

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

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**CWP No.12530 of 2015 (O&M)**

**Date of Decision: 26.10.2016**

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Rajesh Saini & Ors.

... Petitioners

VS.

State of Haryana & Ors.

... Respondents

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**CORAM: HON'BLE MR.JUSTICE SURYA KANT**

**HON'BLE MR.JUSTICE SUDIP AHLUWALIA**

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|--------------------------------------------------------------------------|----------|
| 1. Whether Speaking?                                                     | Yes      |
| 2. Whether Reportable?                                                   | Yes      |
| 3. Whether Reporters of local papers may be allowed to see the judgment? | Yes / No |
| 4. To be referred to the Reporters or not?                               | Yes / No |
| 5. Whether the judgment should be reported in the Digest?                | Yes / No |

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Present: Mr. Vikas Chaudhary, Advocate for the petitioners

Ms. Palika Monga, DAG Haryana

Mr. Anil Kumar Rana, Advocate for

Mr. Lokesh Sinhal, Advocate for respondent No.3

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**SURYA KANT, J.**

(1) The petitioners seek a writ of *certiorari* to quash the acquisition proceedings in respect of plot No.24, Khasra No.205/1, measuring 242 sq.yards situated in the revenue estate of village Patti Chaudhary (Kaithal) which were finalized vide award No.49 of 1963. They further seek a declaration that the impugned acquisition is deemed to have lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 on the ground that no compensation amount has been paid and possession of the land also remained with the petitioners or their predecessors-in-interest for a period of more than five years after passing of the award and before the 2013 Act came into force w.e.f. 01.01.2004. A writ of mandamus is also sought to restore the possession in favour of petitioners or alternatively to

provide them equivalent land of same market value as per the scheme of the new Act.

(2) The question that falls for consideration in this case is whether the petitioners are entitled to invoke Section 24(2) of 2013 Act?

(3) The facts are like this. The erstwhile State of Punjab vide notifications dated 11.02.1957 and 12.03.1957 issued under Section 4&6 of the Land Acquisition Act, 1894, respectively followed by Award No.49 of the 1963 acquired the land of village Patti Chaudhary for setting up Mandi Township at Kaithal. The land of one Mokh Ram s/o Chetu measuring 6 kanal 5 marla (which was part of land measuring 22 kanal 16 marla bearing khasra No.205) was also acquired. The compensation amount was duly received by Mokh Ram s/o Chetu vide refund voucher dated 29.05.1966 (R2). The land was thereafter mutated in favour of Mandi Township vide mutation No.5279. Since the acquired land of Mokh Ram s/o Chetu was a part of khasra No.205, it was after acquisition allocated separate khasra No.205/1.

(4) The petitioners are legal heirs of late Ram Singh s/o Radha Krishan and late Balbir Singh s/o Radha Krishan. Their grandfather, namely, Radha Krishan claims to have purchased a plot measuring 242 sq.yards out of khasra No.205/1 from Mokh Ram s/o Chetu by way of sale deed dated 17.01.1949. The petitioners set up that sale deed in their defence when the Market Committee, Kaithal instituted eviction proceedings against them under Section 5&7 of the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972. Those eviction proceedings were initiated alleging that on the site inspection carried out on 23.03.2006, it was found that the predecessors-in-interest of the petitioners had taken unauthorized

possession of the disputed plot, which was in fact a part of land acquired through award No.49 of 1963.

(5) The Collector discarded the stand taken by the petitioners' predecessors-in-interest and having found that in their sale deed no 'khewat' or 'khasra' No. were mentioned and the original sale deed, if any, was not produced despite sufficient opportunities passed the eviction order dated 29.10.2009 (P5). The petitioners' predecessors went in appeal which was also dismissed on 31.08.2010. They challenged those orders before this Court by way of CWP No.21437 of 2010 but that was also dismissed by a learned Single Judge on 01.12.2010. Still aggrieved, Ram Singh filed LPA No.1618 of 2010 which too was dismissed by a Division Bench of this Court on 09.12.2010 observing as follows:-

*“We are satisfied with the reasoning given. Otherwise also once, the appellant has claimed ownership of the property, in dispute, which was acquired by the State authorities in the year 1963 and thereafter award was passed at the maximum the appellant can claim compensation. He is not permitted to insist that will continue to sit over that land.”*

(6) The eviction order has thus attained finality.

