

C.M.No.2671 of 2014 and
R.A.No.131 of 2014 in
CWP No.958 of 2010

#1# Manoj Kumar
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IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

C.M.No.2671 of 2014 and
R.A.No.131 of 2014 in
CWP No.958 of 2010

Date of decision: 27.5.2016

Mahender Singh through LRs

....Applicant-Petitioners

Vs.

State of Haryana and Ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Satender Singh Gulati, Advocate
for the applicant-petitioners.
Mr. Neeraj Poswal, AAG, Haryana.

Jaswant Singh, J

C.M.No.2671 of 2014

Petitioners have preferred the instant application under Order 22 Rule 3 CPC for bringing on record Lrs of petitioner No.1, who is stated to have since died on 04.6.2011 leaving behind his legal representatives as detailed in para 2 of the application.

For the reasons stated in the application, which is supported by an affidavit, the same is allowed. Applicants as indicated in para 2 of the application are ordered to be impleaded as legal representatives of petitioner No.1, subject to all just exceptions.

Registry to place the amended memo of parties at

appropriate place in the file, besides paginating it.

RA No.131 of 2014

By way of filing this application under Order 47 Rule 1 and Section 114 CPC read with Article 226 of the Constitution, the applicant-petitioners have beseeched this Court for review of order dated 05.4.2010 passed by this Court in CWP No.958 of 2010.

Brief facts of the case are that four petitioners, namely, Mahinder Singh, Surender Singh, Narender Singh and Suraj Mal filed the aforesaid writ petition on 15.1.2010 before this Court challenging the notifications under Sections 4 dated 15.12.2006 followed by a declaration dated 14.12.2007 under Section 6 of the Land Acquisition Act, 1894 (for short "1894 Act") for acquisition of the land as detailed therein, which was dismissed by a Division Bench of this Court along with two other writ petitions bearing CWP No.20355 of 2009 and CWP No.2494 of 2010 on 05.4.2010 while observing as under:

"Having heard learned counsel for the parties we find that no ground is made out to accept the contention raised by the petitioners and to quash the acquisition proceedings subject matter of these petitions. It is conceded position on record that the award in the present case has already been announced on 9.12.2009 before filing of the petitions. It is well settled that no writ petition would be competent after passing of award because possession of land, free from all encumbrances was taken and it is deemed to vest in the State Government. In that regard reliance may be placed on the judgments of Hon'ble the Supreme Court

*rendered in the cases of **Municipal Corporation of Greater Bombay v. Industrial Development and Investment Company (P) Limited, (1996) 11 SCC 501; Municipal Council, Ahmednagar v. Shah Hyder Beig, (2000) 2 SCC 48; Padma v. Deputy Secretary to the Government of Tamil Nadu, (1997) 2 SCC 627; Star Wire (India) Ltd. v. State of Haryana, (1996) 11 SCC 698; and M/s Swaika Properties Pvt. Ltd. v. State of Rajasthan, JT 2008 (2) SC 280.***"

It is admitted in para 2(h) of the review application that after dismissal of the writ petitions, the applicants-petitioners received compensation against their total land from the office of Land Acquisition Officer on or around 03.6.2010.

It is necessary to mention here that the applicants-petitioners did not challenge the order dated 05.4.2010 dismissing their writ petitions, however, the petitioners in CWP No.2494 of 2010 titled as Pataso Devi Vs. State of Haryana and Others challenged the order dated 05.4.2010 by way of SLP (Civil) No.26705 of 2010 (Civil Appeal No.6183 of 2012), which was allowed by Hon'ble Supreme Court vide judgment dated 29.8.2012 holding as under:

"In the result, the appeal is allowed and the impugned order is set aside. The acquisition of the appellant's land is declared illegal and is quashed. The parties are left to bear their own costs."

After acceptance of the appeal in Pataso Devi's case (supra), present applicants-petitioners filed another writ petition

i.e CWP No.4272 of 2013 titled Suraj Mal & Ors. Vs. State of Haryana and Others but the same was also dismissed by a Division Bench of this court on 27.2.2013 holding as under:

"Accordingly, keeping in view the said facts and circumstances, no ground for opening the chapter which already stood closed is made out."

