that construction of the appellants was in existence prior to notification under Section 4 of the Act and the same could not be legally acquired and liable to be released. Meaning thereby, that appellants challenged acquisition of their land by way of notifications issued under Sections 4 and 6 of the Act. It is further argued that while disposing of writ petitions No.648 to 650 of 2003 the appellants (petitioners therein) were relegated to their ordinary civil remedies but it was not held that they can file a civil suit before the Court having territorial jurisdiction over the land in question. According to counsel, it was for the appellants to take a call to challenge the order passed by the High Court in case they were not satisfied with the directions relegating them to ordinary civil remedies but the same cannot be construed to confer jurisdiction upon the civil Court where none exists. In the same breath, it has been argued that jurisdiction upon the civil Court cannot be conferred with consent of the parties or by raising a plea of waiver on the part of defendant/respondent. For this purpose, reference has been made to judgment of Hon'ble the Supreme Court **Rajasthan State Road Transport Corporation & anr. Vs. Bal Mukund Bairwa, 2009(4) SCC 299** wherein it has been held that it is well settled principle of law that the court cannot confer jurisdiction where there is none and neither can the

parties confer jurisdiction upon a Court by consent. If a Court decides a matter without jurisdiction as has rightly been pointed out in **Rajasthan State Road Transport Corporation & Ors. Vs. Zakir Hussain, 2005(7) SCC 447** in view of the seven-Judge Bench decision of this Court in **A.R. Antulay Vs. R.S. Nayak, 1988(2) SCC 602**, the same would be nullity and, thus, the doctrine of prospective overruling shall not apply in such cases.

With regard to civil Court lacking jurisdiction, counsel has further relied upon judgment of Hon'ble the Supreme Court **State of Punjab Vs. Amarjit Singh, 2012 AIR SC (Civil) 607** wherein the Division Bench relied upon judgments in **Dhirendra Kumar's case (supra)** and **Laxmi Chand and others's case (supra)**.

With regard to contention raised by the appellants by relying upon the provisions of Order 14 Rule 2(2) CPC and judgments on that issue, it is argued that as the Civil Court lacked jurisdiction to decide the controversy raised by the appellants neither any useful purpose would have been served by recording findings on other issues except at the cost of making the judgment lengthy nor findings recorded on other issues can be of any legal consequence when the Court recording such finding lacks inherent jurisdiction to decide the matter. It is further argued that in none of the judgments relied upon by counsel for the appellants, the Courts have adverted to the provisions of Order 20 Rule 5 CPC that empowers the Court to record findings upon any one or more of the issues sufficient for

decision of the suit, therefore, the trial Court had rightly decided only the issue of jurisdiction, purely a question of law, at the first instance. For this purpose, reference has been made to judgments of this Court **Gram Panchayat Village Miran Kot Kalan Vs. Santokh Singh and ors., SAO No.55 of 2010 (O&M), decided on 17.02.2011** and **Ishwar Das Vs. Lachhman Dass, 1999(4) RCR (Civil) 425.**

I have heard counsel for the parties, perused the paper book and records.

Before advertng to submissions made by counsel for the parties on the issue 'whether the trial Court was required to record its findings on all the issues or could dispose of the question of jurisdiction of civil Court at the first instance', it is pertinent to note that counsel for the appellants would fairly concede that since the matter has been brought in second appeal before this Court, the question of remittance of the case to the trial Court would arise only if findings of the trial Court, affirmed in appeal, on the question of jurisdiction of the civil Court are reversed. That being so, contentions raised by counsel for the appellants by referring to the provisions Order 14 Rule 2(2) CPC and judgments relied upon in that context would lose relevance and significance. This apart, as has rightly been argued by counsel for the respondents that none of the judgments relied upon by appellants under Order 14 Rule 2(2) CPC, there is reference to the provisions of Order 20 Rule 5 CPC.

