

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

CWP No.2699 of 2015 (O&M)
Date of decision: April 18, 2017

Harbir Singh and others

---Petitioners

Versus

State of Haryana and others

---Respondents

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

Present: Mr.Raman Gaur, Advocate
for the petitioners.

Ms.Palika Monga, DAG, Haryana.

Mr.Rajiv Sharma, Advocate
for respondent No.4.

HARINDER SINGH SIDHU, J.

1. This petition has been filed praying for a declaration that the notifications dated 9.1.1969 under Section 6 of the Land Acquisition Act, 1984 whereby, 123.65 acres of land in village Daulatabad, District Faridabad was sought to be acquired, has lapsed qua the land of the petitioners comprised in Khasra No.28, 10/27, 5/25, 5/3, 5/4 and 5/5, measuring 7 Kanal 18 Marla, situated in the revenue estate of Village Daultabad, Tehsil Ballabagarh, District Faridabad, in view of the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short “ 2013 Act”)

2. The petitioners allege that the grandmother of the petitioners and the father of petitioner Nos.2 to 4 had earlier filed CWP No.5616 of 2003 Smt.Leelawati and anr vs. State of Haryana' praying for release of the land in question from acquisition and for regularizing the existing construction raised thereon by them. The writ petition was disposed of vide order dated 10.5.2011 giving liberty to the respondents to get demarcation of the land falling in Khasra No.17 (Abadi). Rest of the land, which was acquired falling in Khasra No.28, 10/27, 5/25, 5/3, 5/4 and 5/5 was directed be taken in possession.

3. It is averred that the petitioners have constructed their residential houses on the area owned and possessed by them. Besides, there exists a temple, smadh and other *pucca* construction. The area owned and possessed by them was earlier in Abadi No.17 (old No.189). The petitioners have been in possession thereof since the time of their forefathers. The petitioners had earlier filed a civil suit for permanent injunction, which was decreed and the respondents were restrained from dispossessing the petitioners except in due course of law. It is stated that as the petitioners have continued in physical possession of the acquired land and award regarding the same had been passed more than five years, prior to the commencement of the 2013 Act, hence, the acquisition proceedings are deemed to have lapsed. It is also averred that the petitioners have also not taken compensation qua the acquired land.

4. In the written statement filed on behalf of the respondents it has been stated that the acquisition is more than forty five years old and the record thereof is in very bad shape. As per the record available in the office, the petitioners are

not owners of the acquired land in question. Shri Lajja Ram son of Shri Rattan

Lal, grand-father of the petitioners was recorded as co-owner. He had received amount of compensation vide cheque No.970204 dt. 7.7.1969, which was also encashed from the account of the Land Acquisition Officer.

5. It is further stated that physical possession of the acquired land in question was taken vide Rapat No.1475 dated 5.7.1969 (Annexure