

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

**CWP No. 14528 of 2015
Date of decision: 22.07.2015**

Som Nath Batra

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

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

Present: Mr. R.K.Sharma, Advocate for the petitioner.

Ajay Kumar Mittal,J.

1. Prayer in this petition is for quashing the notifications under sections 4 and 6 read with Section 17 of the Land Acquisition Act, 1894 (in short, "the Act") dated 18.10.2000 and 19.10.2000 and award dated 23.3.2002, Annexures P.1 to P.3 respectively being illegal, arbitrary, malafide and contrary to the provisions of the Act. Further prayer has been made for directing the respondents to restore the possession of the land to the petitioner as the same has not been utilized for the purpose for which it was acquired.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner was owner of agricultural land measuring 8 kanals 17 marlas comprised in

Rectangle No.27, Khasra No.1/2(6-7, 2/1/2, 2-10) and 2 kanals 2 marlas being 42/374th share out of land measuring 18 kanals 14 marlas comprised in Khewat No.83, Khatoni No.174 purchased by him vide registered sale deed dated 24.6.1997 from Rohtash Kumar of Village Chhapra Khera, Tehsil and District Karnal. The State of Haryana issued notification dated 18.10.2000, Annexure P.1 under Section 4 read with section 17 of the Act for acquiring land of the petitioner for a public purpose namely for the development and utilization of land for cremation ground in Karnal. Notification under Section 6 read with Section 17 of the Act was issued on 19.10.2000, Annexure P.2. The Land Acquisition Collector, Panchkula passed award dated 23.3.2002, Annexure P.3 qua the land of the petitioner. According to the petitioner, the land has not been utilized for the purpose for which it was acquired since the date of its acquisition and passing of the award. Even now the land is not being used for the said purpose. Respondent No.4 – Estate Officer, Haryana Urban Development Authority (HUDA) is leasing out the said land to different persons from the date of the passing of the award. The petitioner had received the compensation as per the award. He is willing to deposit the entire compensation in case the respondents restore the possession of the said land to him. The petitioner requested the respondent authorities for releasing his land but in vain. The petitioner filed a civil suit in the year 2006 for declaration and consequential relief of permanent injunction. It was dismissed on 11.11.2011 on the ground that the petitioner failed to prove that the possession of the land was with him and the said land was not being used for the purpose for which it was acquired. Hence the instant writ petition with the prayer as mentioned above.

3. We have heard learned counsel for the petitioner.

4. The land was acquired in the year 2000. The award was passed on 23.3.2002. A civil suit was filed by the petitioner in the year 2006 for declaration and consequential relief of permanent injunction which was dismissed on 11.11.2011. He has already received the compensation in pursuance to the award. Once the land had been acquired for a public purpose, namely, for the development and utilization of land for cremation ground in Karnal, we do not find any justification to accept the prayer of the petitioner. It clearly falls within the domain of the State to decide whether the land which is being acquired for a 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.”

5. Further, 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. Accordingly, the 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.

7. In the present case, no material has been shown to substantiate the claim made in the writ petition or to demonstrate malafide on the part of the State in acquiring the land in dispute. Further, the civil suit filed by the petitioner in the year 2006 was dismissed on 11.11.2011 on the ground that he failed to prove his possession over the land and that the land was not being used for the purpose for which it was acquired. No illegality or infirmity has been pointed out in the impugned notifications and the award. Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

July 22, 2015

(Rekha Mittal)
Judge

‘gs’