

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

RA-CW-384-2014(O&M) IN CWP-4553-2008

Date of Decision: 02.12.2016

Smt.Sunila

....Applicant-Petitioner

Vs.

State of Haryana and others

.... Respondents

**CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN
HON'BLE MR. JUSTICE AMOL RATTAN SINGH**

**Present: Mr. Sushil K.Sharma, Advocate
for Mr. M.L.Sharma, Advocate
for the petitioner.**

AMOL RATTAN SINGH, J.

CM-8736-2014

By this application a delay of 40 days in re-filing the accompanying review application is sought.

2. As per the application, accompanied by the affidavit of one of the learned counsel through whom the review application has been filed, the paper book of the case was misplaced in the office of the counsel, after it had been returned by the Registry due to some objection raised.

3. In view of the explanation given, the delay of 40 days in re-filing the application is condoned.

RA-CW-384-2014(O&M)

This review application has been filed by the applicant-petitioner upon liberty having been given to her to do so by the hon'ble Supreme Court, while disposing of SLPs(C) nos.13405 & 13406 of 2010, on

The order of the Supreme Court is reproduced hereinunder:-

“Ms.Indu Malhotra, Learned Senior Advocate appearing for the petitioners states that certain points which were raised by the petitioners were not considered by the High Court.

The petitioners would, therefore like to file a Review Petition before the High Court. Learned Counsel states that in view of this, the petitioners may be permitted to withdraw the present Special Leave Petitions and file a Review Petition in the High Court. Counsel also states that in the peculiar facts of this case and since the petitioners are prosecuting the present Special Leave Petitions, this Court may condone the delay.

In view of the statement made by learned counsel for the petitioners that certain points which were raised by the petitioners were not considered by the High Court, we permit the petitioners to withdraw the present Special Leave Petitions and file a Review Petition before the High Court. If such a Review Petition is filed, the High Court will consider it independently as we have not expressed any opinion on the merits of the said points.

So far as the limitation is concerned, the petitioners will file an appropriate application for condonation of delay and the High Court may consider their application sympathetically in view of the fact that the petitioners were prosecuting the present Special Leave Petitions in this Court.

The Special Leave Petitions are disposed of in the afore-stated terms.”

The order sought to be reviewed, by which the writ petition was disposed of, is dated 07.01.2009, disposing of the writ petition (CWP no.4553 of 2008) in terms of the order passed in CWP no.3972 of 2008 (Nirmala Rani and another vs. State of Haryana and another).

The operative part thereof, which the applicant-petitioner is aggrieved of also, has been reproduced as follows in paragraph 8 of the review application.

“15. As regards the contention that there was release of 34 acres of land in favour of M/s Elite Builders Private Limited, we are of the view that release is contrary to declaration of requirement of land for public purpose and against the judgments of the Hon'ble Supreme Court, inter-alia in Gian Chand V. Gopala and others, (1985) 2 SCC 528, Mahavir V. Rural Institute, (1995) 5 SCC 335 and UP Jal Nigam, Lucknow V. Kalra Properties (P) Limited, (1996) 3 SCC 124 and judgment of this Court in Hari Chand (supra). The stand of the State cannot be sustained. It has not been disputed that M/s Elite Builders Private Limited in whose favour release has been ordered, was not the owner of the land prior to notification under Section 4 of the Act. Neither as per policy nor as per law, release in its favour could be sustained and is required to be undone to advance the public purpose declared by the Staff itself. Mere collaboration of the builder with the owners was of no consequence, in view of law already discussed in the judgment of this Court,. However, M/s Elite Builders Private Limited having not been impleaded as a party to this petition, we do not consider to appropriate to pass a final order and direct the Chief Secretary, Haryana to take necessary action in accordance with law, in the light of judgment of this court in Hari Chand (supra). The Chief Secretary, Haryana may finalise the matter within three months from the date of receipt of a copy of this order and till then, the decision of the State Government will be held in abeyance and remain ineffective and inoperative.”

Thus it is obvious from the aforesaid order that this Court held

that the release of 34 acres of land in favour of M/s Elite Builders Pvt. Ltd. was contrary to the declaration of requirement of land for public purpose and against the judgments of the Supreme Court cited in the order. However, with the aforesaid company (M/s Elite Builders) not having been impleaded as a necessary party in the petition, a direction had been given to the Chief Secretary to the Government of Haryana to look into the matter and to finalise it within three months from the date of receipt of a copy of the order dated 07.01.2009, in the light of the judgment of this Court in **Hari Chand and others vs. State of Haryana and others** (CWP No. 17463 of 2007).

