

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

- (1)

RSA-2643-1993 (O&M)
Reserved on: 31.05.2023
Date of pronouncement: 04.07.2023
- Dewan Singh (deceased) through his LRs

...Appellants
- Versus
- Amritsar Improvement Trust, Amritsar and others

...Respondents
- (2)

COCP-1090-1993 (O&M)
- Nirmal Singh

...Petitioner
- Versus
- Maninder Singh Heera and others

...Respondents
- (3)

COCP-314-2005 (O&M)
- Gurbachan Singh and others

...Petitioners
- Versus
- J.K. Sharma and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Puneet Jindal, Sr. Advocate with
Ms. Neha Anand Mahajan, Advocate and
Ms. Malvi Aggarwal, Advocate for the appellant.

Mr. Amit Singh Sethi, Advocate with
Mr. Ishwar Partap Singh Sethi, Advocate
for respondents No. 1 and 2
in COCP-1090-1993 and COCP-314-2005.

Mr. Sandeep, Addl. A.G., Punjab.

H.S. MADAAN, J.

1. By this judgment, I intend to dispose of above mentioned appeal and contempt petitions since the latter are offshoot of the former.

2. This Regular Second Appeal is directed against judgment and decree dated 22.02.1990, passed by the Court of Sub Judge Ist Class, Amritsar dismissing the suit filed by the plaintiffs as well as judgment and decree passed by the Court of Addl. District Judge, Amritsar, vide which the appeal preferred by the plaintiffs challenging the judgment and decree passed by the trial Court had been dismissed. The appellants before this Court are legal representatives of plaintiff Dewan Singh, who had died during the pendency of proceedings.

3. Briefly stated facts of the case are that plaintiff Dewan Singh son of Thakur Singh, resident of Gumtala, Tehsil and District Amritsar, since dead, now represented by his sons as his legal representatives, as well as his sons Gurbachan Singh, Ajmer Singh, Amrik Singh, Raghbir Singh, Nirmal Singh, Davinder Singh had brought a suit against defendants Amritsar Improvement Trust, Amritsar through its Chairman and the Collector, Amritsar Improvement Trust, Amritsar craving for grant of permanent injunction restraining the defendants from taking possession of the suit land detailed in Schedule-A under the Expansion Scheme, Ajnala Road of Amritsar Improvement Trust covering an area of 537 acres.

The plaintiffs had brought the suit in question on the averments that previously the State Government had sanctioned a Development Scheme, vide notification No. 117(41)-3(C)(i) 72/28177 dated 18.12.1972 but it was struck down by Supreme Court on the ground that some area falling beyond municipal limits was included in the Development Scheme which was not permissible; accordingly, Amritsar Improvement Trust, Amritsar floated two schemes, one known as Development Scheme relating to area within municipal limits and the other termed as Expansion Scheme with respect to the area beyond municipal limits; the dispute between the parties is with regard to the Expansion Scheme which was sanctioned by the State Government, vide notification No.117(4)-73/4951 dated 19.02.1973 which was to be executed within a period of 03 years from the date of notification; before that period of 03 years could expire, the State Government issued amended notification dated 26.11.1975 deleting the limitation of 03 years from the original notification dated 19.02.1973; after sanction of that scheme, defendant No.1-Amritsar Improvement Trust, Amritsar proceeded with the acquisition of land including the suit land belonging to the plaintiffs; the land was acquired and compensation fixed by the Land Acquisition Collector, Amritsar was deposited in the Court; in the suit, the plaintiffs had assailed the Expansion Scheme on several grounds submitting that the defendants had threatened to take forcible possession of the suit land from the

plaintiffs and pleading that as the matter was of urgent nature, therefore, they had filed the suit without serving notices under Section 98 of the Punjab Town Improvement Act, 1922 (for short 'the Act') and Section 80 CPC upon the defendants.

