

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****114****RSA-1069-2023 (O&M)****Date of decision: 20.01.2026****The Estate Officer, Haryana Urban Development Authority,
now Haryana Sheri Vikas Pradhikaran, Sector 12, Faridabad****...Appellant(s)****Vs.****Samunder Singh and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Abhishek Sindhu, Advocate
for Mr. Dhananjay Mittal, Advocate
for the appellant.

Ms. Kushaldeep Kaur, and
Ms. Sharvi Dadhwal, Advocate
for respondents No.1 and 2.

NIDHI GUPTA, J.**CM-4085-C-2023**

Prayer in this application filed under Section 151 CPC read with
Section 5 of the Limitation Act is for condonation of delay of 14 days in
refiling the accompanying appeal.

2. Heard.

3. For the reasons mentioned in the application which is duly
supported by an affidavit of the applicant/appellant, the same is allowed
and delay of 14 days in refiling the appeal is condoned.

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Defendant No.1 is in Second Appeal against the concurrent judgments and decrees of the learned Courts below; whereby suit filed by the plaintiffs/respondents No.1 and 2 herein, for declaration, mandatory injunction with consequential relief of permanent injunction, has been decreed by both the Courts below.

2. Brief facts as pleaded in the plaint are that the plaintiffs are owners in possession of land bearing khasra No. 58, Killa No. 21/1 measuring 4 Killas (hereinafter referred to as "suit land") as described in the plaint as per the Jamabandi records of 1993-1994 and 1988-1989. It was pleaded that the said land has come to the ownership of the plaintiffs by way of ancestral property. Even in the Jamabandi for the year 2003-2004 and 2008-2009, plaintiffs are shown to be owners in possession of the said land. It was pleaded that the suit land had gone into sehlab/flood, and had therefore, been lying abandoned. In December 2013, plaintiffs had discovered that their land was visible and was cultivable. Accordingly, on 24.12.2013, son of the plaintiff No.1 had visited the land. Whereupon it was discovered that the said land had been encroached by defendant No.7 i.e. Christian Graveyard. When the plaintiffs contacted defendant No.7, he was informed that HUDA, Faridabad and defendants No.1 and 2 had given them contract for construction of boundary wall around the land and levelling of the land for construction of Christian Graveyard. It was alleged that defendants were trying to grab the property of the plaintiffs which had been in their possession for over 100 years as also recorded in the revenue records, which were being maintained by



defendants No. 8 and 9 i.e. Tehsildar Ballabgarh and Deputy Commissioner, Faridabad respectively. With these pleadings, present suit was filed on 14.01.2014.

3. Upon notice, defendants No.1 and 2 had appeared and filed joint written statement averring that the suit land had been acquired by the said defendants vide Award No. 14 dated 30.11.1971 for public purpose and possession thereof had been taken. It was stated that part of the suit land had thereafter been allotted to defendant No.7. Moreover, the said defendants had invested huge amount in the suit land. It was further alleged that plaintiffs are trespassers on the suit land as the land already stood acquired by the defendants.

4. Other defendants filed separate written statements.

5. Upon appraisal of the pleadings and the evidence led by the parties, the learned Civil Judge (Junior Division), Faridabad had decreed the suit of the plaintiffs for declaration, mandatory and permanent injunction vide judgment and decree dated 05.01.2019. Against the said judgment and decree dated 05.01.2019, three Civil Appeals were filed including Civil Appeal No. 73 dated 04.02.2019 filed by defendants No.1 and 2/appellants. All the three Civil Appeals were dismissed with costs by learned Additional District Judge, Faridabad vide common judgment and decree dated 30.11.2021. Hence, the present second appeal by defendant No.1.

6. It is *inter alia* submitted by learned counsel for the appellant that the learned Courts below were in patent error in non-suiting the



appellant as they failed to appreciate that the suit land had been duly acquired by the appellant vide Award No. 14 dated 30.11.1971. It is submitted that the Courts below have failed to consider the rapat roznamcha for the year 1971-1972 Ex.D1, which was attached with the Award dated 30.11.1971, which clearly reflects the acquisition of the land by HUDA. It is contended that the rapat roznamcha duly contains the details of the suit land alongwith 90 other khasra numbers that were acquired by the Award dated 30.11.1971. However, these facts have not at all been considered by the learned Courts below while non-suiting the appellant.

7. It is contended that learned Courts below have also failed to appreciate that the land in question was allotted vide allotment letter, memo number 4015 dated 01.02.2011 (Exhibit-DW2/2) to Society Faridabad Christian Cemeteries Committee (Regd.), Old Faridabad and the offer of possession was made vide memo number 17455, dated 10.07.2012 (Exhibit-DW2/4). It is submitted that the learned lower courts below without taking into consideration the said documents have wrongly passed judgments in favor of the plaintiffs.

