

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.881 of 1993(O&M)
Reserved on:26.11.2024
Date of Order: 16.01.2025

State of Punjab

...Appellant

Versus

Hardev Singh(deceased) through LRs and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Salil Sabhlok, Sr.DAG, Punjab
for the appellant.

Mr. Amit Jain, Sr. Advocate, with
Mr. Chetan Salathia, Advocate
for respondent no.1.

ANIL KSHETARPAL, JUDGE.

1. FACTUAL BACKGROUND

1.1 In this Regular Second Appeal, the defendant no.1 assails the correctness of judgment and decree passed by the First Appellate Court which in turn has reversed the trial court's judgment and decree.

1.2. The following questions have come up for adjudication:-

- (1) *What is the date when the period of limitation to file civil suit would begin to run if the property is acquired by the Government in accordance with the provisions of Land Acquisition Act, 1894?*
- (2) *If the Civil Court in the civil suit filed by the third party declares acquisition of land by the government illegal whether such judgment shall be binding in the*

subsequent suit filed by another person?

- (3) *Whether civil court's jurisdiction is excluded to examine the validity of the acquisition of the property by the Government in accordance with the provisions of Land Acquisition Act, 1894?*

1.3. In this case, the State of Punjab while invoking urgency provision under Section 17 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the 1894 Act') issued notification under Section 4 read with Section 17(2) on 25.01.1978, which was followed by a declaration under Section 6 on 27.01.1978. The award was announced by the Land Acquisition Collector on 27.03.1978 and as per the findings of fact arrived at by the Courts below, the plaintiff received compensation on 08.01.1979, vide voucher no174, Ex.D8. While appearing as PW3, the plaintiff admits the receipt of compensation. He also does not dispute the receipt of notice under Section 9 of the 1894 Act and defendants no.2 to 4, his brothers, also received compensation in the year 1979. He filed the suit for grant of decree of declaration on 01.10.1984, claiming that he along with defendants no.2 to 4 (his brothers) are owners in possession of half share of land measuring 13 bighas and 2 biswas and the acquisition of the land is illegal and void.

1.4. While filing the written statement, the defendant-State of Punjab objected to the maintainability of the suit. It was also asserted that the physical possession was taken on 13.01.1978, hence, the suit land vests in the State of Punjab free from all encumbrances. The suit has been filed after the lapse of period of limitation and now the property vests in the State absolutely.

1.5. The following issues were framed by the trial court:-

- “1. *Whether the suit is within limitation?OPP*
2. *Whether notifications dated 25.01.1978 and 27.01.1978 are null and void?OPP*
3. *Whether Civil Court has no jurisdiction to try the controversy between the parties?OPD*
4. *Whether the plaintiff along with defendants no. 2 to 4 are owners in possession of suit property?OPP*
5. *Whether the plaintiff is entitled to injunction prayed for?OPP*
6. *Relief.”*

1.6. Vide judgment dated 10.09.1987, Additional Senior Sub Judge dismissed the suit which as already noticed, has been reversed by the First Appellate Court on 05.01.1990.

1.7. This appeal was admitted for regular hearing and has now come up for final disposal.

2. **ANALYSIS AND DISCUSSION:-**

2.1 Heard the learned counsel representing the parties at length and with their able assistance perused the paper book along with the requisitioned trial court record.

2.2 The correctness of the facts is not disputed. The plaintiff relies upon the judgment passed by the High Court in CWP No.1016 of 1998, filed by Baldev Singh and Sukhdev Singh to challenge the acquisition which was allowed on 24.05.1982. The aforesaid judgment was upheld by the LPA Bench on 26.10.1982. The plaintiff also relies upon judgments Ex.P9 and Ex.10, passed by the Civil Court and the First Appellate Court, in a third party suit declaring the acquisition to be illegal.

2.3. The First Appellate Court has reversed the decree passed by the trial court on the following grounds:-

- (1) The judgments Ex.P9, Ex.P10, Ex.P11 and Ex.P12, are binding.
- (2) The plaintiff is in possession and hence his rights were jeopardized only when he was sought to be dispossessed. Therefore, the period of limitation will begin to run from that date. Reliance has been placed on the Division Bench judgment in Niamat Singh vs. Darbari Singh etc., 1956 The Punjab Law Reporter, 461.

QUESTIONS NO.(1):

“What is the date when the period of limitation to file civil suit would begin to run if the property is acquired by the Government in accordance with the provisions of Land Acquisition Act, 1894?”