4. On being given notice, both the defendants had appeared and filed a joint written statement, contesting the suit, inter alia raising preliminary objections that the scheme had been duly framed after following due procedure and it was sanctioned by the State Government, therefore, it is conclusive evidence and cannot be challenged in the civil Court, the suit land has been legally acquired and compensation has been deposited as ordered by the Land Acquisition Collector, notices under Section 12 of the Land Acquisition Act, 1894 were also served upon the plaintiffs for taking possession, the possession has been delivered to the defendant Trust by the Collector in accordance with law and ownership of the land is vested in the defendant-Trust free from all incumbrances, the plaintiffs have no right, title or interest in the suit land, the State Government by notification dated 26.11.1975 had deleted the period of limitation of 03 years and possession of the suit land has already been taken by the Collector and delivered to the defendant Trust, therefore, the plaintiffs are estopped by their act and conduct to file the suit.

5. On merits, it was contended that the plaintiffs have not served the mandatory notice under Section 98 of the Act and Section

80 CPC. The notifications issued by the State Government were final and conclusive and their legality cannot be challenged. The grounds of attack mentioned in para 8(i) to (vii) assailing the legality of Expansion Scheme were controverted, contending that the plaintiffs are interested in delaying the implementation of the Scheme by filing suits, writs etc., on one pretext or the other. Since it was not possible to execute the Scheme within the period of 03 years, the State Govt., deleted the limitation vide notification dated 26.11.1975, therefore, the Scheme is valid and can be executed even now. Refuting the other assertions in the plaint, the defendants prayed for dismissal of the suit.

6. During the course of proceedings, one of the plaintiffs namely Raghbir Singh withdrew his claim and his name was struck off vide order dated 27.02.1981 passed by the trial Court.

7. Plaintiff filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

8. From the pleadings of the parties, following issues were framed:-

- 1. Whether the expansion scheme cannot be executed without framing the rehousing scheme in the present case? OPP.*
- 2. Whether the defendants are not entitled to take possession for reasons stated in para '8' of the plaint? OPP.*
- 3. Whether the plaintiffs are in possession and have the locus standi to file the suit ? OPP.*
- 4. Whether this court has jurisdiction to adjudicate the matter? OPD.*

5. *Whether the suit is bad on account of misjoinder of parties and cause of action ? OPD.*
6. *Whether the suit has not been properly valued for the purpose of court fee and jurisdiction ? OPD.*
7. *Whether the trust has already taken the possession and the suit has become infructuous ? OPD.*
8. *Whether the plaintiffs are estopped to file the suit on account of laches and acquiescence ? OPD.*
9. *Whether notice u/s 98 of the Pb. Town Imp. Act and 80 CPC was necessary, if so, what is the effect of its non-service ? OPD.*
10. *Whether the plaintiffs are entitled to the injunction prayed for ? OPP.*
11. *Relief.*

9. The parties were afforded sufficient opportunities to lead evidence in support of their respective claims.

10. After hearing arguments, the suit was finally disposed of by the trial Court, vide judgment and decree dated 01.10.1981.

11. The judgment and decree were challenged in appeal and learned Addl. District Judge, Amritsar, vide judgment dated 03.06.1983 had remanded the case to the trial Court for fresh decision but that order was challenged in the High Court and was set aside. During the course of proceedings before learned Addl. District Judge, Amritsar, an application under Order 6 Rule 17 CPC was filed by the plaintiffs seeking amendment of the plaint. That application was allowed, vide order dated 17.01.1987. The judgment and decree passed by the trial

Court were set aside and the case was sent back to the trial Court to decide it afresh. After the case was received back in the trial Court by way of remand, the trial Court, vide order dated 20.09.1983 had framed two additional issues as follows:-

10-A What is the effect of land in suit having been included in the limits of Amritsar Municipal Corporation? OPP.

10-B Whether land in suit is a fruit garden and if so, to what effect? OPP.

12. The parties were again given opportunities to lead evidence in support of their respective claims.

13. After hearing arguments, the trial Court of Sub Judge Ist Class, Amritsar by giving issue-wise findings, vide judgment and decree dated 22.02.1990 had dismissed the suit with costs.

14. Feeling aggrieved, the plaintiffs had preferred an appeal before District Judge, Amritsar which was assigned to Addl. District Judge, Amritsar, who vide judgment and decree dated 03.12.1994 dismissed the appeal, affirming the judgment and decree passed by the trial Court.