3. We therefore put to a query to the learned counsel appearing for the applicant, as to what decision had been taken by the Chief Secretary to the Government of Haryana in terms of the aforesaid order dated 07.01.2009; he, however, expressed ignorance with regard to any order passed by the Chief Secretary.

Mr. Sharma in fact wholly based his argument on the fact that after the disposal of the writ petition on 07.01.2009, the Land Acquisition Act 1894 having been repealed and the new Act, i.e. the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, having come into force, and (as contended), possession of the land in dispute not having been taken by the State, the petitioner is entitled to retain the land, with the proceedings under the old Act deemed to have lapsed in terms of Section 24 of the Act of 2013.

4. On specific query to learned counsel, as to what he could point to from the order dated 07.01.2009, by which there was any error patent on the face of the record which would enable this Court to correct it in review, learned counsel specifically stated that he could not point out anything

5. We may, however, notice here, that in the review application filed, the grounds for review that have been taken, include the contention that a ground had been taken in the writ petition that the official respondents had admitted their readiness to exchange the land of the petitioners with other land of the Haryana Urban Development Authority, but that fact, as stated in the review application, was not taken into consideration by this Court in its order.

Other than that, the issue with regard to mala fides in the acquisition proceedings, including a licence given to “the private respondent” on 28.02.2008, thus discriminating between the petitioner and such private respondent has also been raised in the application. Thus, an issue of discrimination has been raised.

Next, it has been stated that huge chunks of land have been released after the declaration under Section 6 of the Act of 1894 and after the award itself.

Lastly, it has again be reiterated that the petitioner was not heard in respect of the objections filed under Section 5-A of that Act.

6. It may be also noticed here that other than the three official respondents as were arrayed in the writ petition, there was no “private respondent” as has been referred to in the review application. Obviously, the reference seems to be in the context of some person arrayed as a respondent in the other writ petitions that were disposed of along with the present writ petition, with the detailed order having been passed in CWP No. 3972 of 2008. Hence, the reference to the private respondent in relation to the applicant-petitioner in 'this' writ petition (CWP No. 4553 of 2008), is not entirely correct. As regards M/s Elite Builders Private Limited, as already

disapproved by this Court and the matter having been referred to the Chief Secretary, with a direction to take a final decision in that regard, but with no input from the present appellant with regard to any such decision, nothing further need to said in this review application.

7. When learned counsel for the applicant-petitioner was specifically asked by this Court as to what he wished to say with regard to the other grounds made out in the application, in the context of the order under review, he submitted that other the issue of release of the land in terms of the provisions of the Act of 2013, he had no other argument to make. Thus, as regards the merits of the order passed by this Court on 07.01.2009, learned counsel has not pointed to any specific error in the order in relation to what is contained in the review application, in terms of the acquisition proceedings themselves. In other words, he has not pressed or even argued any of those grounds.

In fact, he has not been able to point to anything even in the writ petition, with regard to any exchange of land proposed by the Haryana Urban Development Authority.

8. Hence, with this Court already having expressed its opinion on the issue of how the objections under Section 5-A were dealt with, the issue of existence of a public purpose and discrimination at least qua the release of land in favour of M/s Elite Builders Private Limited, we see no ground to entertain a review application, with nothing specifically pointed out to us with regard to discrimination between the petitioner and any other persons whose land was acquired but released.

9. On the contention of the learned counsel who has appeared before us today, on the acquired land not being released despite what is

review our order.

Simply because a new Act has come into force 4 to 5 years after the aforesaid order was passed, does not give the applicant-petitioner any cause to seek a review of the order, no such ground even being existent at the time when the order was passed, the Act of 2013 having been actually enacted more than 4 years later.

If the petitioner has any cause of action on any ground available to her in terms of the provisions of the Act of 2013, she would take an appropriate remedy in respect thereof, which would be considered and dealt with wholly on its own merits.

10. Consequently, finding no ground to entertain this review application, it is dismissed in limine, but with no order as to costs.

CM-8738-2014

In view of the fact that the review application has been dismissed for lack of any merit in it, the question of condonation of the delay of 5 days in filing the application is rendered wholly academic, but even so, it being a delay of 5 days only, with the reason for such delay having been stated to be on account of the fact that the applicant-petitioner had first filed a Special Leave Petition against the order dated 07.01.2009, which was disposed of on 24.03.2014, Civil Miscellaneous application no.8738 of 2014 is allowed and the delay of 5 days in filing the review application is condoned.

(JITENDRA CHAUHAN)
JUDGE

(AMOL RATTAN SINGH)
JUDGE

December 02, 2016.

Davinder Kumar

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No