

(2006) 07 P&H CK 0204

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1987 of 2006

Haryana State Agricultural Marketing Board and Another

APPELLANT

Vs

Harish Chander and Others

RESPONDENT

Date of Decision : 11-07-2006

Acts Referred:

Land Acquisition Act, 1894 — Section 6

Citation : (2006) 144 PLR 606 : (2006) 3 RCR(Civil) 699

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Advocate : S.P. Singh, for the Appellant; Divya Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Mahesh Grover, J.—The appellants have filed the present appeal against the judgments of the Courts below.

2. Brief facts of the case are that the respondents-plaintiffs filed a suit for declaration and injunction against the present appellants to the effect that they are owner in possession of the land measuring 2 Kanals 8 Marlas comprised in Khasra No. 413/24/1/1/, Khewat No. 4349, Khatauni No. 5521 and the appellants be restrained from encroaching upon any part of the said land by way of constructing road etc. A prayer for mandatory injunction was also made requiring the appellants to vacate the land in question and to deliver its possession to the plaintiffs-respondents. It was specifically pleaded by the respondents that they were owners of 5 kanals and 18 marlas of land which was subjected to acquisition in the year 1971. Three kanals out of this land was acquired and the area measuring 2 kanals 18 marlas was left out from acquisition. In 1995, the appellants wanted to encroach upon the land of the respondents by constructing a road thereon. It was then that the respondents filed the suit mentioned above.

3. The case of the appellants, on the other hand, was that the entire land

measuring 5 kanals 18 marlas had been acquired by the Haryana Government and that the possession thereof had been transferred to the Haryana Agricultural Marketing Board (for short, "the Board") on 26.6.1987 and, therefore, they had every right to raise construction thereon.

4. The Haryana Urban Development, Authority, which was also one of the defendants, took up the plea that the land had been acquired and possession thereof vested in it. It was pleaded that two awards were announced in the years 1958 and 1976 and, therefore, after the awards had been announced, the respondents had no concern with the suit land. It was specifically pleaded that the land comprised in khasra No. 413/24/1 measuring 8 kanals 18 marlas was acquired by the Haryana Government vide award Nos. 32 and 2 dated 7.2.1958 and 21.1.1976 respectively.

5. The trial court decreed the suit of the respondents and held them to be owner in possession of the land measuring 2 kanals and 18 marlas. A decree for permanent injunction was passed in favour of the respondents restraining the appellants from encroaching upon any part of the said land by constructing a road and further mandatory injunction was also granted in their favour directing the appellants to vacate the land in dispute and deliver its vacant possession to them within a period of thirty days commencing from the date of passing of the judgment.

6. The lower Appellate Court affirmed the findings of the trial Court and dismissed the appeal filed by the appellants. Hence, the present appeal.

7. Shri S.P. Singh, learned Counsel for the appellants contended that there was sufficient evidence on record to show that the land stood acquired in the year 1975 and that the compensation was also paid to the respondents and consequently, they had no interest in the same which could survive. According to him, the Court below have returned perverse findings by ignoring the evidence on record. Apart from this, he contended that the suit was barred by limitation and even if, this plea had not been pressed before the Courts below, it was their duty to consider the same and while examining the plaint in that perspective, dismiss the suit as it was a question of law.

8. I have thoughtfully considered the contentions of the learned Counsel and carefully perused the record.

9. The entire case of the appellants is that the land stood acquired and the respondents had no concern with the same, but their own witness, namely, DW-2-Sita Ram, in cross-examination, had admitted while referred to Exhibit P6 which is the notification issued u/s 6 of the Land Acquisition Act, 1894 that only 3 kanals of land comprised in Khasra No. 413/24/1/1 was acquired. He also admitted that Exhibits P8 and P9 are related to the same khasra number which consisted of 3 kanals land. A categorical admission was made by this witness that land measuring 2 kanals and 18 marlas was never acquired and no compensation had been paid even though the compensation in respect of the remaining land

was paid. There is no document on record to show the ownership of the Market committee, Hansi as was the case sought to be put up by the Board. Further, DW-6-Ram Niwas, who was Executive Officer-cum-Secretary of the Market Committee, Hansi, also admitted that only 3 kanals of land from khasra No. 413/24/1/1 was acquired. DW8-Dharampal, Patwari from the office of Land Acquisition Officer, also testified to the same effect. There is thus, overwhelming evidence on record to establish that only 3 kanals of land was acquired and that land measuring 2 kanals and 18 marlas which was the suit land was not subjected to acquisition. Both the Courts below have recorded a consistent finding of fact that the suit land was never acquired. No infirmity or illegality has been pointed out by the learned Counsel for the appellants in the findings recorded by the Courts below. Therefore, I do not find any ground to interfere in the judgments under appeal.

10. Shri S.P. Singh, learned Counsel for the appellants further contended that the suit was barred by limitation as the possession of the land in question was being sought after long lapse of time. However, I do not find any merit in this contention. A perusal of the record shows that even though, the plea of limitation had been raised, yet, the appellants had given up the same and had not pressed it before the Courts below. In view of this, when the objection had been voluntarily abdicated by the appellants, it does not lie in their mouth to arise the plea of limitation in the Second Appeal. Even otherwise, the suit was not only for declaration, but was also for injunction and the respondents were well within their right to file the suit as their possession over the suit land by way of interference by the appellants was being threatened.

11. On the basis of the above discussion, the appeal is held to be devoid of merit and the same is dismissed as such.