

**IN THE HIGH COURT OF JUDICATURE FOR THE STATES OF
PUNJAB AND HARYANA, AT CHANDIGARH**

Civil Writ Petition No. 26164 of 2014

Date of Decision: August 18, 2015

Randhir Singh and others

---Petitioners

Versus

State of Haryana and another

---Respondents

CORAM: **Hon'ble Mr. Justice Satish Kumar Mittal**

Hon'ble Mr. Justice Mahavir S. Chauhan

Present: Shri Kamal Sehgal, Advocate, for the petitioners

1. *Whether Reporters of local papers may be allowed to see the judgment? Yes/No*
2. *To be referred to the Reporter or not? Yes/No*
3. *Whether the judgment should be reported in the Digest? Yes/No*

Mahavir S. Chauhan, J.

Predecessors-in-interest of the petitioners, namely Ishwar Chand etc. owned land admeasuring 96 kanals comprised in Rectangle No. 30, 31, 32, 37, 38, 39, 44, 45, 52, 53, 54 and 60 situated in the revenue estate of Bilaspur, Hadbast No. 279, Tehsil Jagadhri, District Yamuna Nagar (here-in-after referred to as the 'land in dispute'). In the year 1949 the State Government, to provide for the conservation of sub soil water and prevention of erosion in the area, notified the land in dispute under Section

3 of the Punjab Land Preservation Act, 1900 (here-in-after referred to as the '1900 Act') and, as such, was subjected to restrictions/prohibitions, such as clearing or breaking or cultivating, quarrying of stone, burning of lime, cutting of trees or timber etc., in terms of Sections 4 and 5 of the 1900 Act for a period of twenty five years. Vide notification dated August 22, 1975 the land in dispute was re-notified under the afore-stated provisions for a further period of fifteen years. It was further notified for twenty five years in the year 1994. Petitioners purchased the land in dispute vide registered sale deed dated May 21, 2002 i.e. during the currency of the 1994 notification and alongwith other co-sharers, submitted representation to the authority concerned for release of the land in dispute from the above-stated notifications and then filed Civil Writ Petition No. 7090 of 2003 wherein this Court, vide order dated May 23, 2005, directed the respondents to dispose of petitioners' representation within three months after giving an opportunity of hearing to them.

02. Pursuant to the directions of this Court issued vide order dated May 23, 2005, Commissioner and Secretary to Government of Haryana, Department of Forest, passed order dated January 31, 2006 thereby rejecting petitioners' claim. Petitioners again approached this Court by way of Civil Writ Petition No. 2728 of 2006 praying for issuance of a Writ of Certiorari quashing order dated January 31, 2006 and notifications dated August 05, 1994 and a Writ of Mandamus directing the respondents to pay to the petitioners appropriate compensation on account of loss caused to them by notifying their land under Section 3 of the 1900 Act. Civil Writ Petition No. 2728 of 2006 was disposed of by this Court vide order dated January 24,

2012 (Annexure P8) in the following terms:

“In view of the above, the respondent is directed to reconsider the matter and reconstitute a new Committee consisting of senior officials of the concerned department of the State Government as well as senior officials of Government of India, Ministry of Environment and Forests. In the above terms, the case is remanded to the respondent to reconsider with regard to issuance of notification and the restrictions imposed and respondent will direct the Collector to assess compensation and petitioners be paid arrears of the same in lieu of non use of their land, 38 months prior to the date of filing the present writ petition till the date petitioners are not allowed use of the land.”

03. In terms of order dated January 24, 2012 (Annexure P8) passed in Civil Writ Petition No. 2728 of 2006, a Committee was constituted to review the entire process of the notifications and examining the feasibility of releasing the land in question from the purview of the notifications; and Deputy Commissioner, Yamuna Nagar was asked to assess the compensation under Section 15 of the 1900 Act.

04. The Committee constituted pursuant to order dated January 24, 2012 in Civil Writ Petition No. 2728 of 2006, after due deliberations, submitted a report on March 03, 2014 stating that the Government had undertaken detailed and proper processes for notifying the land under Section 3 of the 1900 Act; objections filed by the landowners against closure of their land were rejected by the Sub Divisional Officer (Civil); land of the petitioners was not singled out and the land in dispute could not be released from the purview of the 1900 Act because the Hon’ble Supreme Court vide order dated March 18, 2004 passed in Civil Writ Petition No. 4677 of 1985, M.C. Mehta versus Union of India and others, had held that the land notified under Section 3 of the 1900 Act is treated as “Forest” for

