

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

LPA No.26 of 2012 (O&M)

Date of Decision:-24.08.2015

Gurbax Singh and others

.....Appellants

Versus

State of Punjab and others

.....Respondents

**CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL.
HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN.**

**Present:- Mr. Bikramjit Arora, Advocate
for the appellants.**

Mr. Vinod S. Bhardwaj, Addl. AG Punjab.

Mr. S.M. Sharma, Advocate for
respondents Nos. 5 to 7 and LR of respondent No.8.

SATISH KUMAR MITTAL, J.(Oral)

This intra-court appeal under Clause-X of the Letters Patent has been filed by the appellant, who were respondents No. 5 to 10 before the learned Single Judge, challenging the order dated 16.11.2009, passed by the learned Single Judge, whereby the writ petition filed by the respondent No.5 to 8 herein, was allowed in the following terms:

"The question, however, remains is as to whether the land is liable to be exchanged and whether the same would materially affect the rights of the petitioners. This indeed is a disputed question of fact. This aspect is liable to be considered by the competent authority of the State Government in the Department of PWD (B&R). This Court in exercise

of its writ jurisdiction under Articles 226/227 of the Constitution of India is not to embark upon an inquiry and consider whether the exchange would be in the interest of the Department for the alignment of the road and how the interest of the petitioners can be safeguarded as well. Besides, the question whether respondents No. 5 to 10, even if the exchange is to be allowed can block the front of the petitioners would require consideration if not by the authorities of the State Government by a Court of competent jurisdiction on the basis of evidence and material on record. In any case, in the consideration process regarding re-alignment of road and the exchange, if necessary, the petitioners as also respondents No. 5 to 10 would also have a right of hearing in consonance with principles of natural justice. Therefore, it would be just and expedient if the parties appear before the Principal Secretary of Government of Punjab, PWD (B&R) who shall either himself or through any other competent authority reconsider the matter after granting opportunity of hearing to the petitioners as also respondents No. 5 to 10 and other affected persons; besides, take opinion and comments of the Chief Engineer, PWD (B&R).

Accordingly, the writ petition is disposed of. The order of exchange dated 20.9.2007 (Annexure-P7) and the consequential mutation No.9048 based on the exchange are set aside and quashed. It is held that the State Government cannot exchange the land only by issuance of a memo accepting the proposal of exchange sent by the Chief Engineer, Punjab Department of PWD (B&R), Patiala. However, for the purpose of

consideration of the matter with regard to the re-alignment of the road and the exchange if it is necessary shall be carried out after hearing the petitioner as also respondents No. 5 to 10 and other affected persons who may be similarly situated and after taking comments and opinion of the Chief Engineer, PWD (B&R). In case, the exchange is to be carried out the same shall be done in accordance with Section 118 of the Transfer of Property Act by way of a registered documents. Besides, in case the exchange is effected and the 'Dhaba' in front of the shops of the petitioners is continue, the petitioners shall be entitled to avail their remedy before the civil Court for seeking its removal in accordance with law.

During the course of arguments, learned counsel for the respondents draw the attention of this Court towards the affidavit dated 28.2.2015 of Anurag Agarwal, Secretary to Government of Punjab, Department of PWD (B&R), Punjab Civil Secretariat-II, Chandigarh, wherein in para-3, it has been stated as under:

"3. In pursuant to the aforesaid order of the Hon'ble Court a Committee headed by the Chief Engineer (NH), Punjab PWD (B&R), Patiala was constituted to look into the matter. As directed by this Hon'ble Court on 16.11.2009, hearings were conducted on 16.03.2012, 19.03.2013, 19.03.2014 and 02.04.2014 and after hearing both the parties, it has been recommended by the committee that exchange of land is not required and orders passed in the CWP No.710 of 2008 decided on 16.11.2009 will be implemented. It was further recommended that the orders issued by the Govt., wherein

exchange was allowed will be withdrawn and mutation no.9048 will be cancelled. The recommendations of the committee is annexed herewith as Annexure-R/2. Government has approved the recommendations of the committee on 25.02.2015."

Since the appellants have participated in the proceedings before the Authority, on terms of the learned Single Judge order and adverse order has been passed against them, learned counsel for the appellants states that the appellants may be permitted to withdraw this appeal with liberty to challenge the said order in accordance with law.

Dismissed as withdrawn with the aforesaid liberty.

(SATISH KUMAR MITTAL)
JUDGE

24.08.2015
reema

(MAHAVIR S. CHAUHAN)
JUDGE