

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.4840 of 2015

Date of Decision:-April 20th, 2015

M/s Parisha Promoters Pvt. Ltd.

.....Petitioners.

Versus

The Sub Registrar, Gurgaon & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Shailendra Jain, Senior Advocate assisted by
Ms. Mannu Chaudhary, Advocate for the Petitioner.

JASWANT SINGH, J.

The land in dispute is comprised in Khewat No.381 Khata No.436 Khasra No.337 (1 Bigha-8 Biswa) situated in the revenue estate of Islampur, Tehsil & District Gurgaon. Admittedly, this parcel of land is co-owned to the extent of half share each by one Ram Singh s/o Late Mann Singh along with one Bhima s/o Late Sh. Nihal Singh. Both the co-owners executed the agreement for sale along with possession dated 25.03.2004 (P-2) with the petitioner-company (hereinafter referred to as the Builder) to enable the Builder to obtain the licence under the Haryana Development Regulation of Urban Areas Act, 1975 (for short the 1975 Act) for developing a colony. The said land along with land in the area was acquired by the State Government vide notifications dated 27.11.2003 and 24.11.2004 issued under Sections 4 & 6 of the Land Acquisition Act, 1894.

It is averred that Bhima and Ram Singh along with present builder filed CWP No.18163 of 2006 challenging the acquisition wherein vide interim order dated 17.11.2006 status quo with regard to possession was ordered to be maintained. It is submitted that the said protection was granted prior to the passing of the award dated 22.11.2006 by the Collector, Gurgaon. The said writ petition was finally disposed of vide order dated 21.10.2013 and the operative part reads as under:-

“ The writ petition is accordingly disposed of with liberty to the petitioners to move an application for the grant of licence on the prescribed format within one month from the date a certified copy of this order is received and upon receipt thereof, the State of Haryana/Competent Authority is directed to consider and decide the same in accordance with law and after affording an opportunity of hearing to the petitioners, within a period of three months from the date of submission of application.

Disposed of. Dasti.”

To a pointed query, learned Counsel for the petitioner-Builder states that the case for grant of licence under the 1975 Act is still pending before the competent authority.

It transpires that since the award had been passed and the compensation paid or deposited of the land owners, the symbolic possession as per rapat no.170 dated 22.11.2006 and mutation no.3016 of ownership in favour of HUDA was effected.

The petitioner-Builder being aggrieved against the said mutation on the ground that the possession still vested with the Builder/land

owners issued a notice for demand seeking cancellation of mutation no.3016 sanctioned in favour of HUDA and also registering of a sale deed pursuant to the agreement to sell dated 25.03.2004 on the basis of a general power of attorney dated 25.03.2004 executed by the land owners Ram Singh and Bhima. It is submitted that a report dated 15.01.2015 (P-9) was submitted by a Kanguho regarding the sanctioning of mutation in favour of HUDA and thus, the petitioner-Builder has filed the present writ petition seeking the rescinding of the said mutation and further registration of the sale deed.

It is not in dispute that the said Bhima has died on 12.11.2013 and, therefore, his general power of attorney qua his share cannot be accepted to be enforceable legal document on his behalf.

Learned Counsel for the petitioner-Builder has argued that since the possession of the land has not been obtained till now by the respondents, therefore, the ownership by virtue of section 16 of the Land Acquisition Act, 1894 is not vested with HUDA and continues to remain with the original land owners and, therefore, action on the part of respondent no.1 of not registering the sale deed is arbitrary and, therefore, is liable to be set aside. Learned Counsel for the petitioner has placed reliance upon judgments **Special Land Acquisition Officer, Bomay & Ors. Vs. M/s Godrej and Boyee 1988(1) SCC 50**, **Ganga Jeewan Vs. The Sub Registrar, Mini Secretariat, Gurgaon, Haryana CWP No.19487 of 2014 Decided on 02.12.2014**, **Tara Singh Vs. Chandigarh Administration, Chandigarh through its Administrator at Sector 17 & Ors. CWP No.3999 of 2014 Decided on 10.11.2014**, **Nitin Jain Vs. State of Haryana & Ors. CWP No.6163 of 2014 Decided on 25.11.2014**, **Ganga Vishnu Swaika Vs. Machine Manufacturing Co. Ltd., & Anr. AIR 1955 CAL**

503, Patasi Devi Vs. State of Haryana & Ors. 2012(9) SCC 503, Raghbir Singh Sehrawat Vs. State of Haryana & Ors. 2012(1) SCC 792 & Prahlad Singh & Ors. Vs. Union of India & Ors. 2011(5) SCC 386.

