

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

**CWP No. 12346 of 1993
Date of decision:27.7.2015**

Bagga Singh and others

.....Petitioners

Vs.

The state of Punjab and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Anupam Sharma, Advocate for the petitioners.

Ms. Munisha Gandhi, Addl.A.G.Punjab.

Ajay Kumar Mittal, J.

CM Nos.7991 to 7994 of 2015

1. The Civil Miscellaneous applications are allowed. The legal representatives of some of the petitioners as per details in the applications are taken on record, as prayed.

CWP No.12346 of 1993

2. The petitioners pray for quashing the notifications issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (in short, the Act")

whereby land of the petitioners was acquired for the construction of Isru Payal road in Village Nasrali, Tehsil Khanna, District Ludhiana. Further prayer has been made for releasing the land as the same has not been used for the purpose for which it was acquired and permit the petitioners to refund the compensation amount.

3. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioners are residents of Village Nasrali, Tehsil Khanna, District Ludhiana. In the year 1966, the land measuring 23 kanals 10 marlas was acquired by the Government for the construction of Isru Payal road situated in Village Nasrali, Tehsil Khanna, District Ludhiana. The land is *chahi* and the petitioners are in possession of it since the year 1966. Copies of the notifications under sections 4 and 6 are attached as Annexure P.1 with the writ petition. Petitioner Nos. 1 to 7 were given compensation whereas petitioner Nos.8 to 13 did not get the same. According to the petitioners, the possession was not taken by the respondents and they are in cultivating physical possession of the land. Though the land was acquired in the year 1966, yet nothing was done in this behalf till the year 1973 and thereafter, the Government dropped the idea of constructing the requisite road through the land of the petitioners and decided to construct the said road on the other side of the land. Some of the land on which the road was constructed also belonged to some of the petitioners. The road was finally completed between the years 1977-79. The petitioners approached the PWD Department by sending a representation and a reminder requesting that they may be permitted to return the amount of compensation and their land be

returned to them but in vain. The petitioners also sent various representations to the different authorities but nothing was done. Hence the instant writ petition.

4. We have heard learned counsel for the parties.

5. Challenge has been laid to the acquisition proceedings on the ground that the land had remained un-utilised after acquisition by the State Government. The land in the present case was acquired in the year 1966. The petitioners had received the compensation and possession had been taken by the respondents. Thus, under Section 16 of the 1894 Act, the land in dispute had vested in the State free from all encumbrances. Section 16 of the Act reads as under:-

“16. Power to take possession.- When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.”

The Hon'ble Supreme Court in *Govt. of A.P. and another v. Syed Akbar*, (2005) 1 SCC 558, while allowing the appeal in a case where the Division Bench of the Andhra Pradesh High Court had upheld the order of the learned Single Judge, directing the authorities to hand over the unused portion of the land to the petitioners by collecting the amount of compensation already paid with interest @ 12% per annum and after noticing the standing orders, held as under:-

“10. It is neither debated nor disputed as regards the valid acquisition of the land in question under the provisions of the Land Acquisition Act and the possession of the land had been taken. By virtue of Section 16 of the Land Acquisition Act, the acquired land has vested absolutely in the Government

free from all encumbrances. Under Section 48 of the Land Acquisition Act, Government could withdraw from the acquisition of any land of which possession has not been taken. In the instant case, even under Section 48, the Government could not withdraw from acquisition or to re-convey the said land to the respondent as the possession of the land had already been taken. The position of law is well settled.

XX XX XX XX XX XX XX XX

14. From the position of law made clear in the aforementioned decisions, it follows that (1) under Section 16 of the Land Acquisition Act, the land acquired vests in the Government absolutely free from all encumbrances; (2) the land acquired for a public purpose could be utilized for any other public purpose; and (3) the acquired land which is vested in the Government free from all encumbrances cannot be re-assigned or re-conveyed to the original owner merely on the basis of an executive order.”

6. In *National Thermal Power Corporation Limited v. Mahesh Dutta and others*, (2009) 8 SCC 339, it was held that if possession of the land had been taken over in respect of which notification had already been issued, the State would be divested of its power to withdraw from the acquisition in terms of Section 48 of the Act. Consequently, challenge to the acquisition on the ground that the purpose for which it was acquired was not being carried out, would not justify the release of the land. In such a situation, the relief claimed in this writ petition cannot be allowed.

7. In view of the above, the challenge to the acquisition proceedings after such a long period on account of non utilization of the land cannot be sustained. Learned counsel for the petitioners was unable to produce any material on record to substantiate the claim made in the

petition. Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

July 27, 2015
'gs'

(Rekha Mittal)
Judge