

CWP No.6787 of 2015 -1-

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

CWP No.6787 of 2015 (O&M)

Date of Decision: 17.10.2016

Gurmail Singh and others

..Petitioners

Vs.

State of Punjab and another

..Respondents

CWP No.20769 of 2015 (O&M)

Surat Singh and others

..Petitioners

Vs.

State of Punjab and another

..Respondents

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CWP No.22149 of 2015 (O&M)

Mangal Singh and others

..Petitioners

Vs.

State of Punjab and another

..Respondents

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

**Present: Mr. S.D.Sharma, Sr. Advocate with
Mr.Ved Priya Malik, Advocate for the petitioners.**

**Mr.Kanwaljit Singh, Sr.Advocate with
Mr.Shailender Kashyap, Advocate for the petitioners in CWP
Nos.20767 and 22149 of 2015.**

Mr.Rajesh Bhardwaj, Addl.AG Punjab.

Mr.Ashok Bazaz, Advocate for respondent No.2.

SURYA KANT, J.

(2) This order shall dispose of CWP Nos.6787, 20769 and 22149 of 2015 as point in issue in all the cases is similar in nature.

(3) The question that arises for consideration is whether the petitioners are entitled to seek benefit of Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short '2013 Act') and consequently to declare that the acquisition carried out vide notifications dated 23.8.1977 and 12.12.1977 published under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short 'the 1894 Act') followed by award dated 7.1.1984 shall be deemed to have lapsed?

(4) Brief reference to the facts may be made.

(5) State of Punjab issued notification dated 23.8.1977 proposing to acquire the land for Municipal Corporation, Ludhiana for the extension of Rose Garden in Mohalla Prem Nagar, Civil Lines Ludhiana, followed by notification dated 12.12.1977. Award was announced on 7.1.1984.

(6) The petitioners were admittedly not the owners of acquired property. The land where they are said to have constructed houses and are claiming their possession as *Gair Marusi* (tenants at will) was admittedly owned by Smt.Gurdev Kaur. The owner-Gurdev Kaur accepted the compensation amount. She also initiated separate proceedings for enhancement of compensation under Section 18 of the Act etc.

(7) So far as the petitioners are concerned, some of them came to this Court by way of CWP No.15140 of 1999 (Balwinder Singh and others Vs. The Municipal Corporation and another), CWP No.16409 of 1999 (Ujaggar Singh and others Vs. Municipal Corporation, Ludhiana) and CWP

No.16476 of 2000 (Gurcharan Singh Vs. State of Punjab and others), seeking a direction to the Municipal Corporation, Ludhiana not to demolish their residential houses without giving an opportunity of hearing. They also expressed their willingness and readiness to purchase the land at reserve price for residential purposes.

(8) Meanwhile, a Division Bench of this Court, to which one of us (Surya Kant, J.) was a member, passed order dated 4.10.2008 in exercise of PIL jurisdiction in CWP No.4886 of 2003 (Court on its own motion Vs. State of Punjab and another) directing the Municipal Corporation to remove unauthorised constructions over the public land. There were several other directions also issued vide the cited order including liberty to the public spirited persons to initiate Court of contempt proceedings wherever it was found that Municipal Authorities have failed to remove the encroachments.

(9) The three writ petitions filed by some of the petitioners, referred to above, were thus taken up by a learned Single Judge on 19.1.2011 and after noticing the directions issued in PIL, show cause notices issued to the writ-petitioners were set aside with a direction to the Competent Authority to pass appropriate orders after considering their reply-cum-objections.

(10) The Municipal Corporation thereafter considered and rejected the Objections vide order dated 22.8.2014 declaring the petitioners as unauthorised occupants over the municipal land.

(11) The petitioners unsuccessfully challenged the above-stated order before this Court in CWP No.10359 of 2014 (Balwinder Singh Vs. State of Punjab and others), which was dismissed on 4.9.2014. This Court

held as follows:

“In fact delay in passing an order has benefited the petitioners who continued to be in illegal possession of the land in question which was acquired way back in the year 1979 and vested with the Municipal Corporation free from all encumbrances. In view thereof, we do not find any merit in the present writ petition.”

