

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

CWP No.1677 of 2003 (O&M)

Date of Decision: July 17, 2017

Arjun Singh and another

----Petitioners

Versus

State of Haryana and others

----Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Mr.Ashok Kumar Khubbar, Advocate
for the petitioners.

Mr.Ankur Mittal, Addl. AG, Haryana and
Mr.Abhinash Jain, Asst. AG, Haryana.

HARINDER SINGH SIDHU, J.

This petition has been filed praying for directions to quash the notifications dated 08.06.1976 and 16.01.1978 issued under Sections 4 and 6, respectively, of the Land Acquisition Act, 1894 (for short “the Act”) for acquiring the land of the petitioners and the award dated 17.11.1978 for that land. The petitioners have further challenged the order dated 19.09.2002 (Annexure P-16), whereby, the representation of the petitioners to return the said acquired land to them, has been rejected.

The petitioners were owners in possession of land comprised in Khasra No.25/1-10, 24/5-6, measuring 23 Kanals situated in village Takoran, Tehsil Pehowa, District Kurukshetra. It is averred that sometime in the year 1978, the State of Haryana issued notices to persons whose land the Government intended to use to increase the capacity of existing Bibipur

lake from R.L. 812 to R.L. 822. It invited such land owners to enter into an agreement with the Government to part with their land for temporary submergence for the above purpose. The Monsoon flood waters would be filled in the lake from 21st June till 15th November, whereafter, the land owners would be permitted to sow Rabi crop on their land. It was specified that if the land owners do not enter into such agreement, their lands would be acquired. All the villagers accepted the proposal of the Government and entered into the agreement. Petitioner No.1 was serving in the Indian Air Force, and at that time was posted at Hyderabad. Hence, he was not aware of any such proposal and could not enter into the agreement. Consequently, his land measuring 23 kanals was acquired, whereas, the remaining 24 acres of those who had entered into the agreement was released from acquisition.

It is further averred that it was only in the year 1979, that the petitioner got to know about his land having been acquired. He protested, but was persuaded by the then Deputy Commissioner, Kurukshetra to accept the compensation amounting to ₹ 13,239/- and then pursue with the authorities for release of land. Thereafter, petitioner No.1 remained posted in far flung areas and only on his transfer in Chandigarh in the year 1983, he was in a position to pursue the case for release of his land. He started writing to the authorities that he was willing to enter into an agreement like the others, and that his land be released and he would repay the compensation received by him.

Various communications have been annexed with this petition, whereby, the case of de-notification of the land of the petitioners was processed including a letter dated 12.06.1986 (Annexure P-20), wherein, the

Chief Engineer, Canals, Haryana wrote to the Superintending Engineer, Drainage Circle, Karnal to return the case of the petitioners for taking necessary action for restoration of the acquired land in accordance with the Financial Commissioner Standing Order No.28. But all his efforts and the positive internal communication inter-se authorities did not yield positive results for the petitioners. The petitioners filed Civil Suit Nos.664 and 663 of 1995 praying for mandatory injunction to revert back his land to the petitioners. The said suit was dismissed on 29.05.2001 on the question of maintainability. His appeal to the Additional District and Sessions Judge, Kurukshetra was dismissed on 10.08.2001.

On 18.07.2001, Irrigation Department issued notice to auction the acquired land of the petitioners. They immediately filed CWP No.12013 of 2001 challenging the said auction and also sought a direction to restore back the land to the petitioners. This petition was disposed of in terms of a decision rendered in CWP No.1979 of 2001 decided on 28.02.2002. The petitioners were given liberty to file a representation, which was required to be disposed of by the Competent Authority in accordance with law after giving opportunity of hearing to the petitioners. It was directed that the land be not sold till the representations are decided.

Pursuant to the liberty granted by the Court, the petitioners filed a detailed representation, which has been dismissed vide the impugned order (Annexure P-16) by holding that both, as per the Financial Commissioner Standing Order 28 (as amended) and as per the decisions of Hon'ble the Supreme Court, the land cannot be reverted back to the original landowners.

Hence, this writ petition.

