

In the High Court of Punjab and Haryana, at Chandigarh

1.

Regular Second Appeal No. 276 of 2023 (O&M)

Punjab Urban Planning and Development Authority (PUDA)

... Appellant(s)

Versus

Raj Kaur

... Respondent(s)
2.

Regular Second Appeal No. 284 of 2023 (O&M)

Punjab Urban Planning and Development Authority (PUDA)

... Appellant(s)

Versus

Gurjeet Singh

... Respondent(s)
3.

Regular Second Appeal No. 285 of 2023 (O&M)

Punjab Urban Planning and Development Authority (PUDA)

... Appellant(s)

Versus

Jang Singh

... Respondent(s)
- AND
3.

Regular Second Appeal No. 286 of 2023 (O&M)

Punjab Urban Planning and Development Authority (PUDA)

... Appellant(s)

Versus

Charat Singh

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Harsh Aggarwal, Advocate
for the appellant(s).

Mr. Harkiran Singh Sandhu, Advocate
for the respondent(s).

Anil Kshetarpal, J.

I. Brief Facts

1. With the consent of the learned counsel representing the parties, four connected regular second appeals, namely Regular Second Appeals No. 276, 284, 285 and 286 of 2023 shall stand disposed of by this common order.

2. After having heard the learned counsel representing the parties, this Court is of the view that the matter is required to be remitted back to the Trial Court for fresh decision. Hence, only the relevant facts, in brief, are being noticed.

3. In the year 1968, a preliminary notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as “the 1894 Act”) was issued which was followed by the declaration under Section 6. Two different awards in the years 1969 and 1971 were passed to finally acquire the land followed by the appellant taking possession. However, in the year 1971, the acquisition was quashed by the High Court. On 13.02.1973, a fresh notification under Section 4 of the 1894 Act, proposing to acquire the land measuring 1103 kanals (137.89 Acres) which was followed by a declaration under Section 6 in two parts. First declaration under Section 6 of the 1894 Act was published with respect to the land measuring 550 kanals 9 marlas i.e. 69.93 acres, whereas the second

notification under Section 6 was issued with respect to the land measuring 12 kanals 8 marlas (1.61 acres), located in village Sahib Nagar, Theri. The residential area of the said village is comprised in khasra No. 50 which measures 706 kanals 14 marlas. This parcel of land falls within the '*lal lakeer*' area. Out of the land measuring 559 kanals 9 marals, 109 kanals 8 marlas and the entire land measuring 12 kanals 18 marals from khasra No. 50 was acquired. Thus, the total land measuring 122 kanals 6 marlas was acquired out of khasra No. 50. Accordingly, the awards were announced on 21.03.1974.

4. The appellant herein (PUDA) purchased the land measuring 421 kanals 2 marlas from Y.P.S. School out of which the land measuring 159 kanals 11 marlas was comprised in khasra No. 50. As such, the appellant became the owner of the land measuring 281 kanals 17 marlas out of khasra No. 50. The appellant gave the land measuring 25 kanals 16 marlas to Punjab Wakf Board. Thus, the total land left with the appellant was 256 kanals 1 marla comprised in khasra No. 50 which was utilized for carving out a colony. The appellant claims that during militancy, numerous persons including the plaintiffs or their predecessors had encroached upon the aforesaid acquired land falling in khasra No. 50. The appellant started requesting for demarcation which was carried out on 28.02.2005, and Tehsildar, PUDA, came to a conclusion that the PUDA is in excess possession of the land measuring 45 kanals 16 marlas. However, the aforesaid report was set aside by the higher authorities on 25.04.2005. In the year 2011, once again fresh demarcation was carried out and the PUDA was again found in excess possession of the land measuring 8

kanals 1 marla which was again set aside by the authorities. Subsequently, the appellant sent a notice under Section 46(1)(b) of the Punjab Regional and Town Planning Development Act, 1995 (hereinafter referred to as “the 1995 Act”) to which reply was filed. Subsequently, another notice was issued under Section 46(1)(b) of the 1995 Act to which the plaintiffs filed their replies. Thereafter, they filed four separate suits for the grant of injunction. Raj Kaur, the plaintiff (one of the respondents herein), claims that the land measuring 1238 square yards was her ancestral property which was sold to Karan Singh, Balwinder Singh and Harnek Singh in equal shares vide sale deed dated 12.11.1990. However, Harnek Singh surrendered his share i.e. 412.66 square yards in her favour. The PUDA claims that she has encroached upon the land measuring 315 square yards. Gurjit Singh (respondent No.2) claims ownership of the land measuring 296 square yards having been inherited from his father Satwant Singh. On the other hand, the PUDA claims that he has encroached upon the land measuring 303.64 square yards. Jang Singh (respondent No.3) claims the ownership of the land measuring 310 square yards having been inherited from his father Karan Singh who purchased it from Raj Kaur vide sale deed dated 12.11.1990. The PUDA claims the encroachment of the land measuring 301.01 square yards by him. Charat Singh (respondent No.4) claims the ownership of the land measuring 460 square yards on the basis of an unregistered agreement to sell dated 05.04.2002, from Maan Singh, who purchased it from Kehar Singh vide sale deed dated 17.09.1990.

II. Analysis and Discussion

5. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book along with the requisitioned record. They have also filed the synopsis in support of their submissions.

6. In this case, both the Courts below have committed the following errors:-

- I) The Court ought to have ordered demarcation of the property in order to arrive at the correct conclusion. On the one hand, the appellant claims encroachment by the plaintiffs, whereas the plaintiffs claim ownership. Hence, the dispute could have been simply resolved by getting the property demarcated.
- II) Both the Courts below have erred in overlooking Ex.D16, sale deed executed by Y.P.S. School in favour of the appellant with respect to the land measuring 421 kanals 2 marlas out of which the land measuring 159 kanals 11 marlas is comprised in khasra No. 50.
- III) The plaintiffs were required to prove the ownership of their vendors in order to claim the ownership of the property. It is a well settled principle that the purchaser will get title of the property only if his vendor possesses a title. No one can pass on title better than what they possess.
- IV) The sale deeds/documents relied upon by the defendant

do not refer to any khasra number or other significant details.

V) The plaintiffs, in each case, were required to stand on their own legs. However, the Courts have wrongly shifted the onus upon the defendants to prove the encroachment by them.

VI) Both the Courts below have overlooked that the demarcations carried out in the year 2005 and 2011 were set aside by the higher/superior authorities.

III. Decision

7. Keeping in view the aforesaid discussion, all the appeals are allowed and the judgments passed by both the Courts below in all the four civil suits are set side while remitting the matter back to the Trial Court for fresh decision. The Trial Court is directed to appoint an experienced revenue official who will demarcate the property by using the traditional method as well as with the help of Total Station Machine having GPS facility so as avoid making any error. The parties shall also be given opportunities to lead their further evidence if they pray for. Thereafter, the Trial Court will decide the matter afresh.

8. The miscellaneous application(s) pending, if any, in all the appeals, shall stand disposed of.

**(Anil Kshetarpal)
Judge**

March 21, 2025

“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No