IN THE COURT OF SHRI AMIT THIND, PCS, CIVIL JUDGE (SENIOR DIVISION), SAS NAGAR (MOHALI)

Civil Suit No. RT-180 of 01.04.2016

Date of Institution: 09.02.2012

CIS No.1105/2013

Date of Decision: 01.09.2016

PACL India Ltd. Now PACL Ltd. Corporate Office: 7th Floor, Gopaldass Bhawan, Barakhamba Road, New Delhi (110001), through its authorized signatory Mr. Mantosh Jaggi.

.....Plaintiff.

Versus

- 1. M/s Unitech Ltd. through its M.D., Corporate Office Unitech House, L-Block South City I, Gurgaon, Haryana Regional Office, SCO 189-190-191, Sector 17, Chandigarh.
- 2. Santosh Singh son of Mansha Singh,
- 3. Gurnam Singh,
- 4. Maan Singh,
- 5. Bhupinder Singh,
- 6. Dilbar Singh Ss/o Hardev Singh,
- Devinder Singh son of Mohan Singh, defendants no.1 to 7 residents of village Manak Mazra, Tehsil and Distt. Mohali, SAS Nagar.
- 8. State of Punjab, through Secretary, Department of Housing & Urban Development, Chandigarh.
- 9. Land Acquisition Collector, Urban Development Punjab, PUDA

Bhawan, Sector 62, SAS Nagar Mohali.

- 10.GMADA through Estate Officer, PUDA Bhawan, SAS Nagar Mohali.
- 11. Chief Administrator, GMADA, PUDA Bhawan, SAS Nagar Mohali.

.....Defendants

Suit for Separate Possession by way of Partition in respect of land measuring 11K-6M-1.5 Sarsahi out of land measuring 96K-7M i.e. 4K-3.6M being 1/6th share out of land measuring 25K-2M comprised in Kh/Kh. no. 139/156 Khasra no.29/ $\frac{20}{2}(6-8)$, $\frac{21}{8-0}$, $\frac{30}{24}(5-6)$, $\frac{32}{1(4-19)}$, 20(0-9) and 7K-2M-4.5S being 1/10 share of land measuring no.19/2471K-5M comprised in Kh/Kh. Khasra no.21//19/1(2-12), 22(4-4), 23(7-7), 30//2(1-16), 3(8-0), 4(8-0), 7(8-0), 8(7-7), 13(5-12), 14(8-0), 17(8-0), 18(2-7)situated in the area of village Manak Majra, H.B. no. 39, Tehsil & Distt. Mohali SAS Nagar as per jamabandi for the year 2008-09 and a preliminary decree be passed with a consequential relief for Permanent Injunction restraining the defendants or their agents from raising any sort of construction or changing the nature of the land or alienating specific portion without getting the same partitioned and further for Mandatory Injunction directing the defendant no.1 to demolish and remove the illegal construction whatsoever is found to have been raised by the defendant no.1 illegally and forcibly in the joint land.

Present: Sh. Anil Kaushal Advocate counsel for plaintiff.

Sh. Ashok Kumar Advocate counsel for defendants no.1

Sh. Harkishan Singh Advocate counsel for defendant no. 2.

Sh. B.S. Ahluwalia Advocate counsel for defendant no.3 to 7.

Government Pleader for defendants no. 8 & 9.

Sh. Hargobind Singh Advocate Counsel for defendants no.10

& 11.

JUDGMENT:-

The plaintiff company has filed the present suit separate possession by way of partition of suit land, as detailed in the head note of the plaint with a consequential relief of permanent injunction restraining the defendants or their agents from raising any sort of construction or changing the nature of the land or alienating specific portion without getting the same partitioned and further for mandatory injunction directing the defendant no.1 to demolish and remove the illegal construction whatsoever is found to have been raised by the defendant no.1 illegally and forcibly in the joint land.

2. The brief facts as alleged by the plaintiff company in the plaint are that the suit property is joint and has not been partitioned by metes and bounds. Plaintiff wants to get separated its land measuring 11 Kanal 6 marla and 1.5 Sarsahi from the defendants No. 1 to 7 out of the suit land, fully detailed and described in the head note of the plaint, as there remains a dispute regarding the enjoyment of share out of the suit land. The defendant No.1 in connivance with defendants No. 8 to 11 have

started raising construction without getting the said land partitioned and without finalization of the proceedings under Land Acquisition Act, to which, they have got no right legally or otherwise. Plaintiff requested the defendants not to do so, but of no use. Hence, this suit.

