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= (2024-2)214 PLR 448 (SN)

PUNJAB AND HARYANA HIGH COURT

Before: Justice Sukhvinder Kaur.

RAJBIR SINGH – Petitioner

Versus

DISTRICT REVENUE OFFICER & others – Respondents

CR-2695 of 2024 (O&M)

Civil Procedure Code, 1908 (V of 1908), Order 39 Rule 1 & 2 – Injunction is an equitable relief – “He who seeks equity, must do equity” – In the facts and circumstances of the case, it appears that the plaintiff has not come to the Court with clean hands and as such, no prima facie case is made out in his favour. [Para 14]

Mr. Akshay Kumar Jindal, Advocate, Mr. Vrishank Suri, Advocate and Mr. Abhishek Shukla, Advocate for the petitioner. Mr. RKS Brar, Additional Advocate General, Haryana, for respondents No.1 & 2. Mr. J.P. Sharma, Advocate for respondent No.3.

Cases referred:

1. , 2020(1) AIR Bom.R645,, Bhupendra Singh v. The Competent Authority for National Highway No.6 and the Deputy Collector (Gen.), Land Acquisition (Gen.) Dhule Taluka and Dist. Dhule

Mr. Akshay Kumar Jindal, Advocate, Mr. Vrishank Suri, Advocate and Mr. Abhishek Shukla, Advocate for the petitioner. Mr. RKS Brar, Additional Advocate General, Haryana, for respondents No.1 & 2. Mr. J.P. Sharma, Advocate for respondent No.3.

Sukhvinder Kaur, J. – Instant revision petition has been filed for setting aside the order dated 26.02.2024 passed by the Additional District Judge, Narnaul (Annexure P-8), vide which the appeal filed by the petitioner against the order dated 05.01.2024 (Annexure P-7) passed by the Civil Judge, Jr. Division, Narnaul was dismissed.

2. The relevant facts as per case of the plaintiff are, he had right, title and interest as a co-sharer in the land situated within the revenue estate of village Maksuspur, Tehsil Narnaul, District Mahendergarh (hereinafter to be referred to as 'the suit property') as per jamabandis for the years 2015-16, 2018-19, 2020-21 excluding that portion of land which had now been acquired by the State. It has been alleged that the Government of India through National Highway Authority acquired the land from village Maksuspur and other villagers for upgrading and widening/four laning National Highway No.11 which included some portion of land of the plaintiff as well as other co-owners comprised in khewat No.42, khatauni Nos.47-50, total 11, measuring 50 kanals 2 marlas vide Award No.30 dated 30.11.2018 and other supplementary awards. The compensation for the constructions/structures existing in the acquired property was assessed separately on the basis of Spot Inspection Report of Survey Authority and the owners as per their shares and who had built the same exclusively, received the award. Award regarding structure, borewell, tubewell and other construction was passed separately. It has been alleged that as plaintiff had constructed the shops/boundary wall on rectangle/killia No.3//24, so he received compensation for an amount of Rs.19,00,568/- after the survey and after removal of the objections. The plaintiff during lifetime of his father had built 5 shops and boundary wall in the property situated at village Maksuspur with his own exclusive funds and those 5 shops were rented out to the Sales Tax Department and he used to take the rent. It was further alleged that one Satbir Singh in order to harass the plaintiff, filed a complaint and the District Revenue Officer after proper inspection, released the amount of Rs.19,00,568/- in favour of the plaintiff. It was further alleged that petition under Section 3(H) of the National Highway Act, 1956 (hereinafter to be referred to as 'the 1956 Act') is also pending in the Court of Additional District Judge, Narnaul. It was alleged that the defendants wrongly issued notice bearing No.5383/LAC dated 10.03.2023 to the plaintiff asking to deposit a sum of Rs.19,00,568/- in their account or recovery would be made through attachment. It was also alleged that such notice is totally wrong, against law and fact, null and void and not binding upon the plaintiff. Defendants have no right to auction the property of the plaintiff after attachment. Plaintiff asked the defendants not to take any steps to recover the amount on the basis of notice No.5383/LAC dated 10.03.2023 but in vain. Hence, the present suit as well as application under Order 39 Rules 1 & 2 [CPC](#) read with Section 151 CPC seeking to restrain the defendants from making out the process of attachment and auction of the property of the plaintiff under the garb of impugned notice and from any kind of recovery till final decision of the present suit on merits, was filed.

