

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-3141-2022 (O&M)
Reserved on: 12.01.2024
Date of decision: 31.01.2024

THE CHIEF ADMINISTRATOR, HSVP AND ANR.

..Petitioners

Versus

AJIT SINGH (SINCE DECEASED) THROUGH HIS LRS AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arvind Seth, Advocate
for the petitioner(s).

Mr. Adarsh Jain, Advocate
for the respondents.

ANIL KSHETARPAL, J.

1. While invoking the superintending power of the High Court vested under Article 227 of the Constitution of India, the petitioners (defendants before the trial Court) pray for quashing of orders passed on 19.05.2022, and 25.05.2022. By order dated 19.05.2022, the trial Court has refused to reject the plaint, whereas, vide order dated 25.05.2022, the petitioners have been directed to reflect any litigation, if pending, before any Court qua the suit property in their auction notices and publication.
2. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.
3. In order to acquire the land for a public purpose, the State of Haryana issued a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the '1894 Act') on 15.05.1997, for acquiring

the land including that of the respondents. Objections under Section 5A of the 1894 Act were filed by the petitioners. Thereafter, a declaration under Section 6 of the 1894 Act was published. The respondents filed CWP-5838, 5840 of 2000, before the High Court for quashing the notification published under Section 4 and 6 of the 1894 Act. During the pendency of the writ petitions on 13.05.2000, the Land Acquisition Collector, Gurugram, pronounced the award with respect to the acquired land. On 04.10.2000, the High Court disposed of the writ petitions while granting liberty to the respondents to make a representation for redressal of their grievance before the Chief Administrator, Haryana Urban Development Authority, which has now been renamed as Haryana Shahari Vikas Pradhikaran Nigam. On rejection of the aforesaid representation, the respondents filed two writ petitions i.e. CWP-649 & 650 of 2003, in the High Court while praying for setting aside the award passed by the Land Acquisition Collector and acquisition proceedings. The order rejecting the representation was also assailed. The aforesaid writ petitions were disposed of on 09.03.2004, with the following order:-

“The pleading in the instant case reveal a large number of disputed question of facts in the aforesaid view of the matter does not possible for us to entertain the instant controversy in exercise of our jurisdiction under Article 226 of the Constitution of India. In view of the above, the petitioners are relegated to their ordinary civil remedy if they be so advised.”

5. Thereafter, the respondents filed a suit for declaration and permanent injunction before the Civil Court at Gurugram on 12.04.2004, which was dismissed on 25.10.2004. The learned trial Court dismissed the suit filed by the respondents on 29.10.2011, which was upheld in appeal by

judgment dated 12.01.2012. The respondents thereafter filed a regular second appeal in the High Court, which remained pending. On 29.02.2016, the respondents filed another civil writ petition seeking the benefit of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the '2013 Act'), which was also dismissed on 29.02.2016. The regular second appeal filed by the respondents was dismissed on 08.07.2020. SLP (Civil) No.13279-2020 was also dismissed by the Supreme Court on 23.11.2020, while declining to interfere in the judgment of the High Court passed in regular second appeal on 08.07.2020. The respondents thereafter filed an application before the High Court to recall order dated 09.03.2004, whereby, the respondents were relegated to the alternative remedy. The aforesaid application is stated to be pending. In the meantime, the respondents at the first instance filed CM-5734-2021 for restraining the petitioners from interfering in the respondents peaceful possession. Thereafter, they filed CM-16788-2021 for restraining the petitioners not to carry out development work and the said application was disposed of with the observation that the development work, if any, undertaken in the meantime will be subject to outcome of the main case. The respondents thereafter again filed a special leave petition before the Supreme Court, which was also dismissed. On 12.05.2022, the respondents filed a fresh suit for grant of decree of declaration with a consequential relief of permanent and mandatory injunction. On a careful reading of the plaint, it is evident that apart from narrating the facts, which have already been noticed, the respondents have stated that the petitioners are required to disclose about the

pending litigation, whereas, the petitioners have issued a public notice for auction of the property. The respondents while referring to Section 55 of the Transfer of Property Act, 1882, claim that the seller is bound to disclose to the buyer any material defect in the property or in the sellers title. While submitting that the defendant should not have issued any public notice auctioning the property, the suit has been filed with the following prayers:-