After hearing learned Counsel for the petitioner-Builder and perusing the paper book, this Court is of the considered view that the present petition is devoid of any merit and the same deserves to be dismissed.

In the present case, this Court fails to understand as to how the petitioner-Builder, who is only having an agreement to sell in his favour can seek direction to respondent no.1 to rescind the mutation no.3016 (P-5) entered in favour of respondent no.3-HUDA qua the part of land in question and further seek direction to respondent no.1 for registering the sale deed in favour of petitioner-Builder in pursuance to the agreement to sell dated 25.03.2004 (P-2) as well as general power of attorney dated 25.03.2004 (P-3). It is admitted fact that the land in question was acquired by the State Government vide notification and declaration dated 27.11.2003 and 24.11.2004 issued under Sections 4 & 6 respectively of the Land Acquisition Act 1894. It is also not in dispute that subsequently, award dated 22.11.2004 under Section 11 of the said Act was also pronounced. Although the petitioner-Builder through the owners had challenged the above mentioned notifications under Sections 4 & 6 of the Land acquisition Act, 1894, however same were not set aside. Thus, in effect the notifications issued under Sections 4 & 6 of the Land Acquisition Act have attained finality.

The noting of the concerned official on the legal notice dated 5.1.2015 to the effect that no sale deed can be executed and registered in

name of the petitioner-Builder because mutation no.3016 has already been sanctioned in favour of respondent no.3-HUDA does not seem to be arbitrary or illegal in any manner whatsoever. Once the land has been compulsorily acquired by the respondent State for HUDA and HUDA has been shown to be the owner. There seems no justification for executing the sale deed in favour of the petitioner-Builder when the alleged owners from whom agreement to sell is propounded are not shown to be owners at all.

The remedies which petitioner-Builder is seeking through the present writ petition are not at all available to it through the instant process of law. The argument of the learned Counsel for the petitioner-Builder that since the possession is still with him and, therefore, he continues to be owner in the eye of law under the 1894 Act might be correct, but this argument is not available for the nature of relief sought by him in the present writ petition. The legislature, in its wisdom has now provided for release of lands such as the present one by enacting new Statutes and these arguments might be helpful to the petitioner in proceedings under such statutes.

However, in the present writ petition, the petitioner-Builder cannot be granted any relief whatsoever and the same is wholly misconceived. The reliance placed by the petitioner-Builder on the numerous judgments passed by the Hon'ble Supreme Court as well as this Court are not applicable to the facts of the present case because the judgments are either dealing with the situation when either the possession has not been taken by the State or the Court is dealing with the manner in which the State is required to take physical possession from the landowners after acquisition. The said question is not involved in the present case. The

other judgments that have been relied by the petitioner are to the effect that the Registering Authority has no right to deny any party the right of getting sale deed executed in its favor. The said judgments are also not applicable to the facts of the present case. Respondent no.1-Sub Registrar, Gurgaon was well within its right and competence to correctly exercise its jurisdiction by declining to register the sale deed because of the mutation number 3016 sanctioned in favour of the HUDA on the basis of compulsory acquisition, which as stated earlier has not been set aside by any Court of competence and, therefore, no fault can be found in the impugned order (P-9) dated 20.01.2015 passed by respondent no.1-Sub Registrar, Gurgaon.

In view of the above, finding no merit in the present writ petition, the same is hereby dismissed.

**(JASWANT SINGH)
JUDGE**

April 20th, 2015
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