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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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Date of Decision : July 12, 2023

RAKESH KAUSHIK

-Petitioner

V/S

STATE OF HARYANA AND ANOTHER

-Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present : Mr. Puneet Bali, Sr. Advocate with
Mr. Ranjit Saini, Advocate
for the petitioner.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Saurabh Mago, DAG, Haryana.

SURESHWAR THAKUR, J.(ORAL)

CM-4169-CWP-2019

1. As prayed for, the instant application is allowed and replication to the written statement, as filed by respondents No.1 and 2, along with Annexure P-15 is taken on record.

CM-4589-CWP-2021

2. The learned counsel for the petitioner seeks leave to withdraw the present application.

3. Leave granted.

4. Consequently, the extant application is dismissed as withdrawn.

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The writ petitioner, through the instant writ petition,

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challenges the makings of Annexures P-11 and P-13. Annexures (supra) encapsulate the demand for recovery of compensation, as, comprised in a sum of Rs.15,72,190/- thus from the petitioner. The said demand of recovery is anchored upon the factum, that earlier to the receipt of the demanded amount of compensation, by the writ petitioner, rather an award was made in respect of the disputed lands, thus by the learned Collector concerned, through the latter recouring the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act of 1894'). The said award was pronounced on 20.12.2005 (Annexure P-3). The said award remains unchallenged.

6. The learned senior counsel appearing for the petitioner does not wrangle over the fact that in respect of the disputed lands, an award became passed on 20.12.2005 (Annexure P-3). He also does not hold any quarrel with the factum of a valid notification becoming issued in terms of Section 4 of the Act of 1894, nor contests the validity of the declaration, as, made under Section 6 of the Act of 1894, besides does not contest the factum of compliance being meted to all requisite provisions as engrafted in the Act of 1894.

7. Furthermore, the learned senior counsel appearing for the petitioner also does not dispute, that the said notification (supra) became published in the local newspaper(s) circulating in the area, where the acquired lands became situated, nor also disputes the fact that the said notifications, as per the requirement of Sections 4 and 6 of the Act of 1894, thus became also published in the official gazette

concerned.

8. Therefore, in view of no quarrel or wrangle being raised by the learned senior counsel appearing for the petitioner, in respect of all (supra), therefore it can be presumed that prima facie the petitioner, or his alienor, who is the grandfather of the petitioner, had constructive knowledge of the makings of all the above documents, at the instance of the acquiring authority.

Submissions of the learned senior counsel for the petitioner

9. Be that as it may, the learned senior counsel appearing for the petitioner has very vehemently argued before this Court, that since in terms of the relevant statutory provisions, as contained in the Punjab Land Revenue Act, 1887 (hereinafter referred to as the 'Act of 1887'), thus contemplating the necessity of updation of records of rights, whereby in alteration of the name of the grandfather of the petitioner, who was prior to the award being made in respect of the disputed lands, rather became entered therein as owner thereof, hence the name of the authority in whose favour the acquisition was made, thus was required to be entered therein. However, he submits that since the records of rights did not come to be updated, in terms of the said relevant statutory provisions, as embodied in Section 31 of the Act of 1887. Therefore he argues that irrespective of the purported constructive notice, if any, as may become imputed to all concerned, yet the grandfather of the petitioner, as also the present petitioner, who respectively, as vendor and vendee of the disputed lands, thus made a registered deed of conveyance, in respect of the writ lands, rather were

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bonafidely led to execute such a deed of conveyance. Consequently, he argues that it is in the face of the above, that the subsequent award, if any, as made in the year 2013 (Annexure P-9), even it is made in respect of those lands, which were but previously put to acquisition, besides even if compensation has been received thereunder(s) by the present petitioner, yet the receipt of compensation is completely covered by the bonafidely made sale transaction inter se the present petitioner and his grandfather.

10. Moreover, the learned senior counsel appearing for the petitioner also supplements the above arguments, on the strength of even, the agencies of the State Government, after making an objective application(s) of mind, to the provisions engrafted in Section 4, 6 and 9 of the Act of 1894, theirs yet despite the apposite lands being validly acquired, through an award of 2005, thus proceeding to re-make an award in respect of the previously acquired similar thereto lands. As such, he submits that when even the agency of the State Government did proceed to, as such make a bonafide mistake, as arises from theirs in respect of similar lands, making a fresh acquisition thereof, and thereafters, proceeding to make a fresh award. Therefore, he argues that receipt of compensation by the present petitioner, in terms of award of 2013 (Annexure P-9) is clothed with an aura of sanctity, or, is completely bonafide and that the recovery notice, which is challenged before this Court, this is not amenable to become enforced against the present petitioner.

