

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.7308 of 2014 (O&M)

Date of Decision: 20.10.2016

Balbir Chand Malhan

... Petitioner

VS.

State of Punjab & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE SUDIP AHLUWALIA

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| 1. Whether speaking/reasoned? | Yes / No |
| 2. Whether reportable? | Yes / No |
| 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 |

Present: Mr. KS Dadwal, Advocate;
Mr. Rajiv Joshi, Advocate for the petitioner(s)

Mr. Rajesh Bhardwaj, Addl. AG Punjab

Mr. RS Khosla, Senior Advocate with
Mr. Sarvesh Malik, Advocate for GMADA

Mr. Gurminder Singh, Advocate for
Mr. SS Narula, Advocate for respondent No.5

SURYA KANT, J. (Oral)

(1) This order shall dispose of CWP Nos. 7308 to 7312 of 2014; 15790, 17495 of 2015 and 7914 of 2016 as common questions of law and facts are involved. For brevity, the facts are being taken from CWP No.7308 of 2014.

(2) The petitioner has laid challenge to order dated 21.03.2014 (P-13) passed by Jalandhar Development Authority whereby his objections against the eviction notice were turned down and he has been held to be in unauthorised and illegal possession of the land which is said to have been handed over to Municipal Corporation, Jalandhar for construction of the road.

(3) State of Punjab issued Notification under Section 4 & 6 of the Land Acquisition Act, 1894 (for short 'the Act') dated 01.06.1982 and 17.08.1983, respectively whereby certain parcels of land in Village Kingra, District Jalandhar (now fall within the municipal limits of Jalandhar city), were acquired. The award was passed on 25.03.1985 (P4).

(4) The above-stated acquisition was challenged by way of CWP No.2246 of 1985 (Sharan Pal Singh & Ors. Vs. State of Punjab & Anr.) and a Division Bench of this Court vide judgment dated 11.10.1990 partly allowed the writ petition declaring that the acquisition proceedings *qua* that part of the acquired land on which superstructure and trees were standing had lapsed.

(5) State of Punjab challenged the above-cited decision of this Court and its Civil Appeal Nos.11850 -53 of 1985 was allowed by the Apex Court on 14.12.1995. The writ petitions filed by land owners consequently stood dismissed.

(6) In this manner, the question *re*: validity of the acquisition was finally settled in favour of the State.

(7) The brother of the petitioner in the lead case, namely, Kewal Krishan, entered into an agreement to purchase on 26.02.1991 with the previous owner and despite the award having been passed, the sale deed was executed in favour of the petitioner's wife, who further sold the same on 02.05.1997 i.e. much after passing of the award and when the acquisition proceedings already stood upheld by the Hon'ble Supreme Court.

(8) In the connected cases also, the writ-petitioners purchased the plots from previous owners long after the finalization of acquisition proceedings.

(9) While some of the petitioners have constructed their houses, the other plots are still lying vacant. It appears that in the year 2013, mutation of the land in question was sanctioned in favour of the Municipal Corporation, Jalandhar who then made an attempt to dispossess the petitioners. The eviction notices were served on the petitioners against which they approached this Court in CWP No.15260 of 2013. A Division Bench of this Court to which one of us (Surya Kant, J) was a member, disposed of the writ petition on 20.01.2014 observing that since none of the writ-petitioners were effectively heard, let they be served with fresh show cause notices to which objections could be filed and thereafter appropriate decision was to be taken.

