

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

CWP No.2084 of 2016(O&M)
Date of decision: 24.10.2017

Ajit Singh and others

... Petitioners

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. AS Narang, Advocate for the petitioners.
Mr. Jagmohan Ghuman, DAG, Punjab.
Mr. SC Pathela, Advocate for respondent No.2.

ARUN PALLI, J. (Oral)

This is a petition under Article 226/227 of the Constitution of India, praying for a writ of certiorari to quash the order dated 28.08.2015 (Annexure P9), vide which the prayer of the petitioners to issue 'No Objection Certificate' to enable them to construct their site, after getting their plans approved from the competent authority; has since been declined. And consequently for a direction to the respondent-Trust to grant 'No Objection Certificate' as applied for by the petitioners vide application dated 17.03.2014 (Annexure P5).

The case set out in the petition is; that the predecessor-in-interest of the petitioners had purchased a land measuring 7 kanals 6 marlas, comprised in khasra No.88//7, situated in village Gumtala, Tehsil and District Amritsar, in 1982 by way of auction held by the Central Government. At different points in time, shares in the said property were purchased by the petitioners. And subsequently, in partition proceedings an area measuring 4 kanals 11 marlas (2760 sq. yards), was allotted to the

petitioners. Thus, they are the absolute owners in possession thereof. In the year 2005-2006, the respondent-Trust claimed ownership over the said property, for it was part of the Ajnala Road Expansion Scheme, and was acquired vide notification dated 19.02.1973, issued under Section 41 of the Punjab Town Improvement Act, 1922 (for short, 'the Act'). The respondent-Trust also claimed to have obtained possession of the land in dispute on 14.05.1980, pursuant to an award dated 04.05.1974, rendered by the Collector. And, for the petitioners were sought to be dispossessed, they filed a suit praying for a decree for injunction against the respondent-Trust. The Trial Court, vide judgment and decree dated 22.05.2009 (Annexure P3), decreed the suit and the respondents were enjoined from intermeddling, interfering or forcibly dispossessing the petitioners from the suit property. The appeal preferred against the said decree failed, for it was dismissed vide judgment dated 03.09.2012 (Annexure P4). For the petitioners intended to construct a hotel upon their land, they applied to the Municipal Corporation, Amritsar for sanction of their building plans. However, the Municipal Corporation, Amritsar required the petitioners to obtain 'NOC' from the respondent-Trust. Accordingly, the petitioners moved an application dated 17.03.2014 (Annexure P5). In the meanwhile, the respondent-Trust also preferred an appeal before this Court i.e. RSA No.4750 of 2014, against the judgment and decree rendered by the Courts below, dated 22.05.2009 and 03.09.2012 respectively. And, for despite lapse of considerable time the application (Annexure P-5) moved by the petitioners had failed to evoke any response, they approached this Court vide CWP No.8032 of 2015 titled as **Ajit Singh Dhillon & Ors. v. State of Punjab and another.** The said petition was disposed of by this Court vide order dated 28.04.2015

(Annexure P8) requiring the respondent-Trust to take a decision upon the application moved by the petitioners. And now when vide order dated 28.08.2015 (Annexure P9), the respondent-Trust has declined to issue the 'NOC', as indicated above, the petitioners are before this Court.

Notice of this petition was issued to the respondents and a reply thereto has been filed.

Briefly, all what is stated by the respondent-Trust in its written statement is that since the land in dispute formed part of the sanctioned scheme of the Government, and once a notification under Section 41 of the Act, was issued in respect thereto, the petitioners could no longer claim any valid title or ownership therein. And, accordingly, they were/are not entitled to seek 'NOC'.

Learned counsel for the petitioners submits that the ownership of the petitioners over the land in dispute is proved. Finding recorded by the Civil Court that the land in dispute was excluded from the acquisition by the Collector or it was never acquired, has since become final. He submits that the Regular Second Appeal No. 4750 of 2014, filed by the respondent against the judgment and decree rendered by the Courts below, has since been dismissed by this Court vide judgment dated 06.03.2017. So much so, even the SLP preferred against the decision of this Court has also been dismissed by the Supreme Court vide order dated 5.10.2017. Thus, he asserts that the petitioners have every right to construct their site/land.

Per Contra, all what is urged by Mr. Pathela, learned counsel for the respondent, is that once the land in dispute found part of the sanctioned scheme and notification under Section 42 of the Act was issued,

it is deemed to have been acquired. Therefore, the petitioners could not claim any right therein.

