

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

CWP No. 154 of 2015

Date of decision: 28.3.2016

Shiv Inder Pal Kaur and others

.....Petitioners

Vs.

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporters or not? **YES**

3. Whether the judgment should be reported in the Digest?

Present: Mr. G.S.Punia, Sr. Advocate with
Ms. Harveen Kaur, Advocate for the petitioners.

Ms.Sudeepti Sharma, DAG, Punjab.

Ajay Kumar Mittal,J.

1. The petitioners pray for quashing the order dated 28.9.2014, Annexure P.1 passed by respondent No.2 to the extent that the request of land owners for returning the land had been declined despite the fact that earlier the government gave the same relief vide order dated 10.6.1988 denotifying acquisition of land and handed over the same to the Deputy Commissioner, Patiala for its disposal. Further prayer has been made for a

direction to the respondents to restore the land measuring 38 bighas 10 biswas situated at Bassi Pathana, District Patiala to the land owners which was acquired by the Government of Punjab and had been ordered to be taken back vide order dated 28.9.2014 as the same had not been utilized at all for the purpose for which it was acquired.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The Government of Punjab vide its order dated 10.6.1988, Annexure P.7 ordered de-acquisition of land measuring 38 bighas 10 biswas as the same was not used by the company M/s Vishawkarma Sewing Machine for the purpose for which it was acquired and it was ordered to be handed over to the Deputy Commissioner, Patiala for disposal under the provisions contained in paragraph Nos.493 and 495 of the Financial Commissioner's Standing Order No.28. This order was challenged by the aforesaid company by way of CWP No.12874 of 1989 which was disposed of vide order dated 2.12.2013 on the ground that the company was not heard and respondent No.2 was directed to pass a fresh order regarding de-acquisition of land after hearing the affected parties as they were not heard earlier when the order dated 10.6.1988 was passed. Respondent No.2 upheld the earlier order of de-acquisition vide impugned order dated 28.9.2014, Annexure P.1 and ordered that land could not be returned to the land owners with the following observations:-

“It is not in dispute that the State Government had acquired the land in the year 1956 for setting up of Central Workshop for Sewing Machines at Bassi Pathana. Since till date, the major part of the land is still being utilized for agricultural purposes, and no Central Workshop for Sewing Machines has been set up in accordance with public purpose for which compulsory

acquisition was made. Therefore, I am left with no choice but to order taking back of this land measuring 38 bighas 10 biswas from M/s Vishwakarma Sewing Machine Industries. The request of the land owners for returning the land is also not justified as the land owners accepted the compensation in 1956 and even possession was taken. The land was acquired under the Land Acquisition Act, 1894, which had become final.

In view of the above conspectus, it is directed that the land measuring 38 bighas 10 biswas situated in Bassi Pathana, which is the subject matter of this litigation, be transferred to the Industries Department with immediate effect. Industries Department may thereafter transfer this land to any of the departments or State Public Undertakings in terms of the provisions of para 87 of the Financial Commissioner Revenue Standing Order No.28.”

3. The petitioners are the heirs of some of the original land owners whose land measuring 38 bighas 10 biswas situated at Bassi Pathana, District Patiala was acquired by the Erstwhile State of Pepsu by issuing notification by the Raj Parmukh under Section 4 of the Land Acquisition Act, 1894 (in short, “the Act”) which was published in the Government Gazette dated 25.2.1956, Annexure P.2 for a public purpose namely setting up of a Central Workshop for sewing machines at Bassi Pathana. According to the petitioners, no effort was made by the aforesaid company to achieve the purpose of acquisition. Some residents of Bassi Pathana namely Ram Lal etc. formed a Vishwakarma Sewing Machine Workshop society and the land was sought to be acquired for the said society for setting up a Central workshop for the sewing machines. The objections were raised that no Central workshop was going to be set up as neither the society which was formed had any resources nor they had

