

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

CR No.2363 of 2021 (O&M)

Date of decision: 29th November, 2021

Narender & another

... Petitioners

Versus

Haryana Urban Development Authority & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Sanjeev Manrai, Senior Advocate with
Mr. Keshav Pratap Singh, Advocate for the petitioner.

Mr. Priyavart Prasher, Advocate
for respondents No.1 and 3.

Mr. Gaurav Jindal, Addl. Advocate General, Haryana
for respondent No.2.

FATEH DEEP SINGH, J.

The present petitioners Narender and Ompati were plaintiffs before the lower Court in a suit for declaration with consequential relief of permanent injunction which they preferred against Haryana Urban Development Authority and others (present respondents) and the Court of learned Civil Judge (Junior Division), Rohtak vide orders dated 31.05.2018 (Annexure P6) allowed the application under Order XXXIX Rule 1 and 2 CPC read with Section 151 CPC thereby granting ad-interim injunction in favour of the plaintiffs and against defendant No.1. The same was challenged by defendants No.1 to 3 by moving an application under Order XXXIX Rule 4 CPC read with Section 94(e) and 151 CPC for vacating/discharging the injunction order dated 31.05.2018.

It is by impugned findings (Annexure P9) dated 19.04.2021 learned Civil Judge (Junior Division), Rohtak allowed the application and discharged the order dated 31.05.2018 (Annexure P6). It is pertinent to mention here that earlier an appeal was preferred against the said order by the unsuccessful plaintiffs before the Court of learned Additional District Judge, Rohtak who vide judgment dated 04.10.2021 (Annexure P11) dismissed the appeal and that is how under these circumstances both these orders dated 19.04.2021 (Annexure P9) and dated 04.10.2021 (Annexure P11) have been challenged in the instant revision petition.

Heard Mr. Sanjeev Manrai, Senior Advocate assisted by Mr.Keshav Pratap Singh, Advocate for the petitioner; Mr. Priyavart Prasher, Advocate representing respondents No.1 and 3; Mr. Gaurav Jindal, Addl. Advocate General, Haryana appearing on behalf of respondent No.2 and perused the records of the case.

The very ambit of Section 115 CPC, which deals with the revision, empowers the High Court to call for the records of any case which has been decided by any Court subordinate to the High Court and appears to have exercised jurisdiction illegally or with material irregularity. The High Court may make such order as it deems fit. The challenge is to two orders (Annexure P9) and (Annexure P11). Annexure P9 pertains to the order of the learned Civil Judge (Junior Division), Rohtak discharging the earlier orders of stay by virtue of exercise of powers under Order XXXIX Rule 4 CPC read with Section 94(e) and Section 151 CPC.

Order XXXIX Rule 4 CPC provides as under:-

“4. Order for injunction may be discharged, varied or set aside. – Any Order for an injunction may be discharged, or varied, or set aside by the court, on application made thereto by any party dissatisfied with such order:

PROVIDED that if in an application for temporary injunction or in any affidavit supporting such application, a party has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without giving notice to the opposite party, the court shall vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary so to do in the interests of justice:

Provided further that where an Order for injunction has been passed after giving to a party an opportunity of being heard, the Order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in the circumstances, or unless the court is satisfied that the Order has caused undue hardship to that party.”

A plain reading of this provision lays down that where an order has been passed after giving notice to a party, shall not be discharged or varied except if it is necessitated by a change in the circumstances or unless the Court is satisfied that the order has caused undue hardship to that party.

In the present case, admittedly a part of the property of the plaintiffs stood acquired by HUDA in the year 2004. Vide letter dated 11.07.2007 the Land Acquisition Collector had clarified that part of this acquired land bearing Khasra No.61//20/2 (disputed one) falls outside the acquired land which bears Khasra No.61//20/1 and it is essential to refer here that vide letter bearing memo No.1559 dated 16.04.2008 District Town Planner, Rohtak addressed letter to Sub-Registrar, Rohtak intimating that the office has no objection for registration of the sale of land measuring 9 Marla bearing Khasra No. 61//20/2. It is thereafter, the HUDA authorities/defendants entered into an agreement dated 20.07.2007 with the plaintiff side where this land measuring 9 Marlas, which is mentioned in 'Annexure A' annexed with this agreement, has been released from acquisition and therefore, highlights that this land by virtue of this agreement with HUDA has ceased to be under acquisition. This crucial fact has certainly escaped judicial attention at the time of passing of orders (Annexure P9 and P11).

Invariably from this all factual scenario leads to irresistible conclusion that this property bearing Khasra No. 61//20/2 at the time of passing of the impugned orders was owned and possessed by the plaintiff side. The premise that is sought to be raised on behalf of HUDA that an FIR was registered by HUDA against its own officials in the year 2021 for sale of this land does not in any manner affect the decision of the stay application and it is a matter which can only be gone into in details at the appropriate time upon decision in the criminal case/any administrative

finding by way of enquiry etc. Thus from it all, it is abundantly clear that there was neither any false representation or misstatement by the plaintiff side at the time of securing of the initial orders of stay dated 31.05.2018 and therefore, invocation of powers under Order XXXIX Rule 4 CPC did not arise and the Court below has fallen into an error by recalling the said order (Annexure P6). Similarly order dated 04.10.2021 (Annexure P11) passed by the learned Additional District Judge, Rohtak in appeal preferred by the appellants was kept in dark of this factual position and the legal intricacies involved. The said Court has rightly held that the said land bearing Khasra No. 61//20/2 never stood acquired as it has been de-acquired by the aforesaid act of HUDA.

In the light of the same, the said orders (Annexure P9 and P11) are hereby set aside by way of acceptance of the instant revision thereby affirming orders (Annexure P6).

(FATEH DEEP SINGH)
JUDGE

November 29, 2021

rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No