(10) The petitioners' objections have been considered by the Jalandhar Development Authority and its Chief Administrator has rejected the same by way of a self-speaking order dated 27.03.2014 (P13), the relevant part whereof reads as follows:-

“Keeping in view, I have reached the conclusion that the applicant is in un-authorised and in illegal possession of the land/construction under subject he has become the owner of the land after the pronouncement of the award which is not covered under Section 41 of the Transfer of the Property Act. Apart from this, it is worth mentioning here that as per the office record out of the 6.53 acres land acquired for the construction of the road and leaving the area under possession of the petitioners, on which the stay order has been given by the Hon’ble Punjab & Haryana High

Court. The possession of the remaining area has been handed over to the Municipal Corporation Jalandhar for the construction of the road on 2.12.2013. On the basis of the above facts I reject the objections filed by the applicant Shri Balbir Chand Malhan and ordered that applicant should vacate the illegal possession within 30 days of the issue of this letter. In case, of not doing so, the said illegal possession will be removed as per law. Regarding any loss in this regard, yourself will be responsible and the expenses incurred on getting the possession vacated shall be recovered from you.”

(11) The aggrieved petitioners have again approached this Court.

(12) We have heard learned counsel for the parties at a considerable length and gone through the record.

(13) At the outset, it may be mentioned here that the validity of the acquisition of land has neither been questioned nor it can be assailed by the petitioners for the reason that the same has already been upheld by the Hon'ble Supreme Court. The only relief sought by the petitioners is that the houses constructed by them may be ordered to be released from acquisition. It may be true that this Court, in certain cases has viewed that the residential houses can be exempted from acquisition provided that such construction was raised before issuance of Section 4 notification. The petitioners cannot take the benefit of those decisions as admittedly, they purchased the plots after the acquisition had attained finality and constructions were raised much thereafter.

(14) As regard to the petitioners' plea that they are *bona fide* purchasers, it is a fact that for a considerable long period after the acquisition, the land was not mutated in favour of the State Government or Municipal Corporation and it continued in the names of previous owners but that by itself would not clothe the petitioners with an indefeasible right to seek protection under Section 41 of the Transfer of Properties Act. The petitioners are further obligated to establish that they purchased the plot after due diligence and on being satisfied with the title of their vendors. Had the petitioners made a serious effort to find out from the office of the Municipal Corporation or the local authorities, they would have come to know that the land in question already stood acquired in the year 1985 and vendors no longer had a valid title to transfer in favour of the petitioners. In the absence of such exercise, we are of the considered view that the plea of *bona fide* purchasers also cannot be entertained.

(15) Faced with this, learned counsels for the petitioners submit that the open vacant land in front of their house(s)/plot(s) can be acquired for construction of roads, if need be.

(16) Mr. Khosla, however, explains that the acquisition under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is a cumbersome exercise and fresh acquisition at the current price would not be viable for the authorities.

(17) Taking into consideration the totality of the circumstances, namely, that the subject land has been acquired for a genuine public purpose, we do not find any illegality in the impugned action of the authorities.

(18) Learned counsels for the petitioners at this stage submit that the subject acquisition is liable to be declared to have lapsed in view of Section

24(2) of 2013 Act for the reason that no compensation amount has been disbursed till date and the possession is admittedly with the petitioners/other owners. Such a plea has been taken only in the rejoinder of the lead case. Since the respondents have not got adequate opportunity to controvert such new plea, we do not express any opinion on the question of applicability of Section 24(2) of the 2013 Act at this stage.

(19) That apart, the main issue pleaded by the petitioners or the nature of relief sought by them pertains to the release of land on the plea that they are *bona fide* purchasers. The petitioners, in our considered opinion, can initiate separate proceedings *qua* Section 24(2) of the 2013 Act, if so available to them. Suffice it would be to grant liberty to them to initiate fresh proceedings on the question of applicability of Section 24(2) of the 2013 Act is concerned.

(20) With liberty afore-mentioned, the writ petitions are dismissed, however, with a view to enable the petitioners to initiate appropriate proceedings for invoking Section 24(2) of the 2013 Act, both the parties are directed to maintain *status quo re*: demolition and/or further construction at the site for a period of two months from the date of receipt of certified copy of this order.

(21) Ordered accordingly.

(Surya Kant)
Judge

20.10.2016
vishal shonkar

(Sudip Ahluwalia)
Judge