

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

**CWP No.14166 of 2015
Date of decision: 17.7.2015**

Deep Chand and others

Petitioners

Versus

State of Haryana and others

Respondents

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

Present: Mr. N.C. Kinra, Advocate for the petitioners.

Ajay Kumar Mittal,J.

1. This order shall dispose of CWP No.14166 and 14181 of 2015 as the issue involved in both the petitions is identical. However, the facts are being extracted from CWP No.14166 of 2015.

2. In CWP No.14166 of 2015, the petitioners impugn the notifications dated 1.1.2002 and 30.12.2002 issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (in short, “the 1894 Act”) Annexures P.5 and 6 respectively. Further prayer has been made for quashing the order dated 28/29.5.2014, Annexure P.9 rejecting the claim of the petitioners for release of their land. Direction has also been sought for declaring the acquisition proceedings as having been lapsed by coming into force the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short, “the 2013 Act”).

3. A few facts relevant for adjudication of the controversy

involved herein, as narrated in the petition, may be noticed. The petitioners were owners in possession of the land comprised in Khewat No.176/171 min. Khatoni No.324, Khasra Nos.7392 (2-17) and 7393 (2-17) i.e. 10884/10205/7393 (1-3); 10204/7393 (1-0) and 10883/10205/7393 (1-1) situated within the revenue estate Mouza Rohtak. The Haryana Government proposed to acquire land of the petitioners vide notification under section 4 of the 1894 Act on 1.1.2002, Annexure P.5. The petitioners filed objections under Section 5A of the 1894 Act. According to the petitioners, without considering their objections, the respondents issued notification under section 6 of the 1894 Act on 30.12.2002, Annexure P.6. The award was passed on 29.12.2004. Since the land was lying unutilized, a large chunk of land having been released from acquisition, the petitioners being in possession served legal notice dated 22.10.2012, Annexure P.7 upon the respondents claiming release of their land from acquisition. Having received no response, the petitioners filed CWP No.2012 of 2013 which was withdrawn on 31.1.2013 with liberty to file a fresh one containing better particulars. The petitioners again filed CWP No.22572 of 2013 for quashing the notifications under sections 4 and 6 of the Act and the entire acquisition proceedings. The said writ petition was disposed of on 10.10.2013, Annexure P.8 with a direction to the respondents to decide the matter regarding release of land of the petitioners. Vide order dated 28/29.5.2014, Annexure P.9, the respondents rejected the claim of the petitioners. The petitioners made representation dated 3.11.2014, Annexure P.10 to the respondents for reconsideration of their claim and also to consider the applicability of the provisions of Section 24 of the 2013 Act.

Having received no response, the petitioners filed the instant writ petition.

4. We have heard learned counsel for the petitioners.

5. A perusal of the impugned order dated 28/29.5.2014, Annexure P.9 shows that the petitioners had received the amount of Compensation on 9.3.2005. They had also filed reference under Section 28A of the 1894 Act. With regard to the utilization of the land, it has been recorded that part of the land of the petitioners is falling in the sector dividing road of Sectors 6 and 36A and public/semi public belt, Rohtak. The sector dividing road of sectors 6 and 36A Rohtak has been constructed and part of the land falling in public/semi public belt will be used for this purpose as per the development plan. The relevant finding recorded by the Secretary-cum-Director General, Urban Estates Department, Haryana in its order dated 28/29.5.2014 reads thus:-

“2.....In this connection, it is to mention that the land of Sector 6, Rohtak was notified for acquisition under Section 4 on 1.1.2002. As per report there was no construction/structures on the petitioner's land at the time of issuance of notification under Section 4. The declaration under Section 6 was issued on 30.12.2002 and award was announced on 29.12.2004. A proper procedure as prescribed under the Land Acquisition Act, 1894 was followed for acquiring the land in Sector 6, Rohtak. The legal right of the petitioner was not infringed because the land owners filed objections under Section 5A and a proper opportunity of hearing was granted to the land owners by LAC Rohtak. The petitioner had received the amount of compensation on 9.3.2005 and have filed reference under Section 28A of the Land Acquisition Act, 1894. Regarding the utilization of the land, it has been reported that part of the land of the petitioner is falling in the sector dividing road of sector

6 and 36A and public and semi public belt, Rohtak. The sector dividing road of sector 6 and 36A Rohtak has been constructed and the part of land falling in public and semi public belt will be used for this designated use as per the provision of development plan. Therefore, the contention of the petitioner that his land is lying unutilised is not correct.”

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.”

6. 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.

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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.”

7. 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. Further, it clearly falls within the domain of the State to decide whether the land which is being acquired for public purpose would suit the said public purpose. It is only when the action of the State is actuated by malafides that the same would be amenable to judicial review. A Division Bench of this Court in *Sampuran Singh and others v. Union Territory, Chandigarh and others*, 2007(1) PLR 349 had held as under:-

“11. We are in full agreement with the learned counsel for the respondents. The State can always exercise its absolute power to acquire land, provided a public purpose exists and it is not

necessary that it should succumb to the wishes or willingness of the owner or person interested in the land. The only exception can be when mala fide is shown and then the Courts are bound to protect the individuals from being the victims of such arbitrariness.”

Still further, with regard to invoking the provisions of Section 24(2) of the 2013 Act, it may be noticed that the award in the present case was announced on 29.12.2004 and the petitioners had received the compensation on 9.3.2005. Thus, the provisions of Section 24(2) of the 2013 Act do not apply.

8. In view of the above, there is no merit in these petitions and the same are hereby dismissed.

(Ajay Kumar Mittal)
Judge

July 17, 2015
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(Rekha Mittal)
Judge