

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

CWP No. 26274 of 2013 (O&M)

Date of decision: 5.08.2015

Kuldip Singh and others

.....Petitioners

Vs.

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE DARSHAN SINGH**

Present: Mr. Atul Lakhanpal, Sr. Advocate with
Mr. R.S.Chahal, Advocate, Advocate for the petitioners.

Mr. Rajesh Bhardwaj, Addl.A.G.Punjab.

Mr. I.S.Ratta, Advocate for respondent No.2.

Ajay Kumar Mittal,J.

CM No.9753 of 2015

1. The documents are allowed to be taken on record as prayed.

Civil Miscellaneous application stands disposed of.

CWP No.26274 of 2013

2. The petitioners seek a direction to the respondents not to utilize their land comprised in Khasra No.359/136 measuring 17 kanals 6 marlas situated in Village Pathankot which has not been acquired by them under the development scheme known as Development and Expansion Scheme

near Jogi Bangla 13.56 acres which they have included in the notice dated 20.11.2013, Annexure P.10.

3. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioners are owners in possession of land measuring 10 kanals 7 marlas in Khasra No.229 and 17 kanals 6 marlas situated in Khasra No.359/136 Khewat/Khatauni No.94/16/1 in Village Pathankot, Hadbast No.340. It is situated near bye-pass road Pathankot. The petitioners are co-sharers in this land and have constructed a house thereon. Respondent No.2 Pathankot Improvement Trust issued a public notice under Section 36 of the Punjab Town Improvement Act, 1922 (in short, "the Act") proposing to prepare a Development and Expansion Scheme near Jogi Bangla. Land of the petitioners falling in Khasra No.222 was under the scheme whereas their land falling in Khasra No.359/136 was not part of the scheme. Notices were issued to the land owners for filing objections, if any. None of the petitioners ever received any notice regarding the land situated in Khasra No.359/136 which showed that the land in the said Khasra No. was left out of the scheme and was never part thereof. The layout plan prepared by respondent No.2 showed the area in Khasra No.359/136 owned by the petitioners although the same was not acquired as the layout plan showed the Circular Road from Civil Hospital to Village Rara to be boundary of the scheme and the said road had been shown in Khasra No.222 acquired for the purpose of scheme as boundary. Respondent No.2 announced in award dated 26.7.2011 that land of the petitioners in Khasra No.359/136 was not mentioned nor any amount had been assessed therefor. During the first week of May 2012, the officials of respondent No.2 started digging the land

of the petitioners in Khasra No.359/136 alongwith other land which stood acquired. The petitioners objected but the officials of respondent No.2 insisted that the land stood acquired on the basis of layout plan Annexure P.2 which had provided for boundary of the Circular road shown beyond Khasra No.136 measuring 17 kanals 6 marlas having a width of 32 karams. The petitioners obtained the copy of Aks-shajra Annexure P.3 from the revenue department, Pathankot showing the acquired land as well as land in Khasra No.136 owned by them. This document originally prepared in the year 1909-10 did not reflect the circular road as shown in the layout plan. Petitioner Kuldeep Singh filed an application before the Assistant Collector, Ist Grade, Pathankot dated 7.5.2012 requesting the authorities to demarcate the boundaries of the Khasra no. in dispute. The report of the revenue department dated 7.5.2012 showed the boundaries of Khasra No.359/136 adjoining Khasra No.222 and with a width of 32 karam Circular road existed from Civil Hospital to Village Rara. On 10.5.2012, the petitioner Kuldeep Singh moved an application before Tehsildar, Pathankot requesting him to direct Halqa Kanungo to visit the spot for marking the metaled Circular road from Civil Hospital to Village Rara who submitted his report dated 10.5.2012 showing existence of 15' wide metaled Circular Road on the side of Khasra No.136 and width of 32 karams between Khasra No.222 and Circular road. Khasra No.136 had also been shown in between Khasra No.222 and metaled Circular road – alleged boundary of the scheme. The petitioners filed CWP No.9077 of 2012 in this court for a direction to the respondents not to utilize the land in Khasra No.359/136 being not part of the scheme. Respondent No.2 in the written statement admitted that the said Khasra No.136 was not part of the scheme nor the same was acquired.

Accordingly the writ petition was dismissed as not pressed vide order dated 1.8.2012, Annexure P.9. On 20.11.2013, respondent No.2 again issued an advertisement in the Tribune for selling/allotting the plots in the above referred scheme in which land falling in Khasra No.136 had been included. Hence the instant writ petition.

4. We have heard learned counsel for the parties.

5. A perusal of the averments made in the writ petition and the written statement filed by the respondent authorities shows that there is serious dispute about the fact whether land belonging to the petitioners in Khasra No.359/136 comes under acquisition for the development scheme known as Development and expansion Scheme near Jogi Bangla 13.56 acres. In the earlier petition filed by the petitioners being CWP No.9077 of 2012, it was recorded in the order dated 1.8.2012, Annexure P.9 that the said Khasra No. was not part of the Development scheme. Consequently, the said writ petition was dismissed as not pressed. Since there is dispute on facts, it is required to be adjudicated on the basis of evidence to be led by both the parties.

6. 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 issued 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.”

7. In view of the above, there being dispute on facts, which cannot be decided in writ petition under Articles 226/227 of the Constitution of India, the petitioners may seek their remedy before appropriate forum/court in accordance with law. Consequently, the writ petition stands disposed of.

(Ajay Kumar Mittal)
Judge

August 05, 2015
'gs'

(Darshan Singh)
Judge