

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.22181 of 2013 (O&M)

Date of Decision: 09.12.2016

Prem Singh & Anr. ... Petitioners
VS.
Chandigarh Administration & Anr. ... Respondents

CWP No.13863 of 2009 (O&M)

Hem Raj & Ors. ... Petitioners
VS.
Chandigarh Administration & Anr. ... Respondents

CWP No.13894 of 2009 (O&M)

Ran Singh & Ors. ... Petitioners
VS.
Chandigarh Administration & Anr. ... Respondents

CWP No.14135 of 2011 (O&M)

Harjodh Singh & Anr. ... Petitioners
VS.
Chandigarh Administration & Anr. ... Respondents

CWP No.21363 of 2011 (O&M)

Madan Lal & Anr. ... Petitioners
VS.
Chandigarh Administration & Anr. ... Respondents

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

Present: Mr. Girish Agnihotri, Senior Advocate with
Mr. Vijay Pal, Advocate;
Mr. Vijay Lath, Advocate;
Mr. JS Toor, Advocate;
Mr. PN Arora, Advocate;
Mr. Neeraj Sharma, Advocate;
for the petitioners

Mr. Sanjeev Sharma, Senior Advocate with
Mr. Shekhar Verma, Advocate;
Mr. Vishal Sodhi, Advocate for UT Chandigarh

Ms. Deepali Puri, Advocate for MC Chandigarh

SURYA KANT, J. (Oral)

(1) This order shall dispose of the above-captioned writ petitions as the petitioners in all the cases have laid challenge to the notifications dated 27.09.2006 and 21.09.2007 issued under Section 4 & 6 of the Land Acquisition Act followed by Award No.597 dated 18.09.2009.

(2) By virtue of the impugned acquisition, small size plots owned by the petitioners and which are partially constructed, have been acquired. The petitioners allege discrimination on the ground that while passing the award, the Chandigarh Administration has released 'agricultural *baras*' mostly comprising vacant plots whereas their adjoining constructed houses/structures have not been exempted without any rationale or logic. A pointed reference is made to the two site plans placed on record by both the parties depicting the land where the petitioners are said to have raised constructions and which are surrounded by the released/exempted plots. The petitioners have also placed on record the photographs of the adjoining vacant areas which have been exempted from acquisition.

(3) The respondents have filed their written statement wherein it is candidly acknowledged that the constructions raised by the petitioners were in existence at the time of issue of Section 4 notification. For example, in the very first case i.e. CWP No.22181 of 2013, there is an entry dated 25.03.1982 in the jamabandi to the effect that there is a *gair mumkin* house on the land measuring 1 kanal 15 marla.

(4) We have heard learned counsel for the parties and gone through the record and photographs.

(5) It is undeniable that the respondents took a conscious policy decision whereby *gair mumkin baras*, the land and properties of the

religious places as well as houses constructed on the agricultural land were decided to be exempted. This fact finds mention in the award dated 18.09.2009 (P5), the relevant part whereof is to the following effect:-

“However, as per Administration’s decision regarding exemption of 44 Gair Mumkin Baras and Shiv Mandir and Old Chakkis and Houses existing over agriculture land. The land measuring 15 kanal 19 marla comprising Khara Nos.21/9/1, 9/2, 9/3, 9/4, 9/5, 9/6, 9/7, 9/8, 9/10, 9/11, 9/12, 10/1, 10/2, 10/3, 10/4, 10/5, 10/6, 10/7, 10/8, 10/9, 10/10, 10/11, 10/12, 10/13, 10/14, 10/15, 11/1, 11/2, 11/3, 11/4, 11/5, 11/6, 20/1, 20/2, 20/3, 21/1, 21/2, 21/3, 21/4, 22//25/3, 29//5/3, 225 has been exempted vide No.43/3/181-UTFI(5)-2009/5503 dated 13.08.2009 and Khasra Nos.22//24, 29, 55 vide No.43/4/181-UTFI(5)-2009/6315 dated 18.09.2009”

(6) The site plans on record reveal that the constructions raised by the petitioners are adjoining the released area and are also in close vicinity of the *abadi deh* of village Maloya.

(7) It deserves mention that the resultant effect of the above reproduced policy decision is that while vacant land comprising *baras* stands exempted from acquisition but the constructed houses/structures are under acquisition. Such an anomalous situation, in our considered view, lends support to the petitioners’ allegation of discrimination. The residential houses/structures which were in existence before issue of Section 4 notification especially when most of such constructions do not

obstruct the public purpose of acquisition, thus deserve to be released on the analogy applied by the respondents while releasing the agricultural *baras*.

(8) We may at this stage also take notice of one of the preliminary objection taken by the respondents *qua* delay and laches in approaching the Court in the very first case i.e. CWP No.22181 of 2013. It is true that the petitioners have chosen to approach this Court after almost 4 years of passing the award but we are still inclined to entertain this petition for the reason that the petitioners' co-owners in the same khasra nos. had approached this Court in the year 2009 and their writ petition is still pending. Due to this peculiarity, we deem it appropriate to take up all the cases together for final disposal.

(9) In the light of the above discussion, these writ petitions are allowed to the extent that the Chandigarh Administration is directed to constitute a team of Officers including the Land Acquisition Collector to conduct a fresh survey and wherever residential houses/structures are found in existence before Section 4 notification was issued and if such structures are adjoining or near to the village *abadi deh* or the exempted land/properties, let such structures/houses be also released from the acquisition subject to the deposit of development and other statutory charges by the owners/occupiers of the properties.

(10) The respondents are further directed to release some reasonable open space also to enable the owners to utilize their houses/structures. Rest of the vacant land/area can be kept under acquisition.

(11) Let appropriate decision be taken within a period of three months from the date of receipt of certified copy of this order.

(12) Till then petitioners or any other person shall not raise any further construction at the site.

(13) Ordered accordingly.

(Surya Kant)
Judge

09.12.2016
vishal shonkar

(Sudip Ahluwalia)
Judge

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes
No