2.4. The plaintiff has filed a civil suit for grant of decree of declaration, hence, the same shall be governed by Article 58 of the Schedule attached to the Limitation Act, 1963, which reads as under:-

Article	Description of suit	Period of limitation	Time from which period begins to run
58	To obtain any other declaration	Three years	When the right to sue first accrues

2.5 Even if the respondent (plaintiff) continued in possession after the award was passed by the Land Acquisition Collector, the same is not referable to any entitlement of the plaintiff, hence, it was illegal. Article 58 of the Schedule attached to the Limitation Act provides that the period of limitation will begin to run from the date the first cause of action arise which in the facts of this case would arise at least on the date of award of the Land

Acquisition Collector. Hence, the continuous illegal possession of the plaintiff would not result in beginning the period of limitation.

2.6 The right to sue i.e. the period of limitation will begin to run when it accrues for the first time. The plaintiff admits receipt of notice under Section 9 of the 1894 Act. He also admits receipt of compensation on 08.01.1979. A notification under Section 4 read with Section 17(2) was published in the government gazette on 25.01.1978. Hence, the limitation will begin to run from the date notification under Section 4 was issued. In any case, it would begin to run from the date declaration under Section 6 was published on 27.01.1978 and the award was passed on 27.03.1978, whereas the plaintiff filed the suit on 01.10.1984. The period of limitation is three years. Hence, the suit filed by the plaintiff was time barred. The judgment passed in Niaamat Singh's case (supra) is not applicable because in this judgment the suit was filed for declaration. The court held that the adverse entry in the revenue record would not necessarily give rise to cause of action if the party continues to be in possession. However, the aforementioned case was not with respect to acquisition of the land by the Government in accordance with the provisions of the Act. Hence, the said judgment is not applicable to the facts of the present case. The First Appellate Court has erred in assuming that the period of limitation will not begin to run only because the plaintiff continued its physical possession. The court has overlooked that the date on which the Controller made an award under Section 11, the plaintiff is entitled to take possession which shall thereupon vest absolutely in the government free from all encumbrances under Section 16 of the 1894 Act. Hence, the suit was filed beyond the prescribed period of limitation as provided in Article 58.

QUESTION NO.(2)

“If the Civil Court in the civil suit filed by the third party declares acquisition of land by the government illegal whether such judgment shall be binding in the subsequent suit filed by another person?”

2.7. The plaintiff relies upon the judgments Ex.P-9, Ex.P10, Ex.P11 and Ex.P12. Ex.P11 is a judgment passed in a writ petition filed by Baldev Singh and Sukhdev Singh challenging acquisition in 1978, itself. The learned Single Judge quashed the notification under Sections 4 and 6, so far as they relate to the land of the petitioners therein. Hence, the aforesaid judgment does not amount to the declaration of law that the acquisition is bad in the eyes of law. Ex.P12 is a judgment passed by LPA Bench upholding the judgment of the Single Bench. Ex.P9 and Ex.P10, are judgments passed by the trial court and the First Appellate Court in a civil suit filed by Gobind Kaur and others for declaration that they are owners in possession. The aforesaid civil suit was decreed which in appeal was upheld. The First Appellate Court has erred in declaring that such judgment is binding. Sections 40 to 44 of the Evidence Act, 1872, examine the judgment of the Courts of justice when relevant. In this case, neither Section 40 nor Section 41 or Section 42 are applicable. Section 43 itself provides that the judgments, orders or decrees other than those mentioned in Section 40, 41, and 42, are irrelevant. The First Appellate Court has overlooked Section 43. In this case, Section 44 is also not applicable.

2.8. Hence, the First Appellate Court has erred in observing that the previous judgments are binding.

QUESTION NO.(3)

“Whether civil court's jurisdiction is excluded to examine the validity of the acquisition of the property by the

Government in accordance with the provisions of Land Acquisition Act, 1894?”

2.9. This issue is no longer *res-integra* in view of the consistent judgments passed by the Supreme Court in the following cases:-

- (1) *State of Bihar vs. Dhirender Kumar, (1995) 2 SCC 229;*
- (2) *Laxmi Chand and others vs. Gram Panchayat, Kararia and others, (1996) 7 SCC 218;*
- (3) *Commissioner, Bangalore Development Authority vs. K S Narayan, (2006) 8 SCC 336;*
- (4) *Commissioner, Bangalore Development Authority and another vs. Brijesh Reddy and another, (2013) 3 SCC 66.*

2.10. The First Appellate Court has also overlooked the fact that the land once vested in the State cannot be divested. Reference can be made to the judgment passed by the Supreme Court in *Awadh Bihari Yadav & Ors vs The State Of Bihar & Ors, (1995) 6 SCC 31* and *UP Jal Nigam, Lucknow through its Chairman and another vs. Kalra Propervies (P) Ltd., Lucknow and others, 1996 (3) SCC 124.*

3. **DECISION:-**

3.1. Hence, the judgment of the First Appellate Court is unsustainable. Consequently, it is set aside and that of the trial court is restored.

3.2. The Regular Second Appeal is allowed.

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

16th January, 2025
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/non-speaking
Whether reportable

YES/No
YES/No