

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

**CWP No. 12832 of 2015
Date of decision: 02.7.2015**

Jai Parkash

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

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

Present: Mr. Ajay Jain, Advocate for the petitioner.

Ajay Kumar Mittal,J.

1. The petitioner prays for issuance of a writ in the nature of mandamus directing the official respondents to declare that the benefit of award No.13 dated 8.11.2014 announced in respect of land comprised in Rectangle No.15, Killa No.11 situated at Village Kalaka, Rewari be given to the petitioner alone vide which land measuring about 1 kanal 13 marlas owned and possessed by him was de-notified from acquisition upon which the petitioner had raised his residential house and that respondent Nos. 7 to 9 have no concern with the same.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner alongwith respondent Nos. 7 to 9 is co-owner/co-sharer to the extent of 1/3rd share in equal share in land measuring 20 kanals 8 marlas comprised in Rect. No.15, Killa No.11 (8-0), 12(8-0), 13/1 (4-8) i.e. to the extent of about

1 kanal 13 marlas situated in the revenue estate of Village Kalaka, Tehsil and District Rewari as per jamabandi for the year 2005-06. On the above said land comprised in Rect. No.15, Killa No.11, the petitioner has constructed his residential house comprising of two rooms, kitchen, toilet and boundary wall much prior to the issuance of the notification under section 4 of the Land Acquisition Act, 1894 (in short, "the Act"). The same is in exclusive possession of the petitioner since long. The State of Haryana issued notification dated 1.7.2011, Annexure P.5 under Section 4 of the Act for acquiring land situated in the revenue estate of Villages Konsiwas, Jhanjhanwas, Piwara, Kalaka, Mandhaiya Kalan, Tehsil and District Rewari for alleged public purpose namely for the development and utilization of land of Sector 20 part and Sector 21 residential Rewari including the land of the petitioner. Thereafter, the State Government issued notification dated 26.6.2012 under Section 6 of the Act. The petitioner filed an application for conducting re-survey i.e. to report with regard to the existence of the super structure if any on the land in dispute. The District Town Planner, Rewari in his report dated 2.1.2013, Annexure P.7 opined that the the petitioner was owner of land comprised in Rect.No.15, Killa No.11, Village Kalaka, Rewari and the same was at present being used for residential purpose. The District Town Planner, Rewari recommended to proceed as per the policy. However, notice under section 9 of the Act was issued by respondent No.5 in respect of entire 20 kanals 8 marlas land including the land of the petitioner. The award was announced on 8.11.2014. The petitioner came to know from the HUDA department that the land owned and possessed by him upon which he had constructed his residential house had been released from acquisition by taking decision on the report submitted by the District

Town Planner, Rewari. The petitioner also sought information from respondent No.5 under Right to Information Act, 2005 (in short, “the RTI Act”) on 27.3.2015. He even visited the office of respondent No.5 personally. It came to his notice that 1 kanal 13 marlas of land comprised in Rect.No.15, Killa No.11 had been shown to be released from acquisition in his favour and private respondent Nos. 7 to 9. According to the petitioner, the private respondents have no right, title and interest in the land in dispute upon which he has constructed his residential house. He submitted a representation to respondent No.5 on 30.3.2015, Annexure P.9 but no action was taken. In response to the information sought by the petitioner vide letter dated 27.3.2015, the office of respondent No.5 informed him vide letter dated 21.5.2015, Annexure P.10 that vide award dated 8.11.2014, only 6 kanals 7 marlas of land was acquired and possession was handed over to HUDA. Out of actual area proposed to be acquired, only an area to the extent of 6 kanals 7 marlas was acquired and the remaining area i.e. 1 kanal 13 marlas upon which there existed construction was released from acquisition. The petitioner moved an application before the Land Acquisition officer under Right to Information Act, 2005 (in short, “the RTI Act”) on 4.6.2015, Annexure P.11 to know the names of the persons in whose favour the benefit of information supplied vide letter dated 21.5.2015, Annexure P.10, would enure but no reply was received. Hence the instant writ petition.

3. We have heard learned counsel for the petitioner.

4. The primary grievance as raised in the writ petition relates to private dispute between the petitioner and respondent Nos. 7 to 9. From the perusal of the averments made in the writ petition, it appears that the present

remedy of writ petition is not proper as the petitioner can approach the civil court for redressal of dispute between him and respondents No.7 to 9. Furthermore, disputed questions of facts are involved in the present case. In such a situation, we do not find justification to entertain this petition under Articles 226/227 of the Constitution of India.

5. Examining the scope of writ jurisdiction under Article 226 of the Constitution of India where disputed questions of facts are involved, a Division Bench of this Court in *N.C.Mahendra v. Haryana State Electricity Board and others*, AIR 1984 Punjab 26 had laid down that ordinarily a writ would not issue in favour of a person where disputed questions of facts are raised. The relevant portion reads thus:-

“12. An identical legal position ensures within this country and High Courts have repeatedly held that the exercise of jurisdiction under Article 226 of the Constitution is discretionary and not obligatory without being exhaustive, it is settled law that the Court would not ordinarily issue a writ in favour of a person, who has (i) an adequate alternative remedy, (ii) who is guilty of delay which is unexplained, (iii) who is guilty of conduct disentitling him to relief, (iv) where the interest of justice do not require that relief should be granted, (v) where the petitioner raises a disputed question of fact, (vi) where the grant of writ would be futile, and (vii) where the impugned law has not come into force. It would follow from the above that the grant or refusal of a writ is within the judicial discretion of the Court and that indeed is the line which divides the extra ordinary remedy from the ordinary one by of a civil suit.” (Emphasis supplied).

The Hon'ble Supreme Court in State Cadre Authority and another v. K.S.Bajpal and others, (1990) (Suppl.) SCC 713, Bhagubhai Dhanabhai

Khalasi and another v. The State of Gujarat and others, (2007) 4 SCC 241 and **Mukesh Kumar Agrawal v. State of UP and others**, (2009) 13 SCC 693 has held that wherever disputed question of fact is raised in writ proceedings, the writ petition was not an appropriate remedy. Reference may also be made to the judgment of the Apex Court in ***Dwarka Prasad Agarwal (D) by Lrs. and another vs. B.D.Agarwal and others***, AIR 2003 SC 2686, wherein it was observed as under:-

“We may, however, hasten to add that as at present advised we do not intend to enter into the contention of the petitioners that their fundamental right under Article 19 of the Constitution of India had been infringed. This Court would have entered into the question, if the facts were undisputed or admitted. The question as regard infringement of fundamental right and that too under Article 19 of the Constitution of India cannot be gone into when the facts are disputed. Whether Dwarka Prasad Agarwal and consequently the substituted petitioners are owners of the newspapers and if so to what extent being disputed, it cannot be said, that by reason of the impugned order dated 3.9.1992 passed by the first respondent herein alone, the fundamental right of the petitioners under Article 19 had been infringed.”

6. In view of the above, finding no merit in the petition, the same is hereby dismissed. The petitioner may take recourse to any other remedy available to him in accordance with law.

(Ajay Kumar Mittal)
Judge

July 02, 2015
'gs'

(Rekha Mittal)
Judge