3. Upon notice, defendant No.1 appeared and filed written statement taking preliminary objections that the suit is not maintainable. The answering defendant has initiated Mega Housing Project in an area of about 350 acres comprise in Sector 97, 106 and 107 at SAS Nagar, Mohali, duly approved by the State Govt. The answering defendant has also executed an agreement dated 25.1.2006 for implementation of its project. Under the policy and agreement, the State Govt. is required to acquire 10% area of the project to meet the critical gap in the project falling in the project through the process of acquisition or otherwise at the cost of the developer. The department of Housing and Urban Development, Punjab, has already started the process of acquisition and notification under Section 4 of the Land Acquisition Act in respect of the land in dispute has already been issued on 10.9.2010 and thereafter the final notification u/s 6 has also been issued on 30.6.2011, against which the land owners have filed writ petitions before the Hon'ble High Court. The State Govt. has already approved the project, and the plaintiff has never raised any objection at the time of its approval. The land in dispute which has been purchased and handed over to the answering defendant, falls in the project planning, for which, layout plan already stands approved, and therefore, no partition at this stage can be carried out. The plaintiff is estopped by his act and conduct to file the present suit. The land in dispute was purchased by the answering defendant from the plaintiff vide sale deed dated 11.3.2008, and the exclusive possession of the purchased land was handed over by the plaintiff to the answering defendant at the spot. The answering defendant has already constructed flats by the name Uni-homes, for which, the plaintiff has already relinquished all its rights and possession delivered vide sale deed dated 11.3.2008. Therefore, at this stage, the plaintiff cannot raise any objection with regard to the construction. On merits, it is alleged that notifications under Section 4 and 6 of the Act are already under challenge before the Hon'ble Punjab & Haryana High Court, in which, the stay has been granted. The answering defendant has already constructed the flats in respect of the property much earlier to the filing of the present suit. Plaintiff has already surrendered the physical possession to the answering defendant on the spot and there is no dispute regarding the carryout of construction. Denying all other averments contained in the plaint, answering defendant has prayed for dismissal of the suit.

4. In their separately filed written statement, the defendants No.

- 3 to 7 have alleged that the answering defendants are still owners in possession of the suit property. Nobody has got right to construct over the property owned and possessed by the answering defendants. It is admitted that the suit property is still joint. However, it is alleged that the answering defendants have got no objection for partition of the suit property, subject to protection of their rights. The defendant No.1 has got no right to construct till the property is partitioned by metes and bounds. Denying all other averments contained in the plaint, answering defendants have also prayed for dismissal of the suit.
- 5. In its written statement, defendant No.9 took the preliminary objections that no notice u/s 80 CPC has been served upon the answering defendant. Plaintiffs have no locus standi to file the present suit, and that this Court has no jurisdiction to entertain the present suit. On merits, it is alleged that Notification u/s 4 & 6 of Land Acquisition Act has been published to acquire the land for defendant No.1, but the award is yet to be passed. The answering defendant has neither connived nor permitted the defendant No.1 to raise construction as alleged. Denying other avermens, answering defendant has also prayed for dismissal of the suit.
- 6. In their separately filed written statement, the defendants No.10 and 11 also took the similar pleas as taken by defendant No.9 in its written statement, mentioned above. After denying other averments made

in the plaint, the answering defendants also prayed for the dismissal of the suit.

- 7. From the pleadings of the parties, following issues were framed:-
 - 1. Whether the plaintiff is entitled to separate possession by way of partition of the suit land, as prayed for? OPP
 - 2. Whether the plaintiff is entitled to the permanent injunction, as prayed for? OPP
 - 3. Whether the plaintiff is entitled to the mandatory injunction, as prayed for? OPP
 - 4. Whether the suit is not maintainable in the present form? OPD
 - 5. Relief.
- 8. In order to prove its case, plaintiff company got examined PW-1 Mantosh Jaggi, PW-2 Kanwaldeep Singh Assistant Manager. Thereafter, counsel for the plaintiff closed his evidence after tendering into evidnece documents Ex.P4 and Mark A.
- 9. On the other hand, defendants examined DW-1 Lalit Gupta, DW-2 Kulvir Singh Revenue Executive, DW-3 Raghubir Singh Ranjit Singh himself stepped in the witness box as DW-1. Thereafter, counsel for the defendants closed evidence on behalf of defendants.

10. I have heard the learned counsel for the parties and perused the material on record. My findings on the above issues are as under:-

Issues No. 1, 2 & 3:-

11. The above-said are issues are being taken up together for discussion as they are interrelated and interconnected and onus of proving all these issues was upon the plaintiff and the counsel for plaintiff submitted that the plaintiff company had been in ownership of suit property, which was joint and had not been partitioned by metes and bounds and plaintiff wanted to get their 11K-6M-1.5 Sarsahi land separated from defendants no.1 to 7 out of total land measuring 96K-7M as defendant no.1 in connivance with defendants no. 8 to 11 had started raising construction without getting the land partitioned and without finalization of proceeding under Land Acquisition Act and despite requests no heed was paid. Counsel submitted that both the resolutions passed by plaintiff company in favour of its employees to file suit etc., have been proved on the case file, whereas signatures of defendant company on the resolutions are not proper as only one of the persons had signed it. Counsel pointed out to revenue record to submit that parties are co-sharer and that only share had been sold by plaintiff as there were no specific boundaries in the sale deed it is settled law that the owner can get his share separated as possession of one co-owner is the possession of other co-owners in the khewat. The counsel further pointed out that although PW-1 did not turn up for cross-examination, statement of other employee PW-2 is sufficient to prove the case of the plaintiff regarding their ownership and prayed for partition of the suit property.