the purpose of the Forest (Conservation) Act, 1980 (here-in-after referred to as the Forest Act, 1980) and approval of the Central Government was necessary to use such land for non-forestry purposes; and as held by the Hon'ble Apex Court in order dated December 16, 2002 in IA Nos. 833, 834-835, 837-838, 839, 840, 846 and 847 in Civil Writ Petition No. 202 of 1995, Godavarman Thirumulpad versus Union of India and others, such land continues to be treated as "Forest" for the purpose of the Forest Act, 1980 even if the term of notification issued under Section 3 of the 1900 Act has expired; and, as such release of the land in dispute from the purview of notifications was within the domain and jurisdiction of the Hon'ble Supreme Court alone.

05. In view of the findings of the Committee, petitioners' claim was rejected vide order dated March 25, 2014 (Annexure P9).

06. However, in the meanwhile order dated January 24, 2012 passed in Civil Writ Petition No. 2728 of 2006 came to be challenged by the petitioners by way of Letters Patent Appeal No. 685 of 2012, which, after contest, was disposed of vide order dated July 17, 2013 upholding petitioners' right to get compensation with effect from 38 months prior to the date of filing of Civil Writ Petition No. 7090 of 2003 but as regards release of their land from the notifications the Letters Patent Appeal was dismissed by observing as under:

"We are not convinced with the argument raised. Notifications in question were issued in the year 1994. Petitioner was not owner of the land in dispute. The Original owner did not lay challenge to the above notifications till such time the entire land was sold to the petitioner in the year 2002. Under the circumstances, we feel that petitioner probably will have no right to lay challenge to the notifications after purchase of the land."

He has purchased the land with open eyes and after verifying the relevant record and other relevant factors. If he was not satisfied, he should not have purchased the land which was subject to restrictions as imposed by the notifications under challenge.”

07. When Letters Patent Appeal No. 685 of 2012 was still pending before this Court, petitioners preferred a representation dated May 22, 2013 saying that the land in dispute be acquired by the State Government by invoking the provisions of the Indian Forest Act, 1927 (here-in-after referred to as the ‘1927 Act’) read with Sections 3, 4 and 5 of the 1900 Act and immediately thereafter they preferred Civil Writ Petition No. 23973 of 2013 which came to be disposed of by this Court vide order dated October 30, 2013 (Annexure P10) by directing the respondent-State “to consider and decide the petitioners’ representation dated 22.05.2013 by passing a speaking order and in accordance with law keeping in view the principles reiterated and clarified by the Hon’ble Supreme Court in K.T. Plantation Private Limited versus State of Karnatka, 2011 (9) SCC 1”.

08. Petitioners’ representation dated May 22, 2013, as regards acquisition of the land in dispute under the 1927 Act, after due consideration, came to be rejected by the Principal Secretary to Government of Haryana, Department of Forests vide order dated November 13, 2014, and conveyed to the petitioners vide endorsement dated November 17, 2014 (Annexure P11). Matter with regard to determination and payment of compensation has been forwarded to the Deputy Commissioner, Yamuna Nagar.

09. To seek issuance of a writ of *Certiorari* quashing order dated March 25, 2014 (Annexure P-9) and order dated November 13, 2014

(Annexure P11) as also notifications dated August 05, 1994 (Annexures P3 and P4) and for issuance of a Writ of *Mandamus* directing respondents to release the land in dispute from the restrictions under Sections 4 and 5 of the 1900 Act or, in the alternative, directing the respondents to acquire the land in dispute in accordance with the Right to Fair Compensation and Transparency in Land Acquisition and Resettlement Act, 2013 (for short the '2013 Act'), petitioners have once again approached this Court by way of the instant Civil Writ Petition under Article 226 of the Constitution of India.

10. It has been fervently argued on behalf of the petitioners that the land in dispute is under virtual control of the respondents as it has been subject to restrictions in terms of Sections 4 and 5 of the 1900 Act since the year 1949 and, as such, the petitioners are deprived of their right to use it to their benefit. Therefore, it can be acquired under the provisions of Section 11 of the 1927 Act as per procedure laid down in 2013 Act or, in the alternative, the restrictions imposed upon it should be lifted so as to enable the petitioners to use it in husband like manner.

11. The submission has left us unimpressed.

12. Under Section 7 of the 1900 Act, petitioners are entitled to compensation subject to fulfillment of the conditions enumerated therein and as is evident from the impugned order dated November 13, 2014 (Annexure P11) petitioners' claim for compensation is being looked into by the quarters concerned.

