

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

CWP No.22898 of 2014

Date of decision: 30.5.2016

Shodhan

.....Petitioner

vs.

State of Haryana 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. P.M.Anand, Advocate for the petitioner.

Mr. Saurabh Mago, AAG, Haryana.

Mr. Rajesh Arora, Advocate for respondent No.3.

Ajay Kumar Mittal,J.

1. The petitioner prays for a direction to the respondent authorities not to dispossess him from the land measuring 16 kanals 1 marla situated within the revenue estate of Village Khaytra, Hadbast No.89, Tehsil and District Mahendergarh. Further prayer has been made for a direction to the respondents not to demolish the petitioner's residential house situated on the said land.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The Haryana Government, Urban Estate Department issued notification dated 23.2.2007, Annexure P.1 under Section 4 of the Land Acquisition Act, 1894 (in short, "the Act") for acquisition of agricultural land of the petitioner for the purpose of development of residential, commercial Institutional, Open Space, Sector roads and Green Belt, Sector 9, Mahendergarh. Notification under Section 6 of the Act was issued on 20.2.2008, Annexure P.2. The award was passed on 19.2.2010, Annexure P.3. According to the petitioner, the possession of the land is with him and he has erected wall on the said land. Notification under section 4 of the Act was not issued in accordance with the provisions of the Act. It was not published in the Official gazette and in two daily newspapers having circulation in the locality where the land is situated. Even notification under Section 6 of the Act was issued on 20.2.2008 after about 362 days of the issuance of notification under section 4 of the Act. The petitioner had also filed CWP No.24961 of 2013 for quashing the notifications issued by the Government. Vide order dated 27.1.2014, the said writ petition was disposed of with a direction to respondent No.4 to resurvey the land of the petitioner and if the plea taken by the petitioner was found to be correct, a report be sent to the appropriate authority to take decision in accordance with law and the government policies. Having received no response, the petitioner filed Contempt Petition No.1647 of 2014 in which notice was issued and a direction was issued that if the order 27.1.2014 was not complied with within a period of three weeks, contempt proceedings shall be initiated against the respondents. Thereafter, the respondents passed order dated 16.7.2014, Annexure P.6 that the structure raised on the impugned land was not a residential house and thus the case of the petitioner did not fall under the policy of the Government. Hence the instant writ petition by the

petitioner.

3. A written statement has been filed on behalf of Land Acquisition Collector, Urban Estate, Gurgaon, respondent No.4 wherein it has been inter alia stated that the award was announced on 19.2.2010 and the possession was handed over to the representative of Haryana Urban Development Authority (HUDA) on the same day. Thus, the land completely vests in HUDA free from all encumbrances. Further in para 10 of the reply in preliminary objections, it has been stated that the land was vacant at the time of issuance of notification under section 4 of the Act on 23.2.2007. The petitioner raised illegal construction in temporary manner after the issuance of notification under section 4 of the Act. Further, the area in dispute has already been notified as controlled area under Section 4(1)(a) of the Punjab Scheduled Roads and Controlled Areas Restrictions of Unregulated Development Act, 1963 (in short, "the 1963 Act"). The petitioner has raised unauthorised construction evading conversion and development charges. Thus, he is not entitled to any benefit. Reliance was placed on judgment of the Apex Court in ***Tek Ram Dahiya vs. State of Haryana***, SLP (Civil) No.28469 of 2011 dated 31.10.2011. On these premises, prayer for dismissal of the petition has been made.

4. We have heard learned counsel for the parties.

5. It is the admitted position that the land in dispute was acquired in the year 2007 for a public purpose namely for the development and utilization of residential, commercial and institutional sector roads and green belt, Sector 10 at Mahendergarh. The notification dated 23.2.2007 issued under section 4 of the Act was published in the Haryana Government Gazette on the same day and in the two daily newspapers in the locality i.e. Hari Bhoomi dated 26.2.2007 (Hindi)

the rapat roznamcha on 9.3.2007. The petitioner filed objections under section 5A of the Act which were duly considered and only thereafter notification under section 6 of the Act was issued on 20.2.2008. The award was passed on 19.2.2010 and the possession was handed over to the HUDA on the same day.

6. The petitioner filed CWP No.24961 of 2013 laying challenge to the notifications issued under Sections 4 and 6 of the Act issued by the State Government on 23.2.2007 (Annexure P.1) and 20.2.2008 (Annexure P.2) respectively. The said writ petition was disposed of vide order dated 27.1.2014 with a direction to the respondent authorities to resurvey the land of the petitioner and if the plea taken by the petitioner regarding the existence of residential house on the land was found to be correct, a report be sent to the appropriate authority to take decision in accordance with law and the government policies. Having received no response, the petitioner filed Contempt Petition No.1647 of 2014 in which notice was issued to the respondents and it was directed that if the order dated 27.1.2014 was not complied with, then contempt proceedings shall be initiated against the respondents. In compliance with the order passed by this Court, the case of the petitioner was considered and declined vide order dated 16.7.2014 (Annexure P.6). According to the respondents, the land claimed by the petitioner was vacant at the time of notification issued under Section 4 of the Act on 23.2.2007 and the petitioner had raised illegal temporary construction on the land after the issuance of notification under Section 4 of the

Act. The petitioner had raised unauthorized construction evading conversion charges and development charges. Further, the land was falling inside the alignment of 60 meter wide sector road. Thus, the claim of the petitioner being not covered under the policy dated 26.10.2007 was rejected. It has also been stated in para 10 of the reply filed by the respondent No.4 that the area in dispute has already been notified as controlled area under section 4(1)(a) of the 1963 Act. Nothing has been shown by the petitioner that the stand of the respondents is unsustainable. Still further, there is neither any challenge to the acquisition proceedings nor to the order dated 16.7.2014 passed by the respondents in the present petition. Furthermore, the prayer of the petitioner regarding challenge to the notifications under Sections 4 and 6 of the Act was not granted in the earlier writ petition filed by him. Unless the acquisition is held to be bad, the prayers made in the writ petition relating to not to dispossess the petitioner from the land in dispute and not to demolish the structure on the land cannot be granted. Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

May 30, 2016
'gs'

(Raj Rahul Garg)
Judge