brought any machines and had made any arrangement for setting up a sewing machine workshop which required funds and technical know-how. Notification under Section 6 of the Act was issued on 18.8.1956, Annexure P.3 and possession was taken over by the District Industries Officer, Patiala on 30.10.1956 and on the same date, the possession was handed over to the members of Vishwakarma Sewing Machine Industries. The Vishavkarma Industries instead of taking any steps to establish Central workshop for sewing machines for couple of years just left the land vacant and nothing was done towards the public purpose for which it was acquired. Various representations were given to the Deputy Commissioner, Patiala that since the land which was acquired for a public purpose had not been utilized for the said purpose for many years, the same should be restored to them after taking back the compensation and other charges that may be leviable. Various applications and reminders were also given to the authorities. Having received no response, the land owners approached this Court through CWP No.6414 of 1987 for issuance of a writ of mandamus directing the respondents to restore back the possession of the land to them. During the pendency of the writ petition, the State Government vide order dated 10.6.1988, Annexure P.7 ordered de-acquisition of land and directed for disposal of land as per paragraphs 493, 495 of the Financial Commissioner's Standing order No.28. In view thereof, the writ petition was rendered infructuous vide order dated 15.9.1988, Annexure P.8 and was dismissed as such. Thereafter, M/s Vishwakarma Sewing Machine Industries, Bassi Pathana filed CWP No.12874 of 1989 challenging the order of the Government dated 10.6.1988. Vide order dated 2.12.2013,

Annexure P.9, this Court allowed the writ petition to the extent that the order dated 10.6.1988 is set aside with a direction to the respondents to pass fresh order after hearing all the stake holders in accordance with law. Thereafter, the concerned parties were heard and the order was passed on 28.9.2014, Annexure P.1 holding that the land measuring 38 bighas 10 biswas be transferred to Industries department with immediate effect and that the industries department may transfer this land to any of the departments or State Public undertakings in terms of the provisions of para 87 of the Financial Commissioner Revenue Standing Order No.28. The authorities ordered taking back of the above said land from M/s Vishwakarma Sewing Machine Industries and also held that request of the land owners for returning the land was not justified. According to the petitioners, the impugned order has been passed ignoring Section 101 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short, “the 2013 Act”) which provides that when any land acquired under the Act remains un-utilized for a period of five years from the date of taking possession, the same shall be returned to the original owners or their legal heirs as the case may be or to the appropriate government. Hence the instant petition by the petitioners.

4. We have heard learned counsel for the parties.

5. The main grievance of the petitioners in this petition is for release of their land on the ground that the same had remained un-utilised after acquisition by the State Government and earlier vide order dated 10.6.1988, Annexure P.7, the government had de-notified the acquisition and handed over the same to the Deputy Commissioner, Patiala for its

disposal in accordance with paras 493 and 495 of Financial Commissioner's Standing Order No.28. Admittedly, the land in the present case was acquired way back in the year 1956 for a public purpose namely setting up a Central workshop for sewing machines at Bassi Pathana. The award had been passed and the petitioners had received the compensation. The company having failed to utilise the land for the purpose for which it was acquired, the Government has now ordered that land measuring 38 bighas 10 biswas situated in Bassi Pathana be transferred to the Industries Department with immediate effect. Since the possession of the land had been taken by the respondents after payment of compensation way back in 1956, it had vested in the State Government free from all encumbrances in view of Section 16 of the Act which reads thus:-

“16.Power to take possession.- When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.”

6. The Hon'ble Supreme Court in *Govt. of A.P. and another v. Syed Akbar*, (2005) 1 SCC 558, while allowing the appeal in a case where the Division Bench of the Andhra Pradesh High Court had upheld the order of the learned Single Judge, directing the authorities to hand over the unused portion of the land to the petitioners by collecting the amount of compensation already paid with interest @ 12% per annum and after noticing the standing orders, held as under:-

“10.It is neither debated nor disputed as regards the valid acquisition of the land in question under the provisions of the Land Acquisition Act and the possession of the land had been taken. By virtue of Section 16 of the Land Acquisition

Act, the acquired land has vested absolutely in the Government free from all encumbrances. Under Section 48 of the Land Acquisition Act, Government could withdraw from the acquisition of any land of which possession has not been taken. In the instant case, even under Section 48, the Government could not withdraw from acquisition or to re-convey the said land to the respondent as the possession of the land had already been taken. The position of law is well settled.

