

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

C.W.P. No.12468 of 2012
Date of decision: 22.04.2015

Jatinder Nath Sharma & another

-----**Petitioner (s)**

V/s

Chandigarh Administration & others

-----**Respondent(s)**

**CORAM:- HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE HARI PAL VERMA**

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. P.N. Aggarwal, Advocate and
Mr. Gaurav Mohunta, Advocate
for the petitioners.

Mr. Sanjeev Sharma, Sr. Advocate with
Mr. Vikram Vir Sharda, Advocate
for the respondents no.1 and 2.

Mr. Manoj Bajaj, Addl.A.G, Punjab
for respondent no.3.

HARI PAL VERMA, J.

Through the instant writ petition filed under Articles 226/227 of the Constitution of India, the petitioners have sought quashing/modification of the site plan dated 9.10.2009 vide which the only passage/*kutcha* path linking the main road with the land of the petitioners

measuring 8 Bighas 3 Biswas comprised in Village Baltana has been compulsorily closed and this closure has completely made the agricultural land of the petitioners unusable, resulting into not only degradation and depreciation of the value of their agricultural land, but also in terms of utilization as well.

Briefly stated, the facts of the case are that agricultural land measuring 8 Bighas and 3 Biswas situated at Village Baltana, Tehsil and District Mohali was gifted to the ancestors of petitioners on 17.4.1917 and accordingly, mutation was sanctioned in favour of the forefathers of the petitioners. Since then, they are continuously enjoying the possession over the land. Another piece of land measuring 17 marlas situated at Khasra No.14//16 and 14//24/3 Khewat No.23, Khewat No.23, Khatoni No.23 situated in Village Raipur Kalan, Hadbast No.371, UT, Chandigarh was purchased by the petitioners by way of registered sale deed dated 25.8.1981. The said land was adjoining and abutting the aforesaid agricultural land of the petitioners situated in Village Baltana, Tehsil and District Mohali. A clear kutcha path was provided by the revenue department of the successive Governments to the petitioners linking the main road of Raipur Kalan to their agricultural land situated at Village Baltana. The said path was approved by the revenue

department and is in uninterrupted existence till date. The petitioners are using and enjoying the aforesaid lands situated in Village Raipur Kalan measuring 17 Marlas and in Village Baltana measuring 8 Bighas 3 Biswas. The land of the petitioners measuring 17 marlas situated in Village Raipur Kalan, UT, Chandigarh along with other land measuring 93.13 acres situated in Village Raipur Kalan Hadbast No.371, Chandigarh and land measuring 61.39 acres situated in Village Mauli Jagran, Hadbast No.373, Chandigarh was compulsorily notified for acquisition vide notification dated 12.6.2002 under Section 4 of the Land Acquisition Act, 1894 (for short, "the Act") for setting up the industrial area and other allied uses of third Phase near Mauli Jagran, UT, Chandigarh. The objections under the provisions of Section 5-A of the Act were filed by the petitioners. For the said land, notification under Section 6 of the Act was also issued on 29.11.2002, which was followed by award dated 4.4.2003. Pursuant to passing of award, compensation was disbursed to the landowners including the petitioners. The petitioners accepted the compensation.

Since neither the land was released nor passage for ingress and egress was provided to the petitioners for the agricultural land situated in Village Baltana, they submitted their representation to the Deputy

Commissioner, Chandigarh. The said representation was forwarded to respondent no.2, who sanctioned and provided *rasta* to the land of the petitioners while planning the development of the area including the road network connecting the same to Chandigarh, Baltana and Panchkula.