15. Still feeling aggrieved, the plaintiffs have approached this Court by way of filing Regular Second Appeal. Vide order dated 08.12.1993, this appeal was Admitted and was ordered to be heard with RSA-2634-1993. It was directed that status quo with regard to possession shall be maintained by the parties till further orders, however, the connected appeal bearing No.RSA-2634-1993 was finally

disposed of, vide order dated 27.09.2001, whereas, this appeal was left undecided so it is being taken up for adjudication now.

It may be mentioned here that during pendency of proceedings, Amrik Singh son of deceased plaintiff Dewan Singh and one of his legal representatives had filed an application for withdrawal of appeal qua him. However, considering the fact that there was five legal representatives of plaintiff Dewan Singh and application had been filed only by one of his legal representatives, his such request was declined, vide order dated 24.1.2013.

16. Furthermore, one Rakesh Sharma son of Om Parkash Sharma, Resident of House No.79, Sector 19-A, Chandigarh had filed an application dated 19.03.2014 under Order 22 Rule 10 read with Section 151 CPC with a prayer for grant of permission to be impleaded as appellant in place of appellants for the reason that during pendency of the appeal, the land in question has been purchased by him, vide five separate registered sale deeds, copies of which he has enclosed as Annexures A1 to A5. According to him, all the rights and interest in the land in question stand vested and assigned in favour of the applicant. The application was resisted by the respondents. However, that application is still pending and has not been finally disposed of.

17. It needs to be mentioned here that the appellants had filed two contempt petitions, first bearing No.COCP-1090-1993 against Maninder Singh Heera, Chairman, Mohinder Singh and Rattan Singh,

Overseer, Gurdial Singh, Sub Divisional Officer and N.K. Sharma, Engineer of Amritsar Improvement Trust, Amritsar for violating order of this Court dated 08.12.1993, directing that status quo with regard to possession shall be maintained by the parties till further orders and secondly, COCP-314-2005 against respondents Sh. J.K. Sharma, Chairman, Improvement Trust, Amritsar, Sh. D.R. Bajaj, Principal Secretary to Government of Punjab, Punjab Civil Secretariat, Chandigarh and Yashdev Inder Singh son of late Baldev Inder Singh, resident of Shekhupura Automobiles, Gohana Road Panipat for violating order of this Court dated 08.12.1993, vide which status quo order with regard to possession had been passed.

These petitions are contested by the respondents and are being taken up along with main appeal.

18. I have heard learned counsel for the parties besides going through the record and I find that there is no element of merit in the present Regular Second Appeal.

19. The suit filed by the plaintiffs was for seeking grant of permanent injunction.

Permanent/Perpetual injunction is dealt with by Section 38 of the Specific Relief Act, 1963 which for ready reference is reproduced as under:-

38. *Perpetual injunction when granted.*—

(1) Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to

the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.

(2) When any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II.

(3) When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the court may grant a perpetual injunction in the following cases, namely:

—

(a) where the defendant is trustee of the property for the plaintiff;

(b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

(c) where the invasion is such that compensation in money would not afford adequate relief;

(d) where the injunction is necessary to prevent a multiplicity of judicial proceedings

A perusal of this provision clearly goes to show that Perpetual injunction is a discretionary equitable relief which is to be granted by the Court keeping in view all facts and circumstances of the case including the conduct of the parties and no person can claim this relief as a matter of right. Further term 'obligation' is defined under Section 2 Clause 'A' as including every duty enforceable by law.

20. Now it is to be seen as to whether any such obligation exists in favour of the plaintiffs, the alleged breach of which at hands of defendants, they are complaining of. The answer is in negative. Furthermore, the defendants have been proceeding in accordance with law and Rules under a properly framed Scheme. The land was properly acquired, compensation assessed and deposited in the Court and then possession was taken. The plaintiffs had no right to file the suit since they cannot refrain the defendants from proceeding further in

accordance with law. The matter would have been different if the defendants had been trying to take possession of the land from the plaintiffs illegally and forcibly, however, not in such a manner. As a matter of fact, no cause of action had arisen to the plaintiffs to bring the suit and they had no right to file the same. The plaintiffs very cleverly sought a declaration in the garb of injunction, which is not permissible under law. The Courts below have conveniently ignored this aspect and went on to adjudicate the questions with regard to legality of the Scheme and acquisition proceedings which could not possibly be done in the present suit. Numerous issues in that regard were framed, parties were allowed to lead evidence in support of their version and then lengthy judgments passed. No attention in that regard was given either by the trial Court or Ist Appellate Court.