- 12. Counsel for defendant no.1 on the other hand has submitted that there is no question of any partition proceeding as exclusive possession had been handed over to defendant no.1 knowing very well that said property was required by defendant no.1 for the purpose of his colonization. The counsel submitted hat PW-1 did not turn up for his cross-examination and that his evidence cannot be read, whereas PW-2 has specifically admitted that various formalities regarding Mega Project have been completed by defendant no.1 like change of land used and other approvals which were required for zoning plan. Counsel submitted that this is sufficient to show that plaintiff was having knowledge regarding purpose of purchasing of said property. The counsel has placed reliance upon 30 documents to show that they had completed necessary formalities and that their requirement regarding said piece of land was within knowledge of plaintiff. Counsel pointed out to Ex.DW3/A, which is report of SDM regarding verification and demarcation of the property to submit that consent of plaintiff was there.
- 13. I have heard counsel for the parties at length and have gone

through the case file. Sale deed between parties dated 11.3.2008 is of great relevance to the matter in dispute. Perusal of the said sale deed Ex.D1 reveals that plaintiff had sold the suit property measuring 100 Kanal 0 Marla 8 Sarsahi including all its rights, right to way, internal and external rights, including right to residence and enjoyment, right to water, air, light including all deposited securities including all those rights which at present were available to him to defendant no.1 and actual and physical possession and ownership of said land had been got made of the purchaser company at the spot from the date of sale deed and all original documents concerning the land had also been handed over to purchaser company and now the seller company or their heirs ceased to have any concern whatsoever regarding the said land and neither were to have any concern with the same in future. All the rights have accrued to the purchaser company, which had every right to do whatever it liked. Special Power of Attorney had been given for the entrance of mutation and since the execution of sale deed, defendant company had got approval of revised layout plan Ex.DW1/14, change of land use Ex.DW1/16, grant of special package of incentive of Mega Housing Project Ex.DW1/17, letter of intent for the grant of special package of incentive Ex.DW1/20 and carried out revenue estate wise detail of the land to be acquired by the Government for their project. All this goes on to show that suit land had been purchased by M/s Unitech Ltd. defendant no.1 for specific purpose and this was very well within knowledge of plaintiff company.

- 14. In a letter Ex.DW3/A written to Chief Town Planner Punjab, Chandigarh, SDM Mohali had specifically mentioned in his report that M/s Unitech limited were in possession of property and their land abuts the graveyard as per list attached in two villages i.e. Manak Majra and Raipur Kalan and it did not have any surplus land or any religious place or wakf property in the suit land. The said report further goes on to show that report had been verified by the field staff.
- 15. The aforementioned documents are sufficient to conclude that plaintiff company had full knowledge regarding requirement of defendant no.1 of the specified portion of the land in his possession. The site plan of housing project in the suit land and other documents referred above, go on to show that defendant no.1 had invested lot of money and efforts for the purpose of purchase of land and this is not the case where property had been purchased from third person and there is nothing on record to show that during the said period from 2008 i.e. date of sale deed to 2012, any application or any effort had been made by plaintiff to demarcate the possession between the parties. When acquienscance had been there on the part of plaintiff, he cannot later on move an application

for partition of the suit property, even if property in revenue record is shown to be joint.

16. PACL India Ltd. (plaintiff) had initially appointed Mr. Mantosh Jaggi for the purpose of legal proceedings etc., but said witness did not appear and later vide Ex.P1/A Mr. Kanwaldeep Singh had been appointed the next person. However, Ex.P1/A does not make any mention of the earlier authority granted to the employee, thus resolution dated 6.5.2015 Ex.P1/A is not in continuation of earlier resolution and once Mr. Mantosh Jaggi in whose favour Ex.P1/A had been passed did not depose about earlier resolution, there is no continuity of the suit which had been filed on 9.2.2015 as first resolution has not been proved through evidence of Mr. Mantosh Jaggi, who did not turn up for cross-examination and those evidence could not be read in evidence. In view of aforesaid discussion, all these issues are decided against the plaintiff and in favour of defendants.

Issue No.4:-

17. Onus to prove this issue was upon the defendants. <u>In</u>

<u>Smt.Ganga Bai Vs. Vijay Kumar 1974 (2) SCC 393</u>, the Hon'ble

Supreme Court held that there is basic distinction between right of suit

and right of appeal. There is an inherit right in every person to bring the

suit of civil nature of one's choice. It is no answer to a suit, however

PACL India Ltd. versus M/s Unitech Ltd. & others

13

frivolous to claim that law confers no right to file a suit. A suit for its

maintainability requires authority of law and it is enough that no statue

bars the suit. Learned counsel for the defendants in the present case has

not mentioned any statue by which this suit is not maintainable. Hence,

this issue is decided in favour of the plaintiff and against the defendants.

Issue No.5 (Relief):-

18. In view of the aforesaid discussion, the suit of the plaintiff

fails and the same is hereby dismissed with no order as to costs. Decree

sheet be prepared accordingly. File be consigned to the Judicial Record

Room, after due compliance under rules.

Pronounced in open Court.

Dated: 01.09.2016

(Amit Thind)

Civil Judge (Senior Division)

SAS Nagar (Mohali)