

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CM-6645-CWP-2016 in/and RA-CW-218-2013
and RA-CW-99-2014 in CWP-18931-2009**

Date of Decision: 04.11.2016

Rishi Pal etc.

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE JITENDRA CHAUHAN**

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. Satinder S Gulati, Advocate for review-applicants

SURYA KANT, J. (Oral)

CM-6645-CWP-2016

Written submissions made on behalf of the petitioners is taken on record.

CM stands disposed of.

RA-CW-218-2013 & RA-CW-99-2014

(1) This order shall dispose of the above-cited two review applications seeking to recall the order dated 05.04.2010 whereby a Division Bench of this Court to which one of us (Jitendra Chauhan, J) was a member dismissed the writ petition filed by the review-applicant/petitioners. There were 10 writ petitioners out of whom, 6 have chosen to file these applications. The writ petition was directed against the notifications dated 15.12.2006 and 14.12.2007 issued under Sections 4&6 of the Land Acquisition Act, 1894 as well as the notices issued under Section 9 of that Act. Vide those notifications, the State of Haryana had acquired more than

including Village Bohar in which the land of the review-applicant/petitioners is situated. The acquisition was made purportedly for the public purpose of development of Sector 36, Rohtak by HUDA.

(2) The issue that fell for consideration before the Division Bench was whether the subject acquisition was vitiated in law for non-consideration of the objections filed by the affected landowners under Section 5-A of the Act?

(3) So far as the review-applicants/petitioners' writ petition is concerned, this Court dismissed the same after recording a categorical finding that they failed to disclose the mode of filing of the objections, if any, as they could not produce any proof of filing of such objections either by way of registered letter or handing over the same personally to the officials of Land Acquisition Collector. This Court thus held as follows:-

“At the hearing, we asked Mr. N.C. Kinra, learned counsel for the petitioners to disclose the mode of filing of objections i.e. either by sending registered AD letter or by personally handing it over to the officials of the Land Acquisition Collector and if any of the aforesaid mode is adopted by the petitioners then the proof thereof was required to be furnished by producing the receipt of the registered letter or by producing copies of the objections acknowledging the receipt thereof. Mr. Kinra has remained unable to produce any receipt of sending the objections by registered letter or acknowledgement in token of receipt of the objections by the officials of the Land Acquisition Collector. He

was also not able to show original copy of the objections.”

(4) It is pertinent to mention here that the copy of the objections claimed to have been filed by the review-applicants and their co-petitioners which they attached with the writ petition was Annexure P-13 dated 18.01.2009. It was addressed to the Land Acquisition Collector, Urban Estate, Rohtak. The writ petitioners, however, failed to prove that such objections were ever filed by them. Assuming that those objections were filed, the same were inconsequential as the notifications under Section 4 was issued on 15.12.2006 whereas those objections were purportedly filed on 18.01.2009 i.e. much after the publication of Section 6 notification.

(5) The finding of fact returned by this Court was thus based upon correct appreciation of record.

(6) The applicants now seek review of the order of dismissal of their writ petition with the aid of copy of the alleged objections (P17 colly) which they claim to have filed vide Diary No.424 dated 22.01.2007 before the Land Acquisition Officer, Urban Estate Department, Hisar. To substantiate their plea that these objections were filed, the review applicants have relied upon the communication dated 10.09.2013 vide which the Land Acquisition Officer, Urban Estate Department, Hisar is said to have supplied a copy of these objections to one of them.

(7) On the strength of these documents, it is averred that there is an error which has crept in on the face of the record because the review-applicants (6 of them) had indeed filed their objections under Section 5-A but their writ petition was dismissed on the assumption that they did not file objections under Section 5-A of the Act.

(8) Upon notice, the Land Acquisition Collector, Urban Estate, Rohtak has filed his reply/affidavit taking a preliminary objection to the effect that writ petitioner No.2, namely, Channo Devi had received her compensation amount vide cheque No.502363 dated 09.02.2010 i.e. much before dismissal of the writ petition on 05.04.2010. It is averred that review-applicants are guilty of concealment of material facts as the factum of receipt of compensation was not disclosed in the main writ petition.