Learned counsel for the petitioners contended that the land was acquired only because of the failure of the petitioners, to enter into an agreement with the Government regarding storage of flood waters. The agreement could not be entered because petitioner No.1 remained posted at far off places and was not aware of any notice by the Government regarding acquisition and the offer to enter into an agreement. Immediately, after petitioner No.1 got to know of the acquisition, he started correspondence with the authorities requesting that the land be released and stating that he was willing to enter into an agreement and to return the compensation amount. This correspondence continued till the year 1988 and there are letters indicating that his case for release of land was being actively processed. When no concrete action was taken, at first he filed civil suit, which was dismissed on the ground of lack of jurisdiction giving liberty to the petitioners to pursue his remedies as per law. He further argued that this Court while disposing of his Civil Writ Petition No.12013 of 2001 had directed the authorities to consider his representation in accordance with law. There was specific direction that the matter must be considered by the State Government keeping in view the peculiar facts of each case. Learned counsel for the petitioners further argued the acquisition itself was bad as no notice under Section 9(4) of the Act was issued to the petitioners.

Learned counsel for the respondents, on the other hand, stated that the land was acquired after following the procedure as per law. The plea of being posted outside offers no justification to the petitioners to question the acquisition after so long. Moreover, only petitioner No.1 was

posted outside, but petitioner No.2 could have raised the objections within time. He argued that the compensation was received in the year 1978 and the correspondence for release of land commenced only in the year 1983 after a delay of about 5 years. He argued that the plea of notices under Section 9 of the Act having not been served, was not raised in the earlier writ petition filed by the petitioner, hence, cannot be raised in the present petition. He argued that the public purpose still exists and the land in question has been transferred to the Forest Department for plantation. He further argued that after the amendment in the Standing Order No.28 vide amendment dated 13.09.2000 and as per various decisions of Hon'ble the Supreme Court, including in *State of Kerala v. M. Bhaskaran Pillai, (1997) 5 SCC 432* and *Govt. of A.P. v. Syed Akbar, (2005) 1 SCC 558*, the surplus acquired land is required to be put to public auction and cannot be returned to the original land owners.

We have heard learned counsel for the parties and perused the record.

The petitioners seek return of their land which was acquired way back in the year 1978. Though there may be some substance in the plea of petitioner No.1 that he could not enter into the agreement as he was not aware of the notice regarding the same as he was posted outside, but the land having been acquired and vested in the State, it is not permissible to return the same to the petitioner on his repaying the compensation amount received. As rightly noted in the impugned order, Financial Commissioner's Standing Order No.28, which earlier permitted return of the surplus acquired land to the original landowners has been amended on 13.09.2000

to provide for its disposal either by utilization for other public purposes by other Departments including the Forest Department for afforestation or selling it by public auction.

Hon'ble the Supreme Court has held that surplus land, remained after the public purpose of its acquisition has been achieved, may be used for any other public purpose. In case there is no other public purpose to be achieved, instead of sale to the original landowners, it should be put to public auction.

In ***M. Bhaskaran Pillai's case (supra)***, the Court held as under:-

“4. ... It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting a higher value.”

The same view was reiterated in ***Syed Akbar's case (supra)*** as under:

14. From the position of law made clear in the aforementioned decisions, it follows that (1) under Section 16 of the Land

Acquisition Act, the land acquired vests in the Government absolutely free from all encumbrances; (2) the land acquired for a public purpose could be utilised for any other public purpose; and (3) the acquired land which is vested in the Government free from all encumbrances cannot be reassigned or reconveyed to the original owner merely on the basis of an executive order”.

Any plea of the petitioners questioning the validity of the acquisition cannot be entertained at this stage, both on the ground of inordinate delay and for the reason that such a plea was not raised in the earlier CWP No.12013 of 2001 filed by them.

Thus, there is no merit in the present petition and the same is dismissed.

(RAJESH BINDAL)

JUDGE

(HARINDER SINGH SIDHU)

JUDGE

July 17, 2017

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Whether speaking/ reasoned:	Yes/No
Whether Reportable:	Yes/No