3. Upon notice, defendant No.1 filed written statement by taking the preliminary objections regarding maintainability, locus standi, cause of action, non-joinder and mis-joinder etc. On merits, all the material averments were denied and it was averred that owner of the land and structure while receiving compensation had given the undertaking through affidavit to answering defendant No.1 that if in future any compensation of the land and structure was found to have been disbursed to the wrong owner, then he would deposit the entire compensation in the bank account of defendant No.1 and in case not so deposited then defendant No.1 has the legal right to recover the wrongly disbursed amount from the owner of the land and structure. It was also alleged that on the complaint, inquiry was conducted to determine ownership and possession over the acquired property and legal course has been adopted by defendant No.1 in issuing notice to the plaintiff.

4. The same written statement was adopted by defendant No.2.

5. Defendant No.3 filed separate written statement while alleging that the compensation was awarded to the co-owners as per their shares for the acquired land. But the compensation should have been awarded to the owners, who had built houses, boundary walls, shops etc. It was alleged that plaintiff in collusion with surveyor got entered his name in the column of ownership and the surveyor did not inquire anything in this regard from defendant No.3 and other co-owners. It has been averred that the plaintiff was not the sole co-owner of the property of their father but defendant No.3 was entitled to receive the compensation upto 1/4th share. The plaintiff was not having any concern with the structure made upon khasra Nos.17 and 18. It was denied that the plaintiff had built structure of the shops etc. by spending his own funds. Dismissal of the suit filed by the plaintiff as well as stay application for grant of temporary injunction was prayed for.

6. The application under Order 39 Rules 1 and 2 read with Section 151 CPC filed by the plaintiff was dismissed by the trial Court vide order dated 05.01.2024 (Annexure P-7). Aggrieved against the said order, plaintiff preferred appeal before the Appellate Court, which was also dismissed vide order dated 26.02.2024. Hence, the revision petitioner/plaintiff has knocked the doors of this Court by way of filing the present revision petition.

7. Learned counsel for the petitioner has contended that by spending his own funds, the petitioner had constructed the shops/boundary wall in the acquired land and no other person has any concern regarding the same. Only after due verification and exercise of powers under Section 3H (4) of the 1956 Act, the District Revenue Officer-cum-Competent Authority vide order dated 04.08.2021 directed the release of amount regarding structures to the tune of Rs.19,00,568/- in favour of the petitioner. Though reference under Section 3H (4) of the 1956 Act was pending before the Principal Civil Court of original jurisdiction, yet the stay order i.e. deposit of amount in the shape of FDR was ordered to be made in September, 2021, whereas the order for release of the amount was passed by the District Revenue Officer in August, 2021. Therefore, amount was released in favour of the petitioner prior to the stay order passed by the Reference Court. He has urged that competent authority under Section 3H (2) is well within its rights to determine the persons, who in its opinion are entitled to receive the amount payable and merely because a dispute has been raised against the apportionment of compensation, the same would not preclude the competent authority from passing the order under Section 3H of the 1956 Act. He has further urged that the impugned notice dated 10.03.2023 has been issued only because respondent No.3 – Satbir Singh was habitual to file false complaints and he has no concern with the award passed in favour of the petitioner. Satbir Singh filed complaint before CM window and also filed private complaint for registration of FIR against the petitioner and under the pressure of these complaints, the DRO ordered recovery of the amount vide impugned notice dated 10.03.2023. He has argued that the impugned notice dated 10.03.2023 would amount to reviewing the order dated 04.08.2021, which is not permissible in law and in this context, he has relied upon a decision of the Bombay High Court in *Bhupendra Singh v. The Competent Authority for National Highway No.6 and the Deputy Collector (Gen.), land Acquisition (Gen.) Dhule Taluka and Dist. Dhule and others*

2020(1) AIR Bom.R645. He has submitted that the orders passed by the Courts below are not sustainable in the eyes of law and are liable to be set aside.

