

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CWP-13230-2014

Date of decision : 06.08.2015

Union of India and another

... Petitioners

Versus

Improvement Trust, Amritsar and others

... Respondents

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

Present: Mr.Vikram Bajaj, Advocate
for the petitioners.

Mr.J.S.Toor, Advocate
for the respondents.

REKHA MITTAL, J.

The petitioners have filed the instant petition under Article 226 of the Constitution of India seeking quashing of notices dated 03.02.2014 Annexure P4 and dated 13.06.2014 Annexure P5 whereby the respondents have called upon the petitioners to vacate the land / building and get over possession of the premises in question through police help under Sections 46 and 47 of the Land Acquisition Act 1894 (for brevity 'the Act').

The facts necessary for disposal of the controversy involved herein, narrated in the petition may be noticed.

The Improvement Trust, Amritsar (respondent No.1) for acquiring land for development scheme of 3.03 acres known as 'Durgiana Mandir Complex' issued notification on 09.05.2005 under Section 36 of the Town Improvement Act, 1922 (in short 'the 1922 Act') including land over

which post office of Durgiana Mandir Complex is situated. Further notification under Section 42 of the 1922 Act dated 23.05.2006 was issued in respect of aforesaid development scheme and the award was passed by the Land Acquisition Collector, Improvement Trust, Amritsar Annexure P2.

Counsel for the petitioners contends that area measuring 0 kanal 12 marlas 88 square feet bearing khasra No.116 belonging to the Central Government is not part of the award and no compensation has been assessed in this regard. A period of more than 2 years provided in Section 11-A of the Act has elapsed, therefore, proceedings in respect of acquisition of land in question stands lapsed in view thereof.

Another submission made by learned counsel is that as the Land Acquisition Collector has excluded the area in question while passing the award dated 21.05.2008 Annexure R3/3, the respondents have no right or authority to issue notices impugned calling upon the petitioners to vacate the land and hand over its possession to the respondents much less to initiate coercive process to take its possession.

Counsel for the respondents, on the contrary, would submit that the respondents have already initiated negotiations with the petitioners for acquiring the land in question which is necessary for execution of the development scheme known as 'Durgiana Mandir Complex'.

We have heard counsel for the parties and perused the records.

It is an admitted position of the case that while making the award for assessment of compensation in regard to land acquired for the purpose of aforesaid development scheme, the land in dispute belonging to the Central Government has been excluded from the award. A relevant

extract from the award pertaining to land in question reads thus:-

“Further an area measuring 0 Kanal 12 Marla 088 square feet bearing Khasra No 116(0-12-088) belongs to Central Government, and thus this area has also been excluded from the award and this area can be acquired through negotiation.”

As the respondents have taken a decision to exclude the area in dispute from acquisition process initiated by issuance of notification under Section 36 of the 1922 Act and for that reason, the Land Acquisition Collector has not assessed compensation in respect thereof, the respondents have no authority to take over possession of the land in question on which office of Post and Telegram belonging to Union of India is operating, by issuing impugned notices (Annexure P4 and P5). It is not plea of the respondents that any negotiations initiated by the respondents with the Central Government for acquisition of land in question have been finalised on any terms whatsoever. As the respondents till date are unable to fructify their effort to acquire the land in question through negotiation, the respondents cannot be allowed to take law in their hands or initiate any action much less coercive to recover possession of the land in dispute. In this view of the matter, we are of the considered opinion that action of the respondents in calling upon the petitioner to vacate the land / building or recover possession of the land in question is illegal and unjustified, at this point of time.

In view of what has been discussed hereinabove, the petition is allowed in the aforesaid terms. The respondents are restrained from taking any coercive action in pursuance of the notices (Anneuxres P4 & P5) to

recover possession of the land in question. However, any observation made hereinabove will not cause prejudice to the right of the respondents to enter into negotiation of any kind with the petitioners in respect of the land in dispute. No order as to costs.

(REKHA MITTAL)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

August 06, 2015.
Davinder Kumar