(12) The petitioners thereafter filed Statutory Appeals against the eviction orders before Additional District Judge, Ludhiana but their appeals were also dismissed on 11.2.2015. They again tried their luck before this Court and filed CWP No.3048 of 2015 challenging the appellate order(s) passed in eviction proceedings but that writ petition too was dismissed on 21.2.2015 though by granting them three months' time to hand over the vacant physical possession, subject to furnishing an undertaking. The operative part of the order reads as follows:

“Keeping in view the fact that the petitioners have constructed residential houses on the land vesting with the Municipal Corporation, we deem it appropriate to grant three months' time to the petitioners to hand over the vacant possession of the land in question to the Municipal Corporation provided they furnish an undertaking by way of an affidavit before this Court within a period of two weeks to the effect that they shall hand over the vacant possession and shall not induct any other person in possession of the property in question. If any of the petitioners does not file such an undertaking, the respondents shall be entitled to proceed further to take possession in accordance with law.”

(13) It appears that the above-stated order was challenged before Hon'ble the Supreme Court but SLP was also declined.

(14) Having lost the *lis* in the eviction proceedings where a

categoric finding of fact to the effect that petitioners are unauthorised occupants over the municipal land has been returned, the petitioners have filed the instant writ petition claiming themselves to be Gair Marusi (tenants at Will) on the land of Smt.Gurdev Kaur. They rely upon Jamabandi for the year 1983-84 Annexure P-8(Colly) in which some of them are recorded as Gair Marusi (tenants) under Smt.Gurdev Kaur. On this premise, they claim that they are 'persons interested' in the subject matter of land which was acquired in the year 1979 and since the Municipal Corporation has failed to take possession from them within a period of 5 years or more from the date of passing the award and before 1.1.2014 when 2013 Act came into force, the provisions of Section 24(2) of the 2013 Act are attracted and the acquisition proceedings are liable to be declared to have lapsed.

(15) We have given our thoughtful consideration to the submissions made by learned counsel for the parties and gone through the record. We do not find any merit in the petitioners' claim for more than one reasons.

(16) Firstly, the status of the petitioners as Gair Marusi (tenants) has to be seen and determined before 23.8.1977 when the acquisition proceedings were initiated. There is not an iota of evidence on record to suggest that they lawfully entered into possession of the suit land before August 1977, in their capacity as tenants. The revenue record relied upon by counsel for the Municipal Corporation suggests that in the year 1977-78 Smt.Gurdev Kaur-owner was in possession and the land was not under any tenant.

(17) Secondly, Smt.Gurdev Kaur—the then owner of the land had

received the compensation and never asserted or admitted the possession of petitioners as Gair Marusi (tenants).

(18) Thirdly, such a plea of being in lawful possession of the suit property, ought to have been taken by the petitioners at the very first instance, namely, in the eviction proceedings in which they have been declared 'unauthorised occupants' and such a finding of fact has attained finality. In these collateral proceedings, those findings cannot be re-opened or reversed.

(19) Fourthly, the plea now sought to be taken by the petitioners appears to be an after-thought and has been taken with a view to wriggle out of the consequences which are bound to fall upon them as a result of eviction orders.

(20) Fifthly, the material on record suggests that the petitioners came to occupy the subject land unauthorisedly after acquisition and when it had vested in the state free from all encumbrances. The petitioners have thus failed to establish the ingredients of Section 24(2) of the 2013 Act, namely, their lawful uninterrupted possession before the date of Award onwards, for a period of five years or more until the new Act came into force.

(21) For the reasons afore-stated, the writ petitions stand dismissed.

**(SURYA KANT)
JUDGE**

**(SUDIP AHLUWALIA)
JUDGE**

17.10.2016
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Whether speaking/reasoned	-	Yes/No
Whether Reportable	-	Yes/No