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

Concededly, the land in dispute originally belonged to the Central Government. It is not disputed either that in a public auction it was allotted to the predecessor-in-interest of the petitioners in the year 1982. Sale certificate dated 04.06.1982 (Annexure P1) was accordingly issued in favour of the auction purchasers. Indisputably, at different point in time, the petitioners purchased a share in the joint land. And, for the said land was eventually partitioned, the petitioners were allotted an area measuring 4 kanals 11 marlas, in proportion to their share in the joint khata. The record of rights shows the petitioners to be the owners in possession of the said land. Undoubtedly, the land in question formed part of the Ajnala Road Expansion Scheme, sanctioned by the Government. And pursuant to a notification dated 19.02.1973, issued under Section 42 of the Act, the said scheme was even notified by the State Government. However, concededly, the Land Acquisition Collector vide award dated 04.05.1974, excluded the land in dispute from the acquisition. For, it belonged to the Central Government and, therefore, could never be acquired by way of compulsory acquisition. But only through negotiation. Which is why, the Collector, rather, advised that if the land in dispute was indeed required by the trust to implement its scheme, it could be acquired only by way of negotiation with the Central Government; ***“Land measuring 55K-10 Marla bearing rect. No.88, Rect. No.112 killa No.19/05, 7/1, 5/2, 6/2, 7/2, 8/13, 14/1, 17/1, 18, 19/2, 19/3, 19/5, 19/6 and killa no.19/7 belong to Central govt., this land***

cannot be compulsorily acquired. The Trust is therefore advised to acquire this land by negotiation with Central Govt. if required for the Scheme". It

is not disputed either, that the respondent-Trust never negotiated the matter with the Central Government. Obviously, there is nothing on record to show that pursuant to the alleged acquisition, the land in dispute ever vested with the respondent-Trust free from all encumbrances. On the contrary, the case set out by the respondent-Trust in its written statement lacks both i.e. merits as also the bonafides. Undoubtedly, the land in question formed part of the sanctioned scheme and even a notification under Section 42 of the Act, was issued in respect thereto. But that was inconsequential, for eventually it was excluded from the acquisition proceedings by the Collector. In the given situation, rather, one wonders as to how and on what basis, the respondent-Trust could claim any right, title or interest therein. The matter can be viewed from yet another perspective. The suit filed by the petitioners against the respondent-Trust was decreed and the appeal preferred against the said decree failed. So much so, even the Regular Second Appeal filed by the respondent-Trust has since been dismissed by this Court vide judgment dated 06.03.2017. A copy of the said judgment was produced by the learned counsel for the parties, during the course of hearing, and an analysis thereof reveals that this Court, on a consideration of the evidence on record, concluded;

“Neither of the two steps having been taken to ensure that the suit land was acquired for inclusion in the scheme notified, after the LAC had pronounced the Award, it has to be held, in the opinion of this Court, that the suit land was left out of the acquisition proceedings vide the Award dated

04.05.1974 with no order of the State Govt. superseding that part of Award and therefore, the auction by the Central Government held in favour of the auction purchasers, including some of the respondent-plaintiffs, on 17.05.1982/04.06.1982, were valid proceedings and consequent thereupon, with there being no objection shown to be raised by the Central Government, to the sale by some of the auction purchasers of their share in the suit land, to the respondent-plaintiffs, such sales are also valid and the appellant-Trust has no right or interest in the suit land after 04.05.1974.”

Ex facie, this Court conclusively concluded that the land in dispute was left out of the acquisition. Sale by auction in favour of the predecessors in interest of the petitioners was valid. Likewise, alienation by some of the auctioner-purchaser of their share in favour of the petitioners were valid too. And, respondent-Trust had no right or interest in the land in question post 4.5.1974.

And now when even the Special Leave Petition [Special Leave to Appeal (C) No.28151 of 2017] preferred by the respondent-Trust against the decision of this Court, has also been dismissed, needless to assert that judgment and decree passed by this Court has since attained finality.

Thus in the wake of the position sketched out above, the reasons assigned by the respondent-Trust in support of the impugned order; ***“Keeping in view the foregoing submission it is abundantly clear that once a Notification has been issued, the land vests with the Improvement Trust and only the question left is to award compensation. The status of the***

ownership of the land in question is sham, illegal and is not acceptable in the eyes of law, therefore, the petitioner can't be issued N.O.C. as desired especially when the R.S.A. is pending.” are palpably erroneous. Need I say; that the respondent-Trust engaged itself in an avoidable litigation, which not only resulted in wastage of public funds but also the judicial time of the Courts.

In conspectus of the above, the only and the inevitable conclusion that could be reached is that the order dated 28.08.2015 (Annexure P9) is wholly erroneous and thus unsustainable. Accordingly, the writ petition is allowed and the impugned order (Annexure P9) is set aside. The respondent-Trust is directed to release/issue the ‘No Objection Certificate’ that has been applied for by the petitioners within a period of six weeks from the receipt of certified copy of this order.

October 24, 2017
Rajan

(Arun Palli)
Judge

Whether speaking / reasoned:	YES
Whether Reportable:	NO