“It is, therefore, the plaintiffs most humbly pray that

i. A decree of declaration to the effect that the publication of auctioning of the plot which is carved out from the land which is described in Para No.1 of the plaint and the publication made by the defendant no.2/Estate Officer of HSVP-II in the daily newspaper Dainik Jagran dated 28.03.2022 and other newspapers for Auction on 30.04.2022 by declared illegal, unlawful and not binding upon the interest of the plaintiffs in any manner.

ii. A Decree of Declaration that if any auction has taken place, is also illegal null and void-ab-initio and not binding upon the rights of the plaintiffs since the same has been undertaken by the defendants without following the due process of law and without disclosing material particulars in their auction notice more particularly w.r.t. the pendency of the litigation before the Hon'ble High Court and the passing of the order dated 11.11.2021.

iii. Further, the plaintiffs are also prayed for a Decree of permanent injunction and mandatory injunction restraining the defendants from proceeding further with the auctioning of the plots part of the suit land in any manner be also passed against the defendants or the development of the same in any manner without following due process of law.

iv. Any other order which this Hon'ble Court may deems fit and proper be also passed in favour of the plaintiffs against the defendants.”

6. The petitioners filed application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as the ‘CPC’), to reject the plaint on the ground that the plaint does not disclose cause of action and multiple proceedings initiated by the respondents simultaneously is not appropriate. The trial Court rejected the application by primarily

considering that the principle of *res judicata* is not applicable on the suit. The Court also observed that the plaint cannot be rejected on the basis of allegations made by the defendant in his written statement and therefore, the issue of plaintiff having no cause of action has not been discussed in detail by the trial Court except a small reference that perusal of the plaint reflects existence of cause of action exists in favour of the respondents. As already noticed, the correctness of the aforesaid order has been challenged in this revision petition.

7. On 15.09.2023, after hearing the learned counsel representing the parties, this Court called upon the respondents to place on record all the relevant material to enable the Court to examine the matter in detail. Pursuant thereto, the respondents have filed an application along with the order passed by the High Court on 04.10.2000, civil writ petition dated 07.01.2003, order of High Court dated 09.03.2004, judgment and decree passed by the Trial Court on 29.10.2011, application filed by the respondents for revival of the writ petition, orders passed by the High Court on 09.02.2021 and 11.11.2021.

8 This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the requisitioned record.

9. Undoubtedly, the power under Order VII Rule 11 of the CPC is required to be exercised after examining only the contents of the plaint. Simultaneously, the Court is bound to reject the plaint, if the litigation is manifestly vexatious and does not disclose any right to sue. In **T. Aravind**

Nandanam Vs. T.V. Satyapal and another, (1977) 4 SCC 467, the Supreme

Court held as under:-

“We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now, pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful-not formal-reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever, drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X C.P.C. An activist Judge is the answer to irresponsible law suits. The trial court should insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code (Cr. XI) is also resourceful enough to meet such men, and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi

“It is dangerous to be too good.””

10. Thereafter, in **Raj Narain Sarin (dead) through LRs and others Vs. Laxmi Devi, (2002) 10 SCC 501**, the Supreme Court held as under:-

“7. As noticed above, the learned Single Judge of the Allahabad High Court though elaborately laid down the requirement of Order 7 Rule 11 and the true effect thereof, but in our view, totally misread and misapplied the provision in the contextual facts. No explanation whatsoever is available on the complaint as to the situation under which the suit was filed after about a long period of 40 years. The knowledge of the deed of sale stands accepted by reason of the averment in the complaint itself (vide para 9 of the complaint).