21. The limited question to be adjudicated was whether the plaintiffs are entitled to decree for permanent injunction, in other words, they could have been able to make out a case for permanent injunction, if defendants had been threatening to take possession of the land belonging to them illegally and forcibly without acquiring the land by publication or requisite notifications, getting the compensation assessed and paying the same to the plaintiffs. However, in this case, as has been observed by the Courts below, there is no defect in the acquisition proceedings. The compensation was assessed by the Land Acquisition Collector and has since been deposited in the Court. One

of the legal representatives of plaintiff namely Raghbir Singh has withdrawn his share in the compensation and rather reference for enhancement of compensation had been made. Under the circumstances, there was no occasion for the plaintiffs to file the suit. The suit for permanent injunction was obviously filed to avoid the rigor of Section 98 of the Act by piece of clever drafting because if the plaintiffs had filed a suit for declaration with consequential relief of permanent injunction against the defendants then there was no escape from issuance of prior notice of 2/6 months in terms of Section 98 of the Act but the suit as framed is certainly not maintainable. No declaration could possibly be granted to the plaintiffs.

22. The trial Court by giving issue-wise findings had dismissed the suit filed by the plaintiffs. Even on merits the plaintiff have no case.

With regard to issue No.1 whether the Expansion Scheme cannot be executed without framing the rehousing scheme in the present case, the trial Court had observed that objections of rehousing relates to execution of the scheme and not to its framing and further there was no evidence on the file that the plaintiffs had raised any objection under Sections 26 and 27 of the Act that there existed residential or dwelling houses belonging to them or other persons from which they would be displaced, therefore, the rehousing scheme was necessary. The revenue record in the form of jamabandi Ex.P1 and

khasra girdawaries Ex.PW7/1 and Ex.PW7/2 for the relevant period showed that the land was agricultural in nature with no residential or dwelling houses constructed therein. In view of such reasons given, a proper conclusion was drawn that existing scheme could be executed without framing any rehousing scheme and issue was decided against the plaintiffs and in favour of the defendants.

23. With regard to issue No.2, whether the defendants are not entitled to take possession, for reasons stated in para No.8 of the plaint, the trial Court referring to the objection that Expansion Scheme was to be executed within a period of 03 years, failing which it was to stand rescinded or lapsed automatically, noticed that Expansion Scheme was notified on 19.12.1973 and it had to be executed within a period of 03 years but before expiry of said period of 03 years, the time limit had been deleted with amended notification dated 26.11.1975 Ex.D1 for the reason that the concerned owners had indulged in litigation which made it impossible for the defendant Trust to execute the scheme within a period of 03 years, in that way, bar of limitation was removed, vide notification issued by the State Government, copy of which being Ex.D1 and State Government was competent to do so. The trial Court had noticed that though in the State of Haryana, Section 44 (a) had been added providing a time limit of 05 years for execution of the Scheme but there was no such time limit in the State of Punjab and the State Government was within its right to delete the period of limitation

of 03 years, vide notification Ex.D1, therefore, the Scheme could not be condemned for not taking fresh sanction for execution from the Government

24. With regard to next objection that on account of unexplained and inordinate delay with the result same has become abandoned or lapsed, it was noticed that since the limitation of 03 years had been deleted by the State Government with which no fault can be found and secondly, the reason for the delay was that plaintiffs themselves were filing writs and suits against the defendant Trust resulting in delay and defendant Trust could not be held accountable for that reason. The trial Court has categorically observed that the plaintiffs are still litigating against defendant Trust and are not allowing it to execute the legal and valid scheme by indulging in litigation on one pretext or the other, therefore, that objection was also rejected.