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11. The learned senior counsel for the petitioner has also argued that since the alienor of the present petition, who is his grandfather, did not, in terms of the award of 2005 (Annexure P-3), receive the compensation. Therefore the effect of his not taking compensation, is amplificatory qua his not holding any knowledge, in respect of the makings of the apposite notification, nor also his holding any knowledge in respect of the award, as was made by the learned Collector concerned, in terms thereof. (Annexure P-3).

Submissions of the learned State counsel

12. On the other hand, the learned State counsel, has vigorously argued that the above made submissions, are but rudderless. He submits that merely on account of non-receipt of compensation by the predecessor-in-interest of the present petitioner, and/or, his alienor, thus the present petitioner, could not have proceeded to become untenably or unjustly enriched, through his receiving compensation, as assessed through Annexure P-9, in respect of the disputed lands, especially when the very same lands had become acquired, and, also an award was pronounced in the year 2005.

13. More so, he submits that since the said acquisition proceedings, rather remain unchallenged, at the instance of all concerned, therefore, such acquisition proceedings, do assume finality and conclusivity. As a corollary, he also submits that when there is, as such, complete divestment of any right, title or interest in the disputed lands, of the alienor of the present petitioner. Therefore, the deed of conveyance executed post 2005, is prima facie stained with a vice of

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nullity and as such, the receipt of compensation by the present petitioner, in terms of the award made in 2013 (Annexure P-9), thus acquires a similar taint and as such, the drawing of the impugned recovery notice(s), as issued upon the present petitioner, is but a validly raised demand upon the present petitioner.

14. Having heard the learned counsels concerned and having perused the relevant records, this Court is of the firm view, that all the above contentions, as become raised before this Court, by the learned counsel for the petitioner are devoid of any merit and are required to be straightway rejected.

Reasons for rejecting the submissions made by learned senior counsel for the petitioner and for resultantly dismissing the instant writ petition

15. The reason for forming the above inference ensues from: (i) that even though there was no updation of the records of rights by the revenue authorities concerned, thus in compliance with Section 31 of the Act of 1887, yet when the learned senior counsel for the petitioner, as stated (supra), has not contested the issuance of a notification (Annexure P-1), under Section 4 of the Act of 1894 in the year 2003, besides has also not contested the makings of the statutory declaration (Annexure P-2) under Section 6 of the Act of 1894; (ii) moreover when he has also not contested the exercising of powers by the authority concerned, as contemplated in Section 9 of the Act of 1894; (iii) in addition, when he also does not contest the fact that the apposite notification(s) were published in the daily newspaper(s) circulating in

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the area, where the disputed lands became situated; (iv) significantly, also when he does not contest the fact that the said notification(s) became published in the official gazette. Therefore, the necessary sequel thereof, is but, that all the said notifications acquire a presumption of truth. Amplifyingly also, the said uncontested postures, as made before this Court by the learned senior counsel for the petitioner, are but suggestive that the alienor of the present petitioner, besides the present petitioner, both had constructive notice in respect of the makings of the earlier award on 20.12.2005 (Annexure P-3).

16. The further reason which constrains this Court to reject all the above submissions, as addressed before this Court, and, as appertain to no constructive knowledge, becoming acquired by the present petitioner, as there was no updation of the revenue records, thus also becomes completely effaced, from the stark fact, that the purpose of acquisition of the disputed lands was for the construction of sectoral road(s). Given the fact that this Court has hereinabove inferred, that on termination of the acquisition proceedings, there is complete vestment of all right, title and interest, qua the acquired lands, in the authority or the agency concerned, where for whom, the said lands are acquired and but with a concomitant divestment of right, title and interest in the owner concerned. Therefore, when the said inference becomes entwined with the submissions addressed before this Court by the learned State counsel, that as a matter of fact, the said public purpose for which the disputed lands became acquired, was in fact put to efficacious use, inasmuch as a sectoral road being constructed

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thereon. Naturally, the above begets an inference, that even if assumingly there was no updation of the revenue records, yet upon utilization(s) of the acquired lands at the instance of the concerned, thus now completely estopping the learned senior counsel appearing for the petitioner, to contend, that the petitioner had no knowledge or notice about the makings of the award on 20.12.2005 (Annexure P-3).