8. On the other hand, learned State counsel as well as learned counsel for respondent No.3 have contended that the orders passed by the Courts below are legal and justified and do not call for any interference.

9. I have heard learned counsel for the parties at length and have perused the pleadings on record.

10. In the instant case, this fact is not disputed that the competent authority Land Acquisition/defendant No.1 had acquired the suit property and other land at village Maksurpur for widening/four laning etc. of National Highway No.11. Regarding acquiring of the said property situated at Maksurpur Award No.30 dated 30.11.2018 and other supplementary awards were passed and award of the building/structure was passed separately. The amount of Rs.19,00,568/- was disbursed after assessing the value of construction raised on land bearing rectangle/killla No.3//24 in favour of the plaintiff.

11. Brother of the plaintiff Satbir Singh filed objections before the competent authority while alleging that the said construction had not been raised exclusively by the plaintiff, rather the construction had been raised by their father. On this objection, inquiry was forwarded to the Court of Additional District Judge, Narnaul vide letter No.7995 dated 08.12.2020 for adjudication, along with cheque of the said award amount. Said inquiry is pending adjudication before the said Court. But when the matter regarding entitlement of co-owners of the said amount was subjudiced before the competent authority, the amount of Rs.19,00,568/- was released in favour of the plaintiff through another cheque by District Revenue Officer.

12. Defendant No.3 – Satbir Singh, the brother of the plaintiff moved a complaint through CM window, Narnaul with regard to the wrong disbursement of Rs.19,00,568/- in favour of the plaintiff – Rajbir Singh by the DRO. The SDO (Civil), Narnaul referred the matter for inquiry to DC, Mahendergarh, while reporting that sum of Rs.19,00,568/- vide cheque No.691225 dated 13.08.2021 was wrongly issued qua compensation amount in favour of Rajbir Singh in case No.1/SPL/DRO decided on 04.08.2021. The Additional District Collector, Narnaul also made the report vide inquiry No.2023/1029 dated 21.06.2023 to District Collector, Narnaul in this regard, wherein it was mentioned that the case under Section 3H had already been sent to the Additional District and Sessions Judge, Narnaul and even thereafter the compensation had been disbursed. So only after conducting of the inquiry, the District Revenue Officer-cum-LAC had issued notice bearing No.5383/LAC dated 10.03.2023 to the plaintiff regarding recovery of Rs.19,00,568/-, alleged to have been received by the plaintiff/petitioner wrongly and illegally, while CIS No.LAC 38 of 2020 titled as 'Dharampal deceased through his L.Rs. etc. v. Union of India etc. was sub-judiced before the Additional District Judge, Narnaul. As in the impugned order dated 05.01.2024 of the trial Court, it has been specifically mentioned that plaintiff – Rajbir Singh had also appeared in the said petition, so it is to be inferred that, he was well aware about pendency of the said case. Moreover, letter/Notice No.5383/LAC dated 10.03.2023 had been issued only in

due course of law and as such, a legal recourse for the recovery has been adopted by the defendants.

13. The relief of injunction is an equitable relief. It is well known maxim of law that “he who seeks equity, must do equity’. But in the facts and circumstances of the present case, it appears that the plaintiff has not come to the Court with clean hands and as such, no prima facie case is made out in his favour.

14. The case law cited by learned counsel for the petitioner is of no help to him being based on distinguishable facts as in the instant case the aforesaid notice has been sent only after conducting of due inquiry.

15. Thus, there being no illegality or infirmity in the impugned orders, no interference therewith is called for while exercising the revisional jurisdiction. The present revision petition being bereft of any merits stands dismissed.

16. Pending application(s), if any, shall also stand disposed of.