

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

CWP No.14544 of 2015 O&M)

Date of decision: 6.11.2015

M/s SRS Retreat Services Limited

....Petitioner

VERSUS

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present: Mr. Shailendra Jain, Senior Advocate with
Mr. Gaurav Aggarwal, Advocate for the petitioner.

HEMANT GUPTA, J.

The petitioner, a company, is owner of the land measuring 47 kanals 7 marlas. The land owned by the petitioner became subject matter of acquisition vide notification dated 14.08.2008 issued under Section 4 read with Section 17 of the Land Acquisition Act, 1894 (for short 'the Act') followed by a notification under Section 6 read with Section 17 of the act on 30.08.2008 for the purpose of Master Plan Sector Road in Faridabad. Award in pursuance of aforesaid notifications was announced on 27.08.2010 including the land owned by the petitioner. The petitioner has sought release of the land which is not required for the development of the road i.e. 16 kanals 19 marlas called marginal land.

The petitioner has received the amount of compensation and the possession was also taken by the respondents. The relevant extract from the writ petition reads as under:-

“4. That after completing the aforestated land acquisition process, the respondent No.4 got the demarcation of the acquired land at site for its development for the notified public purpose. In the beginning of year 2014, when contractors/representatives of the respondent No.4, were developing the Master Plan Road in between Sectors 85 and 88, the petitioner noticed that a part of petitioner’s land acquired by respondents was not been developed and utilized for the said notified public purpose and the same is outside the alignment of demarcated Master Plan road to be developed in between Sectors 85 and 88. Upon enquires and after actual measurement at site petitioner learnt that though respondents have acquired petitioner’s aforestated land measuring 47 Kanals 7 Marlas for development of aforestated Master Plan Roads in between Sectors 85 and 88, yet they have actually utilized only a part of the same measuring 30 Kanals 8 Marlas for constructing the same and the remaining land measuring 16 Kanals 19 Marlas out of aforestated acquired land of the petitioner is lying unutilized being outside the alignment of the said Master Plan Road in between Sector 85 and 88....”

Learned counsel for the petitioner relies upon an order of Hon’ble Supreme Court in Banda Development Authority, Banda v. Moti Lal Agarwal and others, AIR 2011 SC 1288, to contend that the possession has not been taken in terms of the parameters laid down by Hon’ble Supreme Court in the aforesaid judgment which reads as under:-

“34. The principles which can be culled out from the above noted judgments are:

- i) No hard and fast rule can be laid down as to what act would constitute taking of possession of the acquired land.
- ii) If the acquired land is vacant, the act of the concerned State authority to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.
- iii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the concerned authority will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the concerned authority will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of

independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.

iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.

v) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3A) and substantial portion of the acquired land has been utilised in furtherance of the particular public purpose, then the Court may reasonably presume that possession of the acquired land has been taken.

Learned counsel for the petitioner also refers to orders passed in CWP No.18712 of 2003 titled Smt. Onkari and others v. State of Haryana and others, on 24.05.2005 and CWP No.13449 of 2012 titled Sukhbir Singh and another v. State of Haryana and another, decided on 14.01.2014, to contend that the land which is not required for the stated public purpose, the same should not be utilized for any other public purpose.

We do not find any merit in the present writ petition firstly for the reason that compensation amount has been withdrawn by the petitioner and that petitioner has now challenged the acquisition proceedings after long lapse of time. Thus the petitioner has approached this Court to challenge the acquisition proceedings after gross delay and laches. The Award was announced in the year 2010 whereas the writ petition has been filed in the year 2015.

Secondly, the possession of the land was taken with the announcing of the award which is apparent from the averments made in para 4 of the writ petition when it is averred that respondent No.4 demarcated the acquired land, at that stage, the petitioner noticed that the part of the land has not been developed. Thus the possession is proved to be taken by the State as the respondents have started demarcating the acquired land. Such land vests free from all encumbrances with the State.