17. A perusal of the reply filed by the State of Haryana, reveals that after the execution of the sale deed, the petitioner entered into a collaboration agreement with M/s Gentle Realtors Private Limited in respect of land including 23//5(8-0). Since 11 Marlas of land was already acquired, licence No.165 of 2008 was granted by the Town and Country Planning Department concerned, however, only for the lands falling in 23//5(7-9). This shows that the Town and Country Planning Department concerned had granted the licence only qua land measuring 7 Kanals 9 Marlas, out of 8 Kanal 0 Marlas, in the land bearing Khasra No.23//5, situated in the revenue estate of Village Badshahpur, as 11 Marlas of land was already acquired by the acquiring authority concerned, for the development of residential, commercial and institutional area at Sector 57, Gurugram.

18. Despite the above factum being very much in the knowledge of the petitioner, yet he conveniently chose to receive compensation amount of Rs.15,72,190/- vide cheque No.074958 dated 11.4.2013, after furnishing the ownership proof, supported by an affidavit. It appears that the petitioner has taken undue advantage of a mistake, as became committed by the land acquisition authority concerned, by re-

issuing an acquisition notice in respect of the very same lands.

19. Therefore, the above facts bely the stand of the petitioner that he is a bonafide purchaser and thus, has every right to retain the compensation amount, as arises from the award dated 27.2.2013.

20. Admittedly, both the notifications under Section 4 and Section 6 of the Act of 1894 were duly notified in the official gazette and daily newspaper(s). The very object of publication of a notification in the official gazette is an intimation to the entire general public and as such, if we accept the argument of the learned senior counsel for the petitioner, qua the petitioner being unaware of any notification and hence bonafidely purchasing the land from his own grandfather, then the basic object of a gazette notification would be defeated, especially when the makings of a gazette notification spurs a legal presumption qua thereby knowledge becoming acquired not only by the petitioner but also by the general public. Further, Section 4 of the Act of 1894, which prescribes the publication of notification and the power of the land acquisition authority, impose the following two conditions to make an acquisition notice legally enforceable: (i) it shall be published in the official gazette, and, (ii) it shall be published in two daily newspapers circulating in that locality, of which at least one shall be in regional language.

21. As already mentioned above, since there is no dispute that both the pre-conditions, as enshrined in Section 4 of the *ibid* Act, have been complied with, therefore it can be safely concluded that the notification (*supra*) was a notification to the entire world.

22. Furthermore, Justice V.R. Krishna Iyer and Justice R.S. Pathak, while speaking for a Division Bench of the Hon'ble Supreme Court of India, in a judgment rendered in ***Civil Appeals No.2062-2063 of 1978***, titled ***"State of M.P. and another V/s Ram Ragubir Prasad Agarwal and others"***, have explained the meaning of the word "publish", according to which, publication is an act of publishing anything which is accessible to public and rendering it accessible to public scrutiny. The relevant extract from the judgment (supra) is reproduced as under:-

"In our view, the purpose of Section 3 animates the meaning of the expression 'publish'. Publication is the act of publishing anything; offering it to public notice, or rendering it accessible to public scrutiny..... an advising of the public; a making known of something to them for a purpose,...."

23. Above all, ignorance of law is not an excuse in view of the maxim *"ignorantia juris non excusat"*. Furthermore, the plea, as raised by the learned senior counsel for the petitioner, that the petitioner had no knowledge in respect of the earlier acquisition proceedings, is falsified from the fact that he could not get any licence qua the acquired lands in 2008, and, yet received compensation in 2013.

24. Moreover, even if the learned senior counsel for the petitioner has very vehemently argued, that he did not loose possession over the disputed lands, yet even the above oral submission, does not appeal to the judicial conscience of this Court, as there is no firm documentary evidence placed on record to bely the submissions, as,

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made before this Court.

25. The learned State counsel on instructions imparted to him by the official concerned states that the public purpose for which the lands were put to acquisition was, as a matter of fact, achieved through construction of a road on the lands of the present petitioner. As such, reiteratedly on utilization of the acquired lands, and, which but is presumed to be within the knowledge of the present petitioner, thereby he could not merely on some bonafide mistake occurring on the part of the respondent concerned, choose to receive compensation, in pursuance to an award made in 2013 (Annexure P-9).

26. The bonafide mistake, if any, committed by the acquiring authority concerned, in its yet, despite an earlier acquisition of similar lands being made, put it to re-acquisition, cannot be a ground for leveraging the petitioner, to claim compensation, especially when under an earlier award, compensation became assessed and it has remained undisbursed to the claimants concerned.

27. The result of the above made discussions is that this Court finds no merit in the instant writ petition and the same is hereby dismissed. The impugned recovery notices are maintained and affirmed.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

July 12, 2023
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No