25. With regard to next objection that the Trust had no jurisdiction for acquiring and taking possession of the entire property, it has been observed that the Scheme has been duly framed after observing the formalities. It has been sanctioned by the State Government and award has been given by Land Acquisition Collector. Compensation amount has already been deposited in the Court, therefore, Trust has every right to take possession of the land. Referring to Section 42 (2) of the notification under sub Section (1), it

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has been observed that any Scheme shall be conclusive evidence that the Scheme had been duly framed and sanctioned. It was so in the present case.

26. The trial Court referring to the evidence available on the record has although reached an inference that the land including the suit land had been duly acquired by the State Government for the execution of Expansion Scheme of defendant Trust but with regard to taking possession, the conclusion drawn by it is obviously wrong. Picking up a line or two from the statements of witnesses examined by the defendants and giving undue importance to the oral deposition of witnesses by the plaintiffs, the trial Court has wrongly concluded that the plaintiffs are still in possession of the suit land. The trial Court has conveniently ignored the documentary evidence in the form of report roznamcha Ex.D1 proved by DW1 Bhagwant Singh, Patwari to the effect that defendant Trust has taken the possession of the suit land. The trial Court seems to have forgotten the settled law that documentary evidence is best type of evidence and is to take precedence over the oral evidence which unfortunately can be easily procured. Many a times, people tell lies while being under oath, therefore, giving preference to the oral evidence over documentary evidence is definitely fraught with a danger but the trial Court for the reasons best known to it, went on to give a finding that the plaintiffs are still in possession of the suit land and have locus standi to file the present suit which was contrary to the factual and legal position.

27. Further, the trial Court fell in error in deciding issue No.4 whether this Court has jurisdiction to adjudicate the matter, holding

that civil Court has jurisdiction for the alleged reason that the act of defendant Trust was outside the preview of the Act. Interestingly, this finding is contradictory. On one hand, the trial Court had observed that there was nothing wrong with the acquisition proceedings whereas on the other hand, gave a finding that act of defendant Trust outside the preview of the Act can be challenged. How it was beyond preview of the Act has not been explained. As a matter of fact, the plaintiffs had no right to file such suit.

28. As regards finding of the trial Court on issue No.5, the same is wrong, in view of the detailed discussion above. The plaintiffs were clearly estopped by their act and conduct from filing the suit, though for unconvincing reasons, the trial Court has decided this issue in favour of the plaintiffs and against the defendants.

29. Furthermore, the suit is bad for non service of notice under Section 98 of the Act. The reasoning given by the trial Court finding that it is not so, is highly unconvincing, not worthy of acceptance. Nevertheless, findings on issue No.10-A dealing with the objection that after framing of Expansion Scheme, the suit land has come within limits of Municipal Corporation, as such the Expansion Scheme cannot be executed because only Development Scheme can be framed, was discussed and found to be without merit, observing that there was no such provision in the Act and it was nowhere provided that with extension of limits of Municipal Corporation, the Expansion Scheme

which was legally and validly framed, becomes un-executable and void because the land covered by its has now come within municipal limits.

30. With regard to findings on issue No.10-B, the trial Court was justified in deciding that issue against the plaintiffs, holding that there is no provision in the Act which prohibits the State Government from acquisition of orchard or garden and no notification had been proved on file to show that those were exempted from the Scheme.

31. With regard to evidence adduced by the plaintiffs regarding existence of orchard in the suit land, it was in the form of oral evidence since no document like jamabandi etc., had been proved on file to show that and the khasra girdawaries Ex.PW7/1 and Ex.PW7/2 showing part of the suit land to be under orchard were not found to be of much relevance because those related to the years 1980 to 1985 whereas the suit land was acquired in the year 1973. The Court is to see the possession at the time of acquisition and not subsequently. The other objections with regard to estoppel etc., were found to be without merit and were rejected.

