

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 19944 of 2011

Date of decision : October 12, 2017

Surinder Kumar

..... Petitioner

Versus

Union of India and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. Namit Gautam , Advocate
for the petitioner.

Mr. Brijeshwar Singh Kanwar, Standing Counsel,
for Union of India-respondent No.1.

Ms. Jatinder Jit Kaur, Advocate
for respondent Nos. 2 and 3.

RAKESH KUMAR JAIN, J (oral).

This petition is filed for seeking a writ in the nature of mandamus for a direction to the respondents to grant passage for access to the retail outlet of the petitioner.

In short, the petitioner is running a retail outlet of the Hindustan Petroleum Corporation Ltd. The petitioner was allotted the retail outlet dealership at Rahpur, District Hoshiarpur under the Scheduled caste category, market plan 1980-83. The National Highway of India (respondent Nos. 2 and 3) asked the petitioner to remove/shift the approach road, buffer strip logo, sign board etc. of retail outlet at Km.36,300(RHS) for the purpose of improvement & widening of Jalandhar-Pathankot Section of NH-1A Km 26.00 to Km. 117.750 and Pathankot-Jammu Section from Km.4,000 to 16.350. Thereafter another letter was received by the petitioner

from respondent Nos. 2 and 3 dated 21.4.2009 by which he was asked to remove the retail outlet at Km.36(RHS) at village Rahpur on NH-1A.

Aggrieved against the said order, the petitioner filed a civil suit No.7962 of 2009 which was disposed of on 25.5.2009 with the following observations:-

“Having heard learned counsel for the petitioner at some length and on perusal of the aforesaid documents, it appears that the matter requires reconsideration by the Project Director of the NHAI. In the light of the two communications referred to above, let the said authority determine as to how much area of the petitioner is required for the widening of the highway. Suffice it to say that to the extent of the area required by the NHAI for widening of the NH No.1-A, the petitioner does not intend to cause any obstruction. The writ petition is accordingly disposed of with a direction to the present Project Director, NHAI to reconsider the whole matter and thereafter determine as to how much area is required to be vacated by the petitioner for the aforesaid purpose. Till then status quo shall be maintained.”

It is alleged that after the aforesaid order the matter of the petitioner was reconsidered and after re-consideration, respondent Nos. 2 and 3 passed the following order:-

“In compliance of the above mentioned directions of Hon'ble High Court, the matter of acquisition of your land has been reconsidered and found that the land in question is required for four laning of National Highways. Only 18 karams i.e. 30 mtrs. width of your land has been acquired which is on the Right Hand Side (RHS) of the road. No land on the left hand side of the road is 16 karams i.e. 88 ft. only and 18 karams i.e. 100ft. More width is required to be acquired on the right hand side falling in line with the other acquired area of

this village. Moreover this acquired area has already vested in the central govt. without any encumbrances vide section 3 D of NH Act.

In view of the above, you are requested to deliver possession of this land along with structure standing on this land to the National Highways Authority of India immediately, so that the projected work of four laning of NH-1A is completed without any further delay.”

Thereafter the petitioner vacated the aforesaid area and shifted his entry to the left over area but still the respondent did not allow him to have a passage for access to his petrol pump. The petitioner made a request in writing for the grant of access but his request fell on the deaf ear because the representation was not decided. Thereafter respondent Nos. 2 and 3 wrote a letter to the HPCL dated 31.3.2011 stating therein that “ due to acquisition of land the size of the plot has been reduced from 36 x 36 m to 36 x 12m. There is no mention about the efforts made by the Oil Co. to increase the size by purchasing the surrounding land. It is observed at the site the land is available on behind the balance land. Hence, the efforts shall be made to increase the size of the plot as per norms of the MoRT&H.”

In reply, the Company alleged that efforts are being made to acquire the land and the Company had already contacted the land owner in this regard. It is submitted by learned counsel for respondent No. 2 & 3 that the same communication continued with the oil company who is otherwise not impleaded as a party in the petition for the reasons best to him. Ultimately on 7.3.2017 the following order was passed by this court:-

“Learned counsel for the petitioner seeks time to ascertain the actual facts on the spot and to know whether some additional land has been acquired by the

petitioner to run the outlet or not.”

Mr. Namit Gautam, learned counsel for the petitioner has submitted that the petitioner has failed to get the additional land for the purpose of running the outlet.

On the other hand, he has argued that the petitioner has been discriminated because the other outlet on the same National highway on the same strip was given access by respondent No.2 and 3. In this regard, averments have been made in paragraph 15 of the writ petition. The respondents have denied the said averment in the reply. Interestingly, the petitioner has though pleaded discrimination but did not implead the entity with whom he has been discriminated.

Be that as it may, the fact remains that the petitioner was required to get additional land to complete the deficiency of his plot caused because of the acquisition by respondent Nos. 2 &3 for widening and improvement of the National Highway 1-A. The said land was not acquired by the petitioner and therefore, merely on the ground that some other person is having the access would not suffice.

In view of the aforesaid, I do not find any merit in the present writ petition. The same is hereby dismissed.

(RAKESH KUMAR JAIN)
JUDGE

October 12, 2017
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Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No