The petitioners were provided regular kutchra path duly approved and sanctioned by the revenue department which is still in existence, so as, to allow the petitioners to enjoy, utilize and reap the benefits of their agricultural land situated in Village Baltana, Tehsil and District Mohali as well as the land situated in Village Raipur Kalan, UT, Chandigarh. Moreover, after the acquisition in the year 2003, revised site plan of the area was approved by the Chandigarh Administration on 30.10.2003, wherein the regular road/rasta has been shown to be in existence, providing link to the agricultural land of the petitioners situated in Village Baltana to the link road i.e. road linking Baltana to Route No.2 (Chandigarh-Panchkula). The position remained the same in the year 2005, when another revised plan dated 18.1.2005 and re-revised plan of the year 2007 were prepared. In the revised plan dated 18.1.2005 as prepared by the Chandigarh Administration, it was shown that the said road/rasta was in existence/provided in the aforesaid

agricultural land of the petitioners to the link road. The petitioners are aggrieved by yet another revised site plan of the area dated 9.10.2009, through which, the road/rasta shown in the earlier site plans catering the petitioners to and fro to their agricultural land situated in Village Baltana has been closed and the same along with other land abutting the same has been earmarked and given to the electricity department for construction and setting up of 66 KV Grid Sub-Station and also for setting up of a CTU Workshop. The path being used by the petitioners for ingress and egress to their agricultural land has been particularly earmarked for construction of boundary wall of the electricity sub-station by the Chandigarh Administration. It has been submitted that if such construction is allowed on the road/rasta approved and sanctioned by the Chandigarh Administration, the petitioner will be left with no other alternative path or rasta for ingress and egress to their agricultural land situated in Village Baltana. No other path has been provided by the State of Punjab to the petitioners at all since the time the petitioners are using this path. The *kutch*a path linking Chandigarh to the agricultural land of the petitioners situated in Village Baltana has been provided to the petitioners by the successive Governments including the Chandigarh Administration and the same is in existence till

date. There is no agricultural land in Village Baltana, as all around the Village Baltana, there is residential inhabitation or commercial complex/shops. Site Plan dated 9.10.2009 (Annexure P7) shows that from the main road, which is the existing metalled road, two internal metalled roads are constructed at the spot. One leads to sector road, which is linking the entire Industrial Area, Panchkula to the main road, while the other is the road linking Baltana with Chandigarh and its periphery. It has been further submitted that the right to passage is an easementary right, which has to be provided to every person for enjoyment and utilization of their land, building and houses and the said right cannot be curtailed, as the same is guaranteed under Article 300A of the Constitution of India. In this manner, a direction has been sought to re-revise the impugned site plan dated 9.10.2009 (Annexure P7) to the extent that an alternative road/*rasta* linking the agricultural land of the petitioners to Chandigarh be provided, so that they can utilize and enjoy the benefits of their land which is ancestral. Apart from that, the petitioners have claimed their emotional attachment *qua* the land, which their ancestors acquired way back in the year 1917 on account of fond memories, love, samadhis and blessings of their ancestors.

In this manner, petitioners have challenged the action of the respondents in closing the existing route/*rasta* from UT, Chandigarh to their agricultural land situated in Village Baltana, Distt. Mohali for construction of boundary wall of electricity sub-station and CTU Workshop. Petitioners have also prayed that they have not been provided with alternative route/*rasta*.

On notice of motion having been issued, the respondents have filed their written statement, wherein it has been submitted that the petitioners are seeking passage/*kutcha path* to their land situated in Village Baltana, Tehsil and Distt. Mohali, but the State of Punjab has not been impleaded as a necessary party and therefore, the writ petition is liable to be dismissed on account non-joinder of necessary parties. The petitioners cannot seek the relief from Chandigarh Administration, as the land of the petitioners falls in Village Baltana, Tehsil and District Mohali, Punjab, whereas the passage/*kutcha path*, which they claim to be there since the time immemorial, is completely irrelevant, because the passage/*kutcha path* which is situated now, belongs to UT, Chandigarh. Moreover, the land was acquired for setting up of industrial area and other allied uses for 3rd phase, vide award dated 28.3.2003. All the objections and the claims with respect to acquisition were settled and even compensation was also