13. As regards the restrictions imposed upon the land in dispute it needs to be remembered that the notifications dated August 05, 1994 (Annexures P3 and P4) imposing restrictions upon the land in dispute under

Sections 4 and 5 of the 1900 Act came into existence when the land in dispute was in the hands of its original owners or say petitioners' predecessors-in-interest. They did not challenge these notifications (Annexures P3 and P4). Silence of original owners of the land in dispute from the year 1994, when the notifications in question were issued, till the year 2002 when the land in dispute was purchased by the petitioners, implies acceptance of the notifications (Annexures P3 and P4) by petitioners' predecessors-in-interest. When the petitioners purchased the land in dispute in the year 2002 the restrictions were still operative. The petitioners, in their wisdom and with their eyes open, entered into the bargain presumably after due verification of the relevant records. It is, thus, needless to say that having purchased the land in dispute with the restrictions under Sections 4 and 5 of the 1900 Act, the petitioners are precluded from making a grievance against notifications (Annexures P3 and P4). Still, immediately on their arrival on the scene, petitioners started laying a challenge to the notifications (Annexures P3 and P4) by recurrently approaching the respondents and this Court. Grievance of the petitioners as regards the validity of notifications (Annexures P3 and P4) was, ultimately, set at rest by a Division Bench of this Court vide order dated July 17, 2013 passed in Letters Patent Appeal No. 685 of 2012 (supra) by holding that they have no right to lay challenge to the notifications after purchase of the land. Order dated July 17, 2013 is not shown to have been upset or reversed in appeal. Since grievance of the petitioners in the instant Civil Writ Petition is the same as in Civil Writ Petition No. 2728 of 2006, out of which Letters Patent Appeal No. 685 of 2012, decided vide order dated July 17,

2013, had arisen, the conduct of the petitioners, as regards challenge to the notifications (Annexures P3 and P4), is hit by the principles of acquiescence and res judicata and, as such, the instant Civil Writ Petition is not maintainable.

14. Petitioners' claim for acquisition of the land in dispute under Section 11 of the 1927 Act is also fallacious and misconceived.

15. Article 300-A of the Constitution of India enables the State to put restrictions on the right to property by law, though that law has to be reasonable and must comply with other provisions of the Constitution. Provisions of Sections 3, 4 and 5 of the 1900 Act provide that whenever it appears to the Provincial Government that it is desirable to provide for the conservation of sub soil water or prevention of soil erosion certain restrictions/prohibitions regarding clearing or breaking up or cultivating of the land, quarrying of stone or burning of lime, cutting and burning of trees or timber or forest produce etc. can be imposed under Sections 4 and 5 of the 1900 by notifying a particular piece of land under Section 3 of that Act. However, the 1900 Act does not provide for acquisition of such land.

16. Under Section 3 of the 1927 Act, State Government is authorized to constitute any forest land or waste land which is property of the Government or over which the Government has proprietary rights or to the whole or any part of the forest produce of which the Government is entitled, a reserved forest. Section 4 of the 1927 Act provides that whenever it has been decided to constitute any land a reserved forest, the State Government shall issue a notification in the Official Gazette in this behalf and ultimately, such land can be acquired under Section 11 of the 1927 Act

in accordance with the procedure laid down in the Land Acquisition Act, 1894. However, it is not the case of the petitioners that the land in dispute either is property of the Government or over it the Government has proprietary rights or the Government is entitled to the whole or any part of its forest produce or that it has been constituted as a reserved forest. In fact, after issuance of a notification under Section 3 of the 1900 Act imposing restrictions/prohibitions as enumerated in Sections 4 and 5 of that Act, owner of the land is not divested of the ownership rights and title remains with him. The land in dispute, therefore, cannot be termed to be a reserved forest within the meaning of Section 3 of the 1927 Act and liable to be acquired under Section 11 of that Act only because it has been notified under Section 3 of the 1900 Act. It will stand repetition that petitioners' claim for compensation under Section 7 of the 1900 Act is being looked into at the appropriate level and beyond that they have no right, whatsoever.

17. Petitioners' claim has been examined with reference to acquisition of land under the provisions of 2013 Act (which has replaced the Land Acquisition Act, 1894). However, it is found to be not covered by any of the various purposes enumerated in Section 2 thereof, for which the land can be acquired.

18. In view of what has been said and discussed in the preceding paragraphs, the writ petition is found to lack substance and is, therefore, dismissed.

[SATISH KUMAR MITTAL]
JUDGE

[MAHAVIRS. CHAUHAN]
JUDGE

August 18, 2015

adhikari