

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

CWP No. 20916 of 2015 (O&M)

Date of decision : 16.11.2017

Madan Lal Sharma

.. Petitioner

versus

The State of Haryana and others

.. Respondents

Coram: **Hon'ble Mr. Justice Rajesh Bindal.**
 Hon'ble Mr. Justice Gurvinder Singh Gill.

Present: Dr. Surya Parkash and Mr. Varlin Garg, Advocates,
 for the petitioner.

Mr. Ankur Mittal, Additional Advocate General, Haryana,
Mr. Shivendra Swaroop and Mr. Manoj Dhankhar, Assistant
Advocate Generals, Haryana.

Rajesh Bindal, J.

The petitioner has approached this court praying for quashing of acquisition of land where notifications under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short “the 1894 Act”), were issued on 11.7.2006 and 16.7.2007, respectively. The Land Acquisition Collector (for short, 'the Collector') announced the award on 23.6.2009. The petitioner claimed that he is owner to the extent of 1,250 square yards of land comprising in khasra No. 3052.

Learned Counsel for the petitioner argued that it is a case of hostile discrimination, if considered in the light of the fact that the State had released substantial portion of land where either construction was there or even the plots were vacant. He had constructed boundary wall and 3-4 rooms on the plot in question which were demolished illegally by the

respondents. The construction was existing on the acquired land of the petitioner prior to issuance of notification under Section 4 of the 1894 Act. He further submitted that the petitioner had filed CWP No. 12363 of 2014 in which directions were issued by this Court to the respondents to reconsider the case of the petitioner. Vide impugned order dated 3.8.2015, the claim of the the petitioner has been wrongly rejected. On three sides of the plots of the petitioner the land has already been released. In fact, the acquired land of the petitioner will not be of any use to the State. The colony in which the plot of the petitioner is located has now been regularized by the State.

Learned Counsel for the petitioner referred to order passed by this Court in a bunch of writ petitions wherein while quashing the impugned order, in CWP No. 5211 of 2014 Krishna Devi vs The State of Haryana and others, decided on 11.3.2014, the matters were remitted back to the authorities for reconsideration and releasing the areas where 'A' class construction existed prior to issuance of notification under Section 4 of the 1894 Act.

On the other hand, learned counsel for the State submitted that this is the third round of litigation by the petitioner pertaining to the same acquisition. Firstly the petitioner filed CWP No. 19465 of 2010 to challenge the acquisition of land which was dismissed by this court vide order dated 29.10.2010, opining that after the passing of the award by the Collector, challenge to the acquisition is not maintainable. The aforesaid order was challenged by the petitioner before Hon'ble the Supreme Court by filling Special Leave to Appeal (Civil) No. 14508 of 2011, which was dismissed on 9.9.2011. Thereafter, the petitioner filed CWP No. 12363 of 2014

claiming that the acquisition had lapsed as the petitioner was still in possession of the acquired land, though such a claim was not admissible for the reason that award in the present case was announced by the Collector on 23.6.2009 and five years period had not lapsed till the enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "the 2013 Act"). However, the writ petition was disposed of on 1.7.2014, directing the authorities to decide the representation filed by the petitioner. The aforesaid representation filed by the petitioner was rejected by the competent authority vide order dated 3.8.2015. It has been specifically mentioned therein that after the acquisition of land the mutation was entered in the name of the State and the possession has been handed over to HSIIDC on 21.5.2010. There was no residential house existing on the acquired land, only one boundary wall was there at the time of acquisition, which was demolished. The petitioner after dismissal of his SLP before Hon'ble the Supreme Court tried to raise construction for which FIR No. 1112 dated 21.12.2011 was registered at Police Station, City Karnal.

It was further submitted that amount of compensation was deposited in the court on 3.1.2011, as there was dispute regarding apportionment. Possession of the acquired land had been taken by the State, writ petition to challenge the same is not maintainable, especially when earlier writ petition filed by the petitioner claiming the same relief was dismissed on 29.10.2010 and the order was upheld by Hon'ble the Supreme Court.

