

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 27033 of 2016

Date of Decision: 23.12.2016

Umesh Arora

....Petitioner.

Versus

State of Punjab and others

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.**

PRESENT: Mr. Raman Sharma, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. Through the instant petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of mandamus declaring the acquisition made vide notifications dated 1.6.1982 issued under Section 4 of the Land Acquisition Act, 1894 (in short “the Act”), dated 17.8.1983 (Annexure P-6) under Section 6 of the Act and the award dated 25.3.1985 (Annexure P-7) as having lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as “2013 Act”).

2. Earlier the petitioner filed CWP No. 7310 of 2014 and this Court vide order dated 20.10.2016 (Annexure P-1) passed in CWP No. 7308 of 2014 dismissed the said writ petition with liberty to the petitioner to

initiate separate proceedings under Section 24(2) of the 2013 Act. The

petitioner purchased house No. 62, Green Avenue, Model Town, Jalandhar from Shri Ashok Parhar and Smt. Rajinder Kaur vide sale deed dated 24.12.1999 and the documents (Annexure P-2 Colly). After purchasing the said house, the petitioner had raised fresh construction after obtaining the certificate dated 29.9.2004 (Annexure P-3) from the Jalandhar Improvement Trust, Jalandhar. A non-encumbrance certificate was also issued by the Sub Registrar, Jalandhar on 8.11.2004. The Municipal Corporation, Jalandhar had also passed the site plan for construction of the house vide memo dated 3.11.2004 (Annexure P-4) on deposit of the requisite fee. A notification under Section 42 of the Punjab Improvement Act, 1922 (hereinafter referred to as the "1922 Act") for development of 143.56 acres scheme was issued on 5.8.1977. As per the said Scheme, alignment of 120 feet Ring Road between Nakodar Road and Cantonment was to be effect and the award dated 12.4.1980 was passed. The Jalandhar Improvement Trust passed a resolution to release the land on which construction was existing. On the basis thereof, the said Scheme was rendered redundant and notification (Annexure P-5) was issued under Section 56 of the 1922 Act for de-notifying the acquired land. Thereafter, Government of Punjab had issued a notification dated 1.6.1982 under Section 4 of the Act followed by notification dated 17.8.1993 (Annexure P-6) under Section 6 of the Act. One Shri Balbir Chand Malhan, owner of the adjoining plot of the petitioner challenged the said acquisition proceedings by filing CWP No. 4345 of 1983 and this Court vide order dated 11.10.1990 quashed the said acquisition proceedings for non-compliance of Section 11-A of the Act. In pursuance to the order dated 5.9.1984 passed by this Court, sewerage etc. was laid down and the construction of the house of said Shri

Balbir Chand Malhan and adjoining house of the petitioner was protected. The award with regard to the said acquisition was passed on 25.3.1985 (Annexure P-7). State of Punjab filed SLP No. 8537-40 of 1991 and the Supreme Court vide order dated 14.12.1995 set aside the order of this Court by that the right to claim compensation to the parties is left open with regard to the construction entry. Since the sewerage had already been laid and approximately 80 feet wide road/passage is already existing and with a view to widen the same, the respondents are not taking the same layout where the sewerage has been laid, even as per the site plan of de-notified Scheme of 143.56 acres, the passage was ear-market towards Model Town and after the de-notification although the passage acquired was reserved but the road has been diverted towards Phase IV as is clear from the site plan (Annexure P-8). Even otherwise, if the measurements are ordered from the sewerage which has already been laid as per the Scheme, then there existed no scope for demolishing the house of the petitioner as the road would not touch the house as is discernible from the site plan (Annexure P-9). After receipt of the representations from the petitioner and others, respondents No.3 and 4 issued notice dated 16.7.2013 (Annexure P-10) asked the petitioner to remove the alleged illegal construction by 17.7.2013. The petitioner and others filed CWP No. 15260 of 2013 and this Court vide order dated 20.1.2014 (Annexure P-11) directed the respondents to decide the individual claims of the petitioners therein. The petitioner filed objections dated 6.2.2014 (Annexure P-12). He was called for personal hearing and at the time of hearing the petitioner also submitted the objections along with the letter dated 12.2.2014 (Annexure P-12). Respondent No.3 vide order dated 21.3.2014 communicated to the petitioner vide endorsement dated

27.3.2014 (Annexure P-13 Colly) rejected the objection of the petitioner. Feeling aggrieved, the petitioner filed CWP No. 7310 of 2014 and this Court vide order dated 20.10.2016 (Annexure P-1) passed in CWP No. 7308 of 2014 dismissed the said writ petition. Vide letter dated 17.4.2014 (Annexure P-14), it was confirmed that the compensation of the acquired land is lying deposited in the Treasury, Jalandhar. The petitioner is still in physical possession of the land in question and no compensation has been paid to him. According to the petitioner, the acquisition proceedings have lapsed in view of Section 24(2) of the 2013 Act. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that the petitioner is still in physical possession of the land in question and no compensation has been received by him. It was claimed that in such circumstances, in view of Section 24(2) of the 2013 Act, the notifications under Sections 4 and 6 of the Act had lapsed. It was further submitted that since no demand notice claiming the relief as claimed in respect of lapse of notifications has been filed with the respondents, liberty be granted to the petitioner to file a detailed and comprehensive representation before the appropriate authority by incorporating the grievance as raised in the present writ petition, however, direction be issued to the authority concerned to decide the representation expeditiously in a time bound manner in accordance with law.

4. After hearing learned counsel for the petitioner, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by granting liberty to the petitioner to file a detailed and comprehensive representation raising all the pleas as

raised in the present writ petition before the appropriate authority. It is directed that in the event of a representation being filed by the petitioner within a period of two months from today, the same shall be decided in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of four months from the date of receipt of representation. The petitioner shall be entitled to lead any evidence to substantiate his claim before the concerned authority. Till the matter is decided by the said authority, status quo shall be maintained by the parties. It is, however, made clear that in case no such representation is filed within the stipulated period as noticed above, the interim order shall cease to operate, thereafter.

(AJAY KUMAR MITTAL)
JUDGE

December 23, 2016
gbs

(RAMENDRA JAIN)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No