8. It is further submitted by learned counsel for the appellant that the learned courts below have further ignored the fact that the suit of the plaintiffs was time barred as they approached the court after a lapse of 43 years from the date of acquisition.

9. Learned counsel further submits that the learned courts below had no jurisdiction to entertain the suit under section 9 of the Code



of Civil Procedure, 1908 as any issue regarding Land Acquisition must be dealt under the Land Acquisition Act, 1894 itself. The said issue has been dealt by the Hon'ble Supreme Court in case titled as **State of Bihar versus Dhirendra Kumar, 1995 (RCR) 539 (SC)**.

10. Learned counsel for the appellant further submits that the learned courts below have erred in not considering that till the time the award is not challenged and set aside, any acquisition that has been made under the said award cannot be set aside by a suit for declaration. In this regard it is submitted that the award acquired 91 khasra numbers and mentions only the total area that was acquired and does not in particular mention any khasra number. To ascertain the lands that were acquired through the award one must refer to the rapat roznamcha which mentions the entire details of all the khasra numbers that were acquired. Therefore, the finding that land acquisition proceedings were never initiated qua the land in question is illegal and erroneous.

11. It is accordingly prayed that the present Appeal be allowed; and the impugned judgments and decrees of Courts below be set aside.

12. No other argument is raised by learned counsel for the appellant. I have heard Id. counsel and perused the case filed in detail. I find no merit in the submissions advanced on behalf of the appellant.

13. It has been contended on behalf of the appellant that suit land was acquired vide Award No. 14 dated 30.11.1971 Ex.D2. However, it is admitted fact on record, and there is categorical and unequivocal findings of fact by both the Courts below, that the relevant Notification



issued by the appellant under Section 4 of the Land Acquisition Act did not contain the suit land bearing khasra No. 58, Killa No. 21/1 measuring 4 Killa. The suit land is not even mentioned under the Notification issued under Section 6 of the Land Acquisition Act. Even in the Award No. 14 Ex.D2, there is no description of the suit land. Thus, for all intents and purposes, the suit land was never acquired.

14. It has been contended on behalf of the appellant that the suit land finds mention in the rapat roznamcha. However, the said argument of the appellant is liable to be rejected in view of the fact that once the suit land does not find mention in the Notifications issued under Sections 4 and 6 of the Land Acquisition Act and even in the Award under Section 9 of the Land Acquisition Act; and, therefore, once the acquisition proceedings were not initiated qua the land in question, then where is the question of the suit land finding mention in the rapat roznamcha. It is also to be noted that appellant had failed to furnish a copy of Notification. Even no order was placed on record to show that any compensation had been directed to be paid, or paid, to the plaintiffs in regard to the said acquisition. Clearly therefore, the appellant had failed to prove acquisition of the suit property. As such, they would have no right over the suit property.

15. Furthermore, the plaintiffs have duly proven their ownership and possession over the suit property by examining PW3 Dinesh Kumar, Halqa Patwari, who had deposed that as per the revenue record Ex.P1 to Ex.P11, khasra No. 58, killa No. 21/1 was recorded in the name of the



plaintiff as owner since 1968-1969. Even as per the khasra girdawari Ex.P11, possession of the plaintiffs is shown over the suit property. Thus, plaintiffs were established to be owners in possession of the land in dispute. The record further bears out that defendants No.1 and 2 had acquired land adjacent to the land in dispute; and that there is dispute regarding demarcation of the suit property. As such, learned trial court has correctly granted liberty to the parties to carry out demarcation.

16. Even otherwise, present Second appeal is liable to be dismissed on the short ground that this Court in Regular Second Appeal has limited jurisdiction to interfere in the concurrent findings of facts returned by the learned Courts below. The Hon'ble Supreme Court in ***M/s. Shivali Enterprises v. Godawari (Deceased) (SC): Law Finder Doc Id # 2034559*** has held that no matter howsoever incorrect or grossly erroneous the concurrent findings of the learned courts below may be, this Court in the Second Appeal can interfere in the concurrent findings only where there is an error in law or procedure. In the present case, no such error in law and procedure has been made out by learned counsel for the appellant.

17. Learned counsel for the appellant is unable to dispute or controvert the above said factual and legal position.

18. In view of the above, no ground is made out to interfere in the concurrent judgments and decrees, and findings of fact of the learned Courts below. The present Regular Second Appeal is hereby **dismissed**.

19. Pending applications, if any, stand disposed of.

20.01.2026

Divyanshi

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No

(NIDHI GUPTA)

JUDGE