Heard learned counsel for the parties and perused the paper book.

In the present case, notifications under Sections 4 and 6 of the 1894 Act. were issued on 11.7.2006 and 16.7.2007, respectively. The award was announced by the Collector on 23.6.2009. Amount of compensation was deposited in Court on 3.1.2011 as there was dispute regarding apportionment. The petitioner claims that he is owner of 1,250 square yards of land located in Ram Dev colony. The present petition has been filed challenging the acquisition by raising the plea of the discrimination claiming that in number of cases where construction had been raised, was released from acquisition. As in the case in hand also, there was construction existing prior to the issuance of notification under Section 4 of the 1894 Act, the petitioner should not be discriminated and acquisition of land of the petitioner be quashed. However, we do not find any merit in the arguments raised. The petitioner had earlier filed CWP No. 19465 of 2010 in this Court challenging the acquisition immediately after the award was announced by the Collector. The same was dismissed on 29.10.2010, specifically recording that there is no locus of the petitioner to challenge the acquisition after the award had been announced by the Collector. Order passed by this was challenged by the petitioner before the Hon'ble the Supreme Court. The Special Leave Petition was dismissed on 9.9.2011. The petition felt satisfied.

There being dispute regarding apportionment of compensation qua land owned by the petitioner was deposited with the Court on 3.1.2011. As stated by learned counsel for the respondents, the possession of the land was taken on 21.5.2010 and the same was handed over to HSIIDC. Even mutation has also been entered in the name of the State. After the dismissal of the Special Leave Petition filed by the petitioner before Hon'ble the

Supreme Court on 9.9.2011, the petitioner attempted to take possession of the acquired land by raising construction thereon, which was demolished by the authorities and even FIR No. 1112 dated 21.12.2011 was registered at Police Station, City Karnal, against the petitioner. The petitioner filed fresh writ petition in this court bearing CWP No. 12363 of 2014 claiming that the acquisition in question has lapsed in view of the provisions of Section 24(2) of the 2013 Act, as the petitioner was still in possession of the acquired land. The same was disposed of vide order dated 1.7.2014, directing the authorities to consider the claim of the petitioner. This writ petition was filed despite the fact that the case of the petitioner was not covered under the provisions of Section 24(2) of the 2013 Act, for the reason that the award in the present case was announced on 23.6.2009 and five years period had not lapsed till the enactment of the 2013 Act on 1.1.2014.

The present writ petition has been filed impugning the order passed by this Court in pursuance to the direction issued by this Court in CWP No. 12363 of 2014, rejecting the claim of the petitioner. The plea of discrimination has been raised, besides lapsing of acquisition under Section 24(2) of the 2013 Act. However, at the time of arguments, prayer regarding lapsing of acquisition was not pressed. For challenging the acquisition otherwise plea of discrimination has been raised. We do not find any merit therein. It is for the reason that the instances of release of plots from acquisition, which have been referred to by the petitioner pertained to the year 2009. First writ petition filed by the petitioner challenging the acquisition was CWP No. 19465 of 2010, which was dismissed on 29.10.2010. The Special Leave Petition was dismissed on 9.9.2011. All pleas to challenge the acquisition were available to the petitioner at that

time but not raised. Hence, the petitioner cannot be permitted to invoke the jurisdiction of this Court again for the same relief merely by raising a different ground. Even otherwise also award in the present case having been announced on 23.6.2009, the petition is highly belated. In fact, there was no construction existing on the plot owned by the petitioner as it was merely a boundary wall, which was also demolished by the authorities.

For the reasons mentioned above, we do not find any merit in the present writ petition. The same is accordingly dismissed.

(Rajesh Bindal)
Judge

16.11.2017
vs

(Gurvinder Singh Gill)
Judge

Whether speaking/ reasoned

Yes/No

Whether Reportable

Yes/No