32. Coming to the judgment by Ist Appellate Court of Addl. District Judge, Amritsar, the same is quite detailed and well reasoned. The Expansion Scheme was found to be duly framed and sanctioned and no fault was found with acquisition proceedings. It was further observed that in view of provisions contained in Section 16 of the Land Acquisition Act after giving of award by the Land Acquisition

Collector on 04.05.1974, Ex.D1, the disputed land covered by the Expansion Scheme vested in the defendants and they were within their rights to take possession of the same. It has been observed that in fact the possession of the disputed land also appears to have been taken by the defendants vide report roznamcha dated 29.04.1980 Ex.D7, though the implementation of the scheme was stalled by the plaintiffs by obtaining stay orders from the Court. It was observed that after issuance of notification dated 19.02.1973 Ex.D8 by the State Government and after giving of the award by the Land Acquisition Collector on 04.5.1979, the disputed land covered by Expansion Scheme automatically vested in the defendants and plaintiffs could not claim any right or interest in the disputed land despite issuance of stay by the Court in their favour. Therefore, the appeal filed by the plaintiffs was rejected.

33. It being so, this Regular Second Appeal filed by the plaintiffs lack merit. Learned counsel for the appellants has made submissions almost on the same lines as had been done before the Courts below. All these objections have been discussed and dealt with by the Courts below in a proper and appropriate manner, rather, I find that in a suit for injunction, there was no necessity of discussing in detail such objections and to scrutinize the legality and validity of the notification issued for Expansion Scheme and land acquired under it.

34. With regard to judgments referred to by learned senior

counsel for the appellants i.e. **The Amritsar Improvement Trust etc.**

Vs. Baldev Inder Singh & Ors., 1972 AIR (SC) 182 and **Bathinda**

Improvement Trust Vs. Madan Lal & Ors., 2016 (4) RCR (Civil)

682. In view of the detailed discussion above, these judgments are not helpful to the case of appellants in any manner.

35. With regard to application bearing No.**CM-4688-C-2014** moved by applicant Rakesh Sharma, he can certainly be not termed to be bona fide purchaser for consideration without notice. As has been discussed in detail above, the land has been properly acquired and stand vested in the Improvement Trust, Amritsar. The plaintiffs were not left with any right or title in the land to transfer the land to Rakesh Sharma, applicant. Therefore, no title stood transferred in favour of the applicant and he cannot possibly be brought on record in place of the original appellants. The application in that regard stands dismissed.

However, the applicant is free to avail of his remedy against his vendors who despite the fact that the land stood acquired and compensation assessed and deposited in the Court with litigation pending, went on to sell of the land to applicant Rakesh Sharma and in the sale deeds in question, copies of which have been attached as Annexures A1 to A5, there is not even a mention of the land having been acquired and vesting in the defendant Trust. The applicant does not come out to be a bona fide purchaser because if he had made enquiries, he would have certainly come to know about the land having

been acquired by the Improvement Trust, Amritsar and litigation pending in that regard. If the applicant has purchased the land, it is at his own peril and risk and he cannot seek any protection under law.

36. Learned senior counsel for the appellants has argued that orchards belonging to the appellants in connected appeal bearing No.RSA-2634-1993 has been exempted by the State Government from acquisition and this benefit be also granted to the appellants. However, in view of the detailed discussion above, it has been observed that no such orchard was proved to be there at the time of acquisition of the land. Therefore, there is no occasion to exempt the same from acquisition. Furthermore, the case in hand is a Regular Second Appeal and not a Writ Petition. Regular Second Appeal is to be decided on its own merits and considering the facts and circumstances of the case and evidence adduced by the parties and there is no question of the appellants seeking parity with any other person whose land might have been acquired under the same scheme. The State Government in exercise of its power might have thought it proper to exempt some orchard etc., belonging to a particular land for certain reasons but that does not confer any right upon the appellants to ask for similar exemption as a matter of right. Therefore, this argument is found to be without force and is rejected.

37. No substantial question of law arises in the Regular Second Appeal. The appeal lacks merit and is dismissed accordingly.

38. With regard to contempt petitions, since the Regular Second Appeal has been dismissed, the interim orders passed have merged in the final order. No ground is there to take any action against the respondents for any alleged contempt of the Court. Thus, both the contempt petitions are also dismissed.

04.07.2023
sumit.k

(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No