8. On an analysis of the complaint, apart from there being a mere bald statement that the sale deed has nothing to do with the rest of the area i.e. bighas 13 biswas and the bungalows built thereon which stand to be owned and

possessed by the plaintiff and prior to him by Munni Lal, there is no other averment tracing the title for 6 bighas and 13 biswas. Admittedly, several portions of the plot stood demarcated as being 3 bighas 13 biswas and the other being 6 bighas 13 biswas; whereas there is no dispute as regards 3 bighas 13 biswas but the conferment of title on to the plaintiff as regards 6 bighas 13 biswas is not available in the plaint itself. The plaint is totally silent on that score, though, however, the existence of the deed of sale noticed above stands accepted by the plaintiff. The litigation, in our view, cannot but be termed to be utterly vexatious and abuse of the process of court, more so by reason of the fact that the deed of sale being executed as early as 1941 stands unassailed for a period of over 50 years. The decision of this Court in T. Arivandandam has its due application and having regard to the decision as noticed above and upon consideration of the relevant provisions as engrafted in the Code itself, we have no hesitation in accepting the order of the learned Additional District Judge. The High Court obviously fell into a manifest error and as such this appeal is allowed. The order of the High Court stands set aside. The order of the learned Additional District Judge stands restored. No order as to costs.”

11. Recently, in **Dahiben Vs. Arvindbhai Kalyanji Vs. Bhanusali (Gajra) through his LRs, (2020) 7 SCC 366**, the Court held that vexatious and frivolous litigation is required to be dismissed outrightly.

12. From the facts already noticed, it is evident that the respondents are indulged in multiple litigations simultaneously. On the one hand, the respondents have already filed an application for recall in the High Court, which is pending. In the aforesaid proceedings, the respondents have already filed an application restraining the petitioners (defendants before the trial Court) from carrying out any development work. The High Court disposed of the application while observing that the development work, if any undertaken in the meantime would be subject to the outcome of the main case. Against this order, the respondents filed a special leave petition, which has been dismissed. On a careful perusal of the plaint, it is evident that the

respondents in their plaint itself have disclosed all these facts. In these circumstances, it is evident that the respondents are simultaneously indulging in parallel proceedings in order to achieve the desired result. In fact, the respondents have indulged in 'Forum Shopping', and that must be strictly dealt with. After having failed to get the desired relief from the High Court and the Supreme Court, the respondents have filed the present suit. In any case, the entire edifice of the suit is based on the fact that the respondents may get some relief in the application filed for recalling the order passed by the High Court while relegating him to the alternative remedy. If the application is dismissed, the acquisition of the land for the public purpose is already complete. The suit property now vests in the government and its instrumentalities free from all encumbrances from the date of award of the Land Acquisition Collector, which was announced in the year 2000. The period of 24 years have already elapsed, however, the respondents are continuing to prolong the litigation. It is evident that except pendency of recall application, respondents are not left with any right, title or interest in the property acquired by the government. In these circumstances, the trial Court was expected to examine the ground of 'lack of cause of action' in detail. The trial Court erroneously rejected the petitioners application while writing only one sentence that "Perusal of the plaint reflects existence of cause of action in favour of the plaintiff". As already noticed, the entire foundation of the plaintiffs' case is based upon the pendency of recall application filed before the High Court. The trial Court was also aware of the fact that a similar application was filed in the High Court by the respondent in which a particular order has been passed, which

has been upheld by the Supreme Court, however, still the trial Court not only dismissed the application but also directed the petitioners to show the pending cases qua the suit property in their auction notices and publications.

13. Keeping in view the aforesaid discussion, this Court is of the considered view that the respondents have not only indulged in ‘Forum Shopping’ but also the plaint fails to disclose any cause of action or any right, title or interest in the land, which was acquired except pendency of recall application.

14. With these observations, the revision petition is allowed. Both the orders dated 19.05.2022 and 25.05.2022, are set aside and the plaint filed by the respondents before the trial Court shall stand rejected.

15. All the pending miscellaneous applications, if any, are also disposed of.

January 31st, 2024

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(ANIL KSHETARPAL)
JUDGE

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