The applicants-petitioners instead of annexing the said judgment have attached the copy of judgment dated 27.2.2013 passed in CWP No.4242 of 2013 titled Tejvir Singh Vs. State of Haryana and Ors, which shows a clear lackadaisical approach. It is also relevant to mention here that aggrieved against the dismissal of the writ petition bearing CWP No.4272 of 2013 vide order dated 27.2.2013, the applicants-petitioners approached the Hon'ble Supreme Court by way of SLP (Civil) No.28839 of 2013, which was dismissed as withdrawn vide order dated 23.9.2013 while observing as under:

"After making some submissions and realising that the Court is not inclined to entertain the special leave petitions, learned counsel for the petitioners made a request that their clients may be permitted to withdraw the special leave petitions with liberty to avail appropriate remedies."

The request of the learned counsel is accepted and the special leave petitions are dismissed as withdrawn with liberty in terms of the prayer made."

However, it is made clear that the liberty given to the petitioners to pursue other remedies shall not be construed as a mandate of this Court to

any authority or Court to entertain the prayer made by the petitioners and the application, if any, filed in this regard shall be dealt with and decided on its own merits keeping in view the fact that the writ petitions filed by the applicants have already been dismissed. "

Although, the Hon'ble Supreme Court permitted the applicants-petitioners to avail the appropriate remedies; but under the garb of present review application, the applicants-petitioners want the review of the order dated 05.04.2010 passed in CWP No.958 of 2010, which has already attained finality and was not challenged at the relevant time by the petitioners for the reasons best known to them. Now, after the dismissal of their second and subsequent writ petition i.e CWP No.4272 of 2013, filing of present review application against the order dated 05.4.2010 in CWP No.958 of 2010 is totally misconceived and abuse of the process of the court, more particularly when the petitioners have already received the amount of compensation as is clear from para 2(h) of review application, which reads as under:

"(h). Petitioners disheartened by the aforesaid decision of this Hon'ble Court dated 05.04.2010 took compensation against their total land from the office of Land Acquisition Officer, Urban Estate, Rohtak on or around 03.06.2010, but they have not taken compensation against the structure of their residential house. It is submitted that petitioners undertakes to pay back the compensation amount taken by him in a reasonable period, in case, this Hon'ble Court shall be pleased to release the

land of the petitioners from acquisition."

Thus, filing of the present review application cannot at all be construed to be the appropriate remedy rather the same is absolutely unwarranted and liable to be rejected as the petitioner is estopped by his own act and conduct.

Even otherwise, a bare perusal of the provisions of Section 114 and Order 47 of CPC would reveal that passing of a subsequent judgment cannot be made as a ground for review of an order. It has been authoritatively held by Hon'ble Supreme Court in **(2014) 13 SCC 75, Subramanian Swamy v. State of T.N** that:

*"52. The issue can be examined from another angle. The Explanation to Order 47, Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") provides that if the decision on a question of law on which the judgment of the court is based, is reversed or modified by the subsequent decision of a superior court in any other case, it shall not be a ground for the review of such judgment. Thus, even an erroneous decision cannot be a ground for the court to undertake review, as the first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and in absence of any such error, finality attached to the judgment/order cannot be disturbed. (Vide **Rajender Kumar v. Rambhai [(2007) 15 SCC 513 : (2010) 3 SCC (Cri) 584 : AIR 2003 SC 2095]**".*

As a matter of fact, the applicants-petitioners are trying to

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re-agitate the matter third time before this Court by resorting to filing of present review application, which already stands closed. If such a course is permitted, then there will be no end to the litigation. Thus, in the light of the facts and circumstances of the present case especially when the petitioners have already accepted the amount of compensation towards their land from the State Government, they can not be permitted to re-agitate the matter by way of filing the review application.

The contention that the petitioners are in actual physical possession of the land in question and they are entitled for the benefit of Section 24 (2) of the Act of 2013 is not acceptable and cannot be made a basis to re-open the *lis*, which already stands settled and closed on two occasions in CWP Nos.958 of 2010 and CWP No.4272 of 2013.

Dismissed.

(JASWANT SINGH)
JUDGE

May 27, 2016
manoj

(JITENDRA CHAUHAN)
JUDGE