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14. From the position of law made clear in the aforementioned decisions, it follows that (1) under Section 16 of the Land Acquisition Act, the land acquired vests in the Government absolutely free from all encumbrances; (2) the land acquired for a public purpose could be utilized for any other public purpose; and (3) the acquired land which is vested in the Government free from all encumbrances cannot be re-assigned or re-conveyed to the original owner merely on the basis of an executive order.”

7. In ***National Thermal Power Corporation Limited v. Mahesh Dutta and others***, (2009) 8 SCC 339, it was held that if possession of the land had been taken over in respect of which notification had already been issued, the State would be divested of its power to withdraw from the acquisition in terms of Section 48 of the Act. Consequently, challenge to the acquisition on the ground that the purpose for which it was acquired was not being carried out, would not justify the release of the land. In such a situation, the relief claimed in this writ petition cannot be allowed.

8. In ***State of Kerala & Anr. v. M. Bhaskaran Pillai & Anr.***, (1997) 5 SCC 432, the Apex Court while delving into the issue of utilisation of acquired land for a public purpose observed as under:

"It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the Constitution."

9. Further, a Division Bench of this Court in CWP No.1408 of 2013 (*Rajinder Singh and others vs. The State of Punjab etc.*) decided on 24.1.2013 to which one of us (Ajay Kumar Mittal,J.) was a member, while dealing with identical issue relating to release of land with respect to provisions of Sections 16 and 48 of the Act, after relying upon judgment of the Apex Court in *Govt. of A.P. and another vs. Syed Akbar* (2005) 1 SCC 558, recorded as under:-

"6.Under the provisions of Section 16 & 48 of the Act, once the award is passed and possession is taken, the land deems to vest in the Government and it cannot be released. The law on the said issue also stands settled by this Court as well as by the Hon'ble Apex Court...."

10. In view of the above, it is concluded that the acquired land had vested in the State Government free from all encumbrances and that the acquired land cannot be re-assigned or re-conveyed to the original land owner merely on the basis of any executive instructions. Further, the State is empowered to utilize the acquired land for any other public purpose.

11. Learned counsel for the petitioners relied upon order dated 2.12.2013 passed by this Court in CWP No.12874 of 1989 (*M/s Vishwakarma Sewing Machine Industries, Bassi Pathana, District Patiala vs. State of Punjab and others*), Annexure P.9 whereby direction was given

to the respondent authorities to pass fresh order after hearing all the stakeholders whereas in the present case, prayer has been made for the return of the land to the petitioners. Further, CWP No.6414 of 1987, Annexure P.8 was filed by the petitioners in the year 1987 and the same was dismissed as infructuous vide order dated 15.9.1988 as the land had been de-acquired and handed over to the Deputy Commissioner, Patiala for disposal under the provisions contained in paragraph 493 and 495 of Financial Commissioner's Standing Order No.28. In view of settled legal position as noticed above, the impugned order dated 28.9.2014 (Annexure P/1) cannot be faulted as the land which was not utilized by the company to whom the same was allotted and has been ordered to be transferred to the Industries Department, the State is within its power to utilize the same in accordance with law.

12. Equally, the petitioners are not entitled to any relief even under Section 101 of the 2013 Act which is quoted as under:-

“101. When any land acquired under this Act remains unutilised for a period of five years from the date of taking over the possession, the same shall be returned to the original owner or owners or their legal heirs, as the case may be, or to the Land Bank of the appropriate Government by reversion in the manner as may be prescribed by the appropriate Government.

Explanation – For the purpose of this section, “Land Bank” means a governmental entity that focuses on the conversion of Government owned vacant, abandoned, unutilised acquired lands and tax-delinquent properties into productive use.”

A plain reading of the above quoted provision shows that it applies to acquisitions which are made under the 2013 Act and not to acquisitions

which had been made under the Act prior thereto.

13. In view of the above, no interference is called for with the impugned order dated 28.9.2014, Annexure P.1 in exercise of writ jurisdiction under Article 226 of the Constitution of India after a period of six decades. Consequently, the petition is dismissed.

(Ajay Kumar Mittal)
Judge

March 28, 2016
'gs'

(Raj Rahul Garg)
Judge