

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

Civil Revision No. 5481 of 2019

DATE OF DECISION: 09.07.2021

Haryana Urban Development Authority and others

...Petitioners

Versus

Raj Kumar Jain (deceased) through LRs. and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Arvind Seth, Advocate, for the petitioners.

Mr. Govind Goel, Advocate,
for respondents No. 1 and 2.

Mr. Rajneesh Chadwal, Assistant Advocate General, Haryana
for respondents No. 3 to 5.

(Presence marked through video conference)

ARUN MONGA, J. (ORAL)

Petitioner/HUDA, having once accepted the outcome of civil suit filed by the respondents, which after a contested trial was decreed in their favour vide judgment dated 04.03.2011, is now tooth and nail opposing the implementation of decree in execution proceedings. Attempt is being made re-open the conclusive findings already rendered in the original judgment and decree. The petitioners herein (judgment debtor) did not assail the judgment and decree dated 04.03.2011 by filing appeal, the same has thus attained finality.

2. Instant revision petition arises out of the execution proceedings filed by the decree holders/respondents herein to seek payment of the compensation in terms of the decree in their favour, qua the land which was

strangely taken over by way of sheer possession by the petitioner-HUDA, instead of acquiring the same in accordance with law, through the land acquisition proceedings.

3. In fact, before proceeding further, it would be apposite to note that the modus operandi adopted by HUDA to take over the land has rightly been frowned upon by the learned trial Court, as is borne out from the following observation made in the judgment:-

“With above facts in mind, this Court is of the view that it is a classic case where high handedness of the Government is clearly visible and of the official staff who illegally and unauthorisedly took possession of the land more than acquired. Evidently, they have worked like land grabbers for the reason best known to them. Here in the case in hand, the case of plaintiff stand proved by the defendants’ own documents and the witnesses. The case of the plaintiff that out of the total land of 2 Bigha 14 Biswa in khasra No.3322/1, only 0 Bigha 3 Biswa was acquired by the Government in the year 1984, stand proved by reply of the LAO Office Ex.P-2. It means the remaining land 2 Bigha 11 Biswa, of Smt. Kasturi Devi in Khasra No.3322/1 remained un-acquired and remained so till date. Though, learned counsel for defendants has tried to show that land shown in khasra No.3322/1 and 6529/3322 is the same and acquired in the year 1994, but this argument is nothing but an effort on his part to conceal misdeeds of the official staff of the concerned department. To show that Khasra No.3322/1 was acquired in the year 1994, reference has been made to Ex.D-7, but the defendants have failed to show as to why their own department in the demarcation report Ex.P-4 and Jamabandi 2001-2002 Ex.P-10, continuously show Smt. Kasturi Devi and others as owner and not the Government. Had the Government acquired this land in dispute, the ownership should have shifted in the name of Govt. rather than to continue with the plaintiffs. Not only this, defendants’ own witness DW-1 Kehar Singh, has categorically deposed that Khasra No.3322/1 was in the name of Kasturi Devi and Khata No.6590/3322 was in the name of Jambu Prashad having same

area of 2 Bigha 11 Biswa and the latter's land was acquired and compensation awarded. He has further deposed that as per their record land in question 3322/1 is not acquired and Smt. Kasturi Devi continued to be owner of the said land. The defendants have not been able to dispute the version of their own witness on this xxx. Rather by admitting the contents of Ex.D-9 and Ex.xxx which show Sh. Jambu Prashad, owner of khasra No.6590/3322 and Smt. Kasturi Devi of Khasra No.3322/1 respectively, the defendants have contradicted their own stand that both properties are the same. Notwithstanding this, since the defendants have claimed payment of award of the land acquired, then onus was on them to have shown as to when the award of the land in question i.e. 3322/1 was paid to Smt. Kasturi Devi. If they could prove the payment of Smt. Kasturi Devi? If she did not receive payment, then where her amount gone, has remained unanswered by defendants. It is also not their case that Smt. Kasturi has disputed the payment made to Sh. Jambu Prashad on the ground that it was her land which was acquired and she is the one entitled for the money and not Sh. Jambu Prashad."

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"Here in the case in hand, the defendants representing the Govt. have not been able to establish that they had acquired the suit land and to cover their illegal act of unauthorised possession over the land in question, they have taken the plea of adverse possession on the ground that plaintiff cannot get back the possession which is there with the defendants since 1994 continuously without any interference from the plaintiff. This contention of the defendants is not only liable to be rejected but is also condemnable because by taking such plea they have acted like land grabbers, presently very active, who illegally take over the possession of the properties of innocent and then claim their right of ownership by adopting all means."

4. Aforesaid observations/findings are quite scathing, to say the least.

The same have since attained finality as the judgment and decree was never

challenged. On the other hand, the execution proceedings thereof had to be

carried out by the decree holders since decree was not complied by the judgment debtors on their own.

5. It is pertinent to mention that the trial Court while decreeing the suit granted relief to the respondents/decreed holders in following terms:-

“In view of the foregoing discussion particularly on issue Nos.1 to 3, the suit of the plaintiffs is decreed with costs. The defendants are directed to either pay the compensation of the amount equivalent to the total cost of the land in question prevalent in the area as on date or in the alternative give plots equivalent to the area of the land in dispute to the plaintiffs and other co-sharers, in their new sectors developed in Sonapat where land has the same value as that of property in question. The Land Acquisition Department which unauthorisedly took the possession of the land in question and enjoyed its fruit for such a long time is also burdened with exemplary costs of Rs.20,000/- to be paid to the plaintiffs and other co-sharers as litigation charges and this amount would be recoverable by the department after its payment to the plaintiffs, from the salaries of the officials who were responsible for such illegal encroachment. The defendants are given three months time to implement the judgment in its letter and spirit failing which the plaintiffs would be at liberty to approach the Court for execution of the decree within three months after the period of three months given to the defendants for implementation. Decree-sheet is prepared accordingly.”

