

[305] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-285-1991

Date of Decision :30.01.2023

SUBHASH CHANDER

...Appellant

versus

IMPROVEMENT TRUST PATHANKOT AND ORS.Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Vishal Aggarwal, Advocate for the petitioner.
Mr. Kavita Arora, Advocate for the respondents.

B.S. Walia, J. (Oral)

[1] Regular Second appeal has been filed against judgment and decree dated 08.10.1990 passed by the learned Additional District Judge, Gurdaspur in Civil Appeal No.22/98 in case titled as Subash Chander vs. Improvement Trust, Pathankot and another upholding the judgment and decree dated 14.10.1987 passed by the learned Sub Judge Ist Class, Pathankot vide which the civil suit filed by the appellant/plaintiff for a decree of permanent injunction for restraining the respondents/defendants from forcibly dispossessing/dismantling/demolishing the shop marked as ABCD and shown in red colour in the site plan attached with the plaint situated in village Saili, Pathankot, unless he was provided with alternative shop accommodation.

[2] On the pleadings of the parties, the following issues were framed:-

1. *Whether the plaintiff is owner in possession of the property in dispute? OPP*
2. *Whether the plaintiff is entitled to the injunction as requested for ? OPP.*
3. *Relief.*

Thereafter, on the basis of the evidence led, qua issue No.1, it was held that although the appellant/plaintiff had ceased to be owner of the disputed land/property after its acquisition by the respondents/defendants, yet the appellant/plaintiff continued to be in possession over the disputed structure and accordingly, issue No.1 was decided in his favor, qua possession but against him, regarding ownership.

[3] As regards issue No.2, learned trial Court held that the compensation in respect of the acquired site having been deposited and the appellant/plaintiff not having filed appeal against the verdict of the Court regarding the assessment of the compensation after depositing of the compensation assessed by the competent Court for the acquisition of the disputed structure as well as the site covered by the same, the respondents/defendants-Trust had the right to acquire its possession and the appellant/plaintiff had no right to remain or continue in possession over the same and that the respondents/defendants in the circumstances could not be restrained from taking possession thereof. Accordingly, issue No.2 was decided against the appellant/plaintiff.

[4] As regards the claim for alternative accommodation before dispossessing the appellant/plaintiff from the disputed structure, learned trial Court referred to Section 27 of the Punjab Town Improvement Act, 1922 (for short - “the Act”) which is reproduced as under:-

“Any resident house-owner who is likely to be displaced by the execution of any scheme under this Act, may apply to the trust to be re-housed, and no such scheme shall be put into execution until a re-housing scheme as provided for in Section 26 for the re-housing of such resident house-owners as may

apply under this Section has been completed.”

and held that claim would be attracted in terms of Section 27 of the Act ibid only in case the same pertained to a residential house whereas the dispute in the instant case was regarding the structure raised for running a brick kiln and presently, allegedly being used for running a Karyana shop by the appellant/plaintiff, accordingly, the disputed structure / or business in the premises in respect thereto was not covered under the law contained in Section 27 of the Act, therefore, it was not mandatory for the respondents/defendants to provide the appellant/plaintiff with alternative accommodation before taking possession of the disputed property, therefore, the appellant/plaintiff could not be held entitled to relief of a permanent prohibitory injunction against the respondents/defendants. Accordingly, case on the issue was decided against him and in view of the same, the suit was dismissed vide judgment and decree dated 14.10.1987.

[5] The learned Additional District Judge, Gurdaspur dismissed the appeal filed by the appellant/plaintiff while affirming the judgment and decree dated 14.10.1987 passed by the learned Sub Judge, 1st Class, Pathankot. Learned Additional District Judge, Gurdaspur while relying upon the provisions of Sections 26 and 27 of the Act ibid held that rehabilitation was permissible only qua a residential house which had been acquired for execution of any scheme under the Act, whereas under Section 26 of the Act it was the sole discretion of the Trust to frame a rehousing scheme as in the opinion of the Trust was required to be

scheme under the Act, unlike the provision of Section 27 of the Act *ibid* which could be enforced through a Court, whereas the provision of Section 26 of the Act could not be enforced through a Court as the discretion lay solely with the Improvement Trust to frame rehousing scheme and since the shop in question was being used as an office for a brick kiln and the appellant/plaintiff had made a reference to the learned District Judge and got enhanced compensation, the appeal was dismissed.

[6] Learned Counsel for the appellant contended that pursuant to the decision by the Courts below, it is learnt that the respondents have taken a decision to release some of the land of the scheme. However, neither was the said point in issue before the Courts below nor is there any material in respect thereto on the record. Learned Counsel contends that in the circumstances he does not press the instant appeal but prays for liberty to represent to the respondents for consideration of the appellant's prayer for release of land in accordance with law as per scheme if any framed.

[7] Per contra, learned counsel for the respondents-Trust contends that the sole argument of the appellant/plaintiff is of his not having been provided with alternative accommodation qua the shop along with structure which was acquired under the scheme but he had failed to show any legal right in respect thereto or that Section 27 of the Act *ibid* was applicable and the same provided for rehabilitation only in case of acquisition of residential property whereas admittedly in the instant case, the acquired premises was a shop structure. Besides, as is evident from the judgment and decree dated 08.10.1990 passed by the

learned Additional District Judge, Gurdaspur, the appellant/plaintiff had made a reference to the learned District Judge and got enhanced compensation.

[8] I have considered the submissions of learned counsel for the parties.

[9] Admittedly, the sole claim of the appellant/plaintiff is for being rehabilitated pursuant to acquisition of the shop and structure thereon. However, the appellant on a reference made by him to the learned District Judge got enhanced compensation. Learned Counsel, neither from the pleadings nor by reference to any provision of law has been able to substantiate the claim for rehabilitation. No other point has been argued.

[10] In the circumstances, no question of law much less substantial question of law arises for consideration. Accordingly, finding no merit in the appeal, the same is dismissed but with the liberty as prayed for by the learned counsel for the appellant.

(B.S. Walia)
Judge

30.01.2023
'Amit'

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