disbursed to the landowners including the petitioners, which was duly accepted by them without laying any challenge. It has been further pleaded that if any passage/*kutcha* path is provided to the land of the petitioners, the same is to be provided by the State of Punjab only and not by the UT, Chandigarh. Once the land is acquired by the Government, all its previous rights stand dissolved in case the same is not exempted from acquisition. Since the land of the petitioners has been acquired and compensation *qua* the said land has already been accepted by the petitioners, their claim for passage and *kutcha rasta* also stands dissolved. Moreover, even the survey plan of the acquired land does not show any passage/*kutcha rasta* on the land which goes to the land of the petitioners. Copy of survey plan for acquisition of land has been placed as Annexure R-2. The open spaces/passages shown in the earlier drawings were only for connecting internal blocks/parking etc. above the scheme area. Annexure P7 is the final layout plan of the Chandigarh Administration, which does not show any *rasta*/passage to the land in question. After the acquisition of the land, the land upon which the passage/*kutcha rasta* is situated has been earmarked for CTU Depot and for 66 KV Grid sub-station and the same was approved by the Chandigarh Administration on 21.11.2011 and on

3.5.2012. In case the passage/*kutchra rasta* is provided to the land in question, which falls in the State of Punjab, then the whole planning of Industrial Area, Phase-III will be disturbed and the very purpose of acquisition shall become redundant.

We have heard learned counsel for the parties.

Learned counsel for the petitioners has argued that in case the *kutchra rasta* is utilized for the construction of 66 KV Grid Sub-station and CTU Workshop, the petitioners would be deprived of access to their land. The petitioners have been using the passage since long without any interruption and therefore, they are entitled to use the path. It has been further argued that the petitioners have got easementary right to continue with the passage. In support of his assertion, learned counsel has relied upon a judgment of the Hon'ble Apex Court in the case **HP State Electricity Board v. Shiv K. Sharma** 2005(2) SCC 164 to contend that the case of the petitioners for easementary rights like right of passage, as enjoyed by them over the land under acquisition, was not extinguished by reason of acquisition.

The relief claimed by the petitioners regarding passage/*kutchra path* to approach their land situated in Village Baltana in the State of Punjab is completely irrelevant, as the land upon which the passage/*kutchra*

path is situated now belongs to UT, Chandigarh. The said land was acquired for setting up industrial and other allied uses for the third phase, vide award dated 28.3.2003. All objections and claims with respect to acquisition have already been settled and compensation has been disbursed to the landowners including the present petitioners. The petitioners have accepted the compensation without raising any challenge. Therefore, they cannot claim any passage on the acquired land which already vests with the Chandigarh Administration. On acquisition of land by the Government, all previous rights of the landowners are automatically dissolved. In the present case, the claim for passage/*kutcha rasta* being raised by the petitioners is unfounded, as such claims are automatically dissolved once the land in question is acquired by the Government and they have accepted the compensation without any challenge. Even the survey plan for the acquired land does not show any passage of *kutcha rasta* which goes towards the land of the petitioners.

The claim of the petitioners for passage on the basis of easementary rights cannot be entertained and decided by the writ Court in exercise of its powers under Article 226/227 of the Constitution of India, as it depends upon facts to be established in a properly constituted suit by impleading necessary and proper parties. The judgment

in the case of **HP State Electricity Board** *v.* **Shiv K. Sharma** (*supra*), is a case which was routed through Civil Courts and therefore, this Court cannot decide such disputed questions in exercise of its powers under Article 226/227 of the Constitution of India.

Accordingly, the present writ petition is dismissed. However, liberty is granted to the petitioners to approach the Civil Court to seek passage to their land in Village Baltana in the State of Punjab, rather than to seek passage from Chandigarh Administration in accordance with law.

(**HEMANT GUPTA**)
JUDGE

(**HARI PAL VERMA**)
JUDGE

April 22, 2015
Ak/Vimal