6. Notwithstanding, that three months’ time with effect from 04.03.2011, was given to the judgment debtors/petitioners herein for implementation of the decree, the same remains un-implemented even after more than ten years. During the interregnum, one of the decree holders i.e. respondent No.1, Sh. Raj Kumar Jain, for lack of better medical treatment, owing to the financial constraints, is stated to have died. It is stated that had the legitimate money owed to him by petitioner/HUDA been paid during his lifetime,

perhaps his life could have been saved. His legal representatives are now before this Court.

7. It is rather ironical that despite this Court having passed interim order dated 22.10.2019, directing the judgment debtors/petitioners to deposit a sum of Rs.3.00 crores with the executing Court, the same was not allowed to be disbursed to the decree holders due to the opposition of the petitioner/HUDA in the pending execution proceedings. In fact, given the dire urgency, an application was later filed by the decree holders seeking disbursement of the aforesaid amount of Rs.3.00 crores, but the judgment debtors/HUDA kept on opposing/procrastinating it by seeking more time on every hearing on the ground that reply thereof was/is still to be filed. While, on one hand, adjournments were sought to file reply to the said application and on the other hand, the amount deposited in the executing Court remained undisbursed due to the callous attitude of the HUDA.

8. Adverting to the merits of the decree and/or discussing veracity thereof, at this stage once the same has attained finality, is neither open to this Court or the executing Court. It was open to the judgment debtors/HUDA to have assailed the same, which right it consciously did not avail, be it on merits or deliberate acquiescence. Either way, the decree has since attained finality, it has now to be implemented on all four squares.

9. As regards the compensation in terms of the decree, the same has also been crystallised in the relief part contained in paragraph No.19 of the judgment as produced hereinabove. Qua the same, learned counsel for the judgment debtors argues that the findings given therein, that the amount equivalent to the total cost of the land in question prevalent in the area as on date, is to be interpreted to mean that the decree holders are entitled to

compensation as per the valuation of the land contained in the rural areas at serial No.149 as per Annexure P-10. It clearly envisages that the cost of the rural area is Rs.5100/- per sq. yard. The respondents are thus entitled only to a mere sum of Rs. 1,30,81,500/- (2,565 x 5,100 =1,30,81,500.00). The said argument is completely *dehors* the revenue record, as also produced before the executing Court by way of a document recited as AW-10. The said document AW-10 has also been tendered before this Court through e-mail and is appended as Mark-A (in Hindi). Mark-A is dated 01.04.2011 and captioned as “Collector rates for the year 2011-12”. At serial No.14, it is stated that the value of the land located in Sector 15, Sonapat is Rs.20,000/- per sq. yard. To be noted, it is irrefragable position that the land in question qua which the compensation is to be paid to the decree holders/respondents is indeed located in Sector 15, Sonapat. The argument of the learned counsel for HUDA/petitioner thus flies in the face of its own record (Collector rates) produced and relied upon.

10. That apart, I have perused the impugned order passed by the executing court and I am in agreement with the findings returned therein. The same have been rendered after having gone through the record, as is borne out from following illustrative extract :-

“16. My Ld. Predecessor previously assessed the value of the property in dispute @ 1859.50 per sq. yards i.e. the collector rate prevailing in the area in 2011-12, by considering the nature of land to be agricultural situated in Patti Musalmanan. The DHs approached Hon’ble High Court against the assessment with CR No.7914 of 2015 (O&M) titled as Raj Kumar Jain and another vs. HUDA and others. Hon’ble High Court vide order dated 14.12.2018 set aside the order of this Court dated 12.08.2015 and directed the executing Court to determine the entire controversy afresh by looking into the documentary evidence already brought on record. The Court also

observed that the determination of value of the land had to be on the date of the decree.

Since Hon'ble High Court has set aside the findings recorded by my Ld. Predecessor in assessment of the value of the land, considering it to be a part of Patti Musalmanan, therefore, the only alternative which remains is to consider the land in dispute to be part of Sector 15 Sonapat on the date of decree. It is also the fact in reality. The property in dispute was a part of Sector 15 on the date of decree of the suit. The contentions of the JDs that they had developed the land, constructed road, parks etc. are of no consequence in the light of the fact that the JDs had encroached upon the land of the DH without his consent. Even when the mistake came to their knowledge, instead of redressing the grievance of the DH, they dragged him into unnecessary litigation. The JDs developed the land at their own peril and now cannot scuttle the rightful claim of the DHs. Further the JDs themselves have opted the option of payment of value of the land on the date of decree."

Accordingly, the executing Court passed the following order granting relief:-

"19. In view of the findings given on issue No.1, the application of the decree holders under Section 151 of Civil Procedure Code is disposed of with a direction that the JDs are directed to pay compensation of the land in question measuring 2565 sq. Yards situated in Sector 15, Sonapat @ 20000/- per square yard i.e. collector rate of the area in the year 2011-12 along with simple interest @ 8% per annum from the date of judgment and decree dated 04.03.2011 till its realization to the decree holders and other co-sharers as per their respective shares within a period of three months from the date of passing of this order."

11. No fault can be found with the findings of the executing court, which are based on cogent evidence and have been rendered after due application of mind by giving proper reasons thereof. No ground to interfere is made out.

12. Dismissed.

(ARUN MONGA)
JUDGE

09.07.2021
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No