(7) It is also pertinent to mention that one of the predecessor of of the petitioners – late Ram Singh filed two Civil Suits bearing No.187 of 2012 and No.417 of 2012, seeking declaration of ownership and permanent injunction. The First Appellate Courts in both the suits held that the plaintiff was not entitled to the reliefs sought in the Civil Suits. The orders passed by two different First Appellate Courts were challenged before this Court by

way of Civil Revision No.1717 of 2014 and 7861 of 2011 but both the revision petitions were dismissed on 19.03.2015. In the civil suit proceedings, it was observed that there was no mention of any 'khewat' or 'khasra' No. in Urdu or Hindi version of the sale deed dated 17.01.1949 and the land mentioned therein was situated in Kaithal Town and was not part of the revenue estate of Village Patti Chaudhary, as claimed in the civil suits.

(8) Having lost their claim in two rounds of litigation, the petitioners have now chosen to initiate these proceedings to declare that the very acquisition of their alleged property is deemed to have lapsed under Section 24(2) of the 2013 Act.

(9) The Land Acquisition Collector, Kaithal has filed a comprehensive written statement questioning the *locus standi* of petitioners as well as maintainability of this writ petition. The orders passed in the quasi-judicial proceedings, of the High Court as well as those passed in Civil Suit proceedings have also been appended.

(10) Having heard learned counsel for the parties and after going through the record, we do not find any merit in these proceedings. We say so firstly for the reason that there is a categorical finding of fact returned in the previous proceedings that the predecessors-in-interest of the petitioners were never ever the owners of the subject land. That finding has attained finality. The petitioners cannot wriggle out of those findings by initiating successive proceedings on the premise that the acquired land is one and the same which their grandfather had statedly purchased on 17.01.1949 from Mokh Ram s/o Chetu.

(11) Secondly, the respondents have well established that the true owner, namely, Mokh Ram s/o Chetu had received the compensation in

respect of his entire acquired land measuring 6 kanal 5 marla vide refund voucher dated 29.05.1966. Possession of the land was also taken. Thus, none of the ingredients of Section 24(2) of the 2013 Act are proved on record. Thirdly, the predecessors-in-interest of the petitioners were found to have taken unauthorized possession of the plot in the year 2006 or so. It is not a case where the expropriated owner was allowed to retain possession of the acquired property for a period of five years or more before the new Act came into force. Fourthly, the eviction order has attained finality much before the 2013 Act came into force on 01.01.2014 and since *ad interim* stay was declined by the Civil Court as well as this Court in Civil Revision proceedings, the respondents have rightly contended that they re-posessed the acquired land before 01.01.2014.

(12) Fifthly, for the true meaning of the expressions “taken” and “paid” used in Section 24(2) of 2013 Act in the context of ‘physical possession’ or ‘compensation’ of the acquired land, can be mere understood if read together with Section 31 of the Land Acquisition Act, 1894. We have no reason to doubt that the ‘physical possession’ of the land or compensation payable in lieu thereof, are referable to the ‘expropriated owner’ or the ‘person interested’ only. The strangers to the land have no claim either to the possession or to compensation under the 1894 Act. The deeming fiction created by Section 24(2) of the 2013 Act becomes operative only when there is willful breach of some of the provisions including Section 31 of the 1894 Act. Thus the declaration under Section 24(2) of the 2013 Act can also be sought only by a “true owner” or a “person interested” in the property acquired under the 1894 Act.

(13) For the reasons afore-stated, we do not find any merit in this writ petition which is accordingly dismissed.

**(Surya Kant)**  
**Judge**

**26.10.2016**  
*vishal shonkar*

**(Sudip Ahluwalia)**  
**Judge**