A relevant extract from Order 20 Rule 5 CPC, reads thus:-

"Court to state its decision on each issue"

In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

A plain but careful reading of the aforesaid extract leaves no manner of doubt that at the time of final decision of the suit, the Court is competent to record finding on any one or more of the issues sufficient for decision of the suit, meaning thereby that the Court may not record finding or decision on all the issues framed in the suit and can dispose of the suit by recording findings on one or more of the issues. This is none of the requirement of aforesaid rule that for recording finding upon one or more issues sufficient for decision of the suit, the said issue must be treated as a preliminary issue or the Court is required to record a separate order that suit would be disposed of by recording finding on one or more issues. As the trial Court recorded findings with regard to jurisdiction of the Court against the appellants, it was none of the obligation of the Court to record findings on other issues. In this view of the matter, the first contention raised by counsel for the appellants lacks substance and accordingly rejected.

This brings the Court to merits of decision on the question of jurisdiction of Civil Court.

Hon'ble the Supreme Court in **Laxmi Chand and others's case (supra)** has held in para 3 of the judgment, quoted thus:-

It would thus be clear that the scheme of the Act is complete in itself and thereby the jurisdiction of the civil court to take cognizance of the case arising under the Act, by necessary implication, stood barred. The civil court thereby is devoid of jurisdiction to give declaration on the invalidity of the procedure contemplated under the Act. The only right an aggrieved person has is to approach the constitutional courts, viz., the High Court and the Supreme Court under their plenary power under Articles 226 and 136 respectively with self-imposed restrictions on their exercise of extraordinary power. Barring thereof, there is no power to the civil Court.

In **Dhirendra Kumar's case (supra)**, a relevant extract from para 3 of the judgment, reads as follows:-

Thus, it could be seen that the Act is a complete code in itself and is meant to serve public purpose. We are, therefore, inclined to think, as presently advised, that by necessary implication the power of the civil Court to take cognizance of the case under Section 9 of CPC stands excluded, and a civil court has no jurisdiction to go into the question of the validity or legality of the notification under Section 4 and declaration under Section 6, except by the High Court in a proceeding under Article 226 of the Constitution. So, the civil suit itself was not maintainable. When such is the situation, the finding of the trial Court that there is a prima facie triable issue is unsustainable. Moreover, possession was already taken and handed over to Housing Board. So, the order of injunction was without jurisdiction.

In the instant case, the appellants filed writ petitions bearing No.5838 to 5840, disposed of by the High Court vide order dated 04.10.2000. They again approached the High Court by filing writ petitions No.648 to 650 of 2003 that came to be disposed of vide order dated 09.03.2004 relegating the petitioners to their ordinary civil remedies. There is no such finding recorded by the High Court that either the appropriate remedy with the appellants is to file a civil suit or jurisdiction for deciding the question of acquisition of their land despite existence of alleged construction thereon, lies with the civil Court. It was for the appellants to decide that since the civil Court does not have jurisdiction to decide the question of validity or legality of acquisition made by resorting to procedure prescribed in the Act, a complete code in itself, what remedy they should avail of in case they were not satisfied with the order dated 09.03.2004 passed by the High Court. The mere fact that the High Court had relegated them to their ordinary civil remedies is not sufficient to confer jurisdiction upon the civil Court where it does not exist. In **Rajasthan State Road Transport Corporation & another's case (supra)**, it has been held that Court cannot confer jurisdiction where there is none.

Indisputably, the representation made by the appellants, in pursuance of directions issued by the High Court in writ petitions No.5838 to 5840 was rejected vide order dated 06.09.2001. The appellants have not challenged legality or validity of said order by way of present suit. In this view of the matter, I find myself unable to be persuaded with submissions

made by counsel for the appellants that the Courts have committed an error much less perversity by answering issue No.4 against the appellants and in favour of respondents. As a result, findings on issue No.4 are affirmed.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed leaving the parties to bear their own costs.

08.07.2020

ashok

(REKHA MITTAL)  
JUDGE

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