(9) As regard to the plea taken by the review applicants that they had filed the objections, the Land Acquisition Collector has explained as follows:-

“That after examination of the record, it is revealed that a joint objection was filed on 22.01.2007 by 11 land owners (Annexure P-17 of review petition) in response to the notification u/s 4 dated 15.12.2006. The objection was filed beyond the limitation period of 30 days. However, the objections were duly heard. The objection of the petitioners that the land is fertile, and is the only means of livelihood and will be sold at very higher price was duly recorded. Since, the land was vacant at site, therefore, it was recommended to be acquired. Report of LAC is enclosed herewith as Annexure R-1. After considering the report of LAC and matter on merits, the Government decided to acquire the vacant land of the petitioners. Hence, the present review petition is devoid of merits and the same is liable to be dismissed.”

(10) The review-applicants have filed rejoinder to the reply of the Land Acquisition Collector. Therein they have claimed that:-

“It is also submitted that the plea being taken by respondent No.3 that the objections filed by petitioners under Section 5-A were time barred, firstly, it is contrary to the earlier stand taken by them, secondly, otherwise also the said assertion is wrong and contrary to the record, in as much as the objections are dated 19.01.2007 and the same were filed also on 19.01.2007, the admitted case of the respondent in their aforesaid written statement to the writ petition is that the publication in the news-paper “National Herald” is dated 21.12.2007, therefore, the objections filed by the petitioners were within time.”

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

(12) Following two questions arise for our consideration:-

- (i) Whether the averments made in the review application(s) constitute an error on the face of the record?;
- (ii) Whether submission of objections on 22.01.2007 (as alleged by Land Acquisition Collector) or on 19.01.2007 (as claimed by the review-applicants) has any legal effect on the merits of the main case?

(13) As regard to the first question, we find that the review-applicants along with their co-petitioners approached this Court with a categorical stand that they had filed the objections (P13) on 18.01.2009.

Those objections had no sanctity in the eyes of law, for the right to submit objections survives for 30 days from the date of last publication of Section 4 notification. The view taken by this Court on the basis of admitted, undisputed or uncontroverted facts on record was factually correct and legally sustainable. That being so, no error can be said to have been committed on the basis of the record.

(14) A total new factual plea now taken by the writ petitioners that they had in fact filed objections on 19.01.2007 (P17), does not inspire confidence at this belated stage. We say so for the reason that the objections are purported to have been typed on 19.01.2007 and claimed to have been diarised at No.424 on 22.01.2007. In the connected review application (RA-CW-218-2013), these objections were apparently signed by the first writ-petitioner (Rishi Pal) on 29.01.2007. We fail to understand that if the objections were signed on 29.01.2007 then how could these be submitted on 22.01.2007? It thus appears that the review-applicants have subsequently manipulated some entries in the office of Land Acquisition Collector with or without the collusion of the staff, therefore, it is difficult to place reliance on such documents or to accept the new stand now taken by the review applicant(s).

(15) Secondly, even if these objections were filed and diarised on 22.01.2007, the same were not maintainable being time barred as the last date to submit such objections expired on 20.01.2007. There is no power to condone the delay under Section 5-A hence any objections filed after expiry of 30 days of publication of Section 4 notification has to be rejected being barred by limitation.

(16) Thirdly, regardless of the fact that the objections filed by the review-applicants were time barred, the Land Acquisition Collector has come up with a categoric stand that such objections were duly considered on merits and the first writ petitioner (Rishi Pal) was heard in person also. That being so, the very foundation that their objections were not considered by Land Acquisition Collector is contrary to the record and has to be rejected.

(17) For the reasons afore-stated, we do not find any merit in these review applications and the same are accordingly dismissed.

(Surya Kant)
Judge

04.11.2016
vishal shonkar

(Jitendra Chauhan)
Judge