The argument of learned counsel for the petitioner is that the *Roznamcha* of possession is not witnessed by independent witnesses whereby the possession of acquired land has been handed over to the Estate Officer, Haryana Urban Development Authority (for short 'HUDA').

We do not find the said argument to be factually correct. The *Rapat Roznamcha* is to hand over possession to Kishan Singh, Patwari, who is representative of the Estate Officer, HUDA. One Narain Singh, Sevadar, is a witness of process of handing over. Vide the said *Rapat Roznamcha* 757 (Annexure P-12), the possession of land measuring 70.79 acres in village Baselwa was handed over to the representative of the Estate Officer, HUDA.

In Banda Development Authority, Banda's case (supra), the Court has held that there cannot be any hard and fast rule as to what act would constitute taking of possession of the acquired land. In the present case, it is not the case of the petitioner that there was a standing crop or any house or dwelling unit. If there was no standing crop or a dwelling unit, the possession would be taken by the process of going to the spot and handing over possession to the acquiring Department.

In Tamil Nadu Housing Board v. A. Viswam (dead) by LRs, (1996) 8 SCC 259, the Hon'ble Supreme Court has said that one of the accepted modes of taking possession of the acquired land is recording of a memorandum of *panchnama* by the Land Acquisition Officer in the presence of witnesses. The Court said to the following effect:-

“9. It is settled law by series of judgments of this Court that one of the accepted modes of taking possession of the acquired land is recording of a memorandum or Panchnama by the LAO in the presence of witnesses winged by him/them and that would constitute taking possession of the land as it would be impossible to take physical possession of the acquired land. It is common knowledge that in some cases the owner/interested person may not cooperate in taking possession of the land.”

In another judgment reported as Sita Ram Bhandar Society v. Govt. (NCT of Delhi), (2009)10 SCC 501, the Court held that while taking possession of a large area of land a pragmatic and realistic approach had to be taken as it would be impossible for the Collector or the Revenue Official to enter each bigha or biswas and to take possession thereof. The Court held to the following effect:-

“30. It would, thus, be seen from a cumulative reading of the aforesaid judgments, that while taking possession of a large area of land with a large number of owners, it would be impossible for the Collector or the Revenue Official to enter each bigha or biswas and to take possession thereof and that a pragmatic approach has to be adopted by the Court. It is also clear that one of the methods of taking possession and handing it over to the beneficiary department is the recording of a Panchnama which can in itself constitute evidence of the fact that possession had been taken and the land had vested absolutely in the Government.”

In Brij Pal Bhargava v. State of U.P., (2011) 5 SCC 413, the view in Sita Ram Bhandar Society's case (supra) was reiterated.

In the present case, there is one independent witness of the action of delivery of possession. It is not necessary that there has to be multiple witnesses. Taking of possession and handing over to the State is an act performed by the officials in their ordinary course of business. Such act carries presumption of correctness. Therefore, the petitioner cannot be permitted to say that the act of taking possession is not proper and that too after long lapse of time.

The orders referred to by learned counsel for the petitioner does not refer to any of the binding precedents as discussed in detail in a judgment of Division Bench of this Court in CWP No. 17979 of 2011 titled Jagtar Singh and others vs. State of Punjab and others, decided on 09.02.2012. Such cases have been decided on the peculiar facts and are not binding precedents.

The argument that land acquired for one public purpose cannot be utilized for another public purpose has been examined in respect of the acquisition in question in CWP No.16085 of 2012 titled M/s Kataria Construction Pvt. Ltd. v. State of Haryana and others, decided on 05.11.2015. It has been held that the marginal land, after utilization the land for the purpose of road can be utilized for another public purpose.

In view of the above and for the reasons recorded in M/s Kataria Construction Pvt. Ltd.'s case (supra), the present writ petition is dismissed.

(HEMANT GUPTA)
JUDGE

NOVEMBER 6, 2015
‘D. Gulati’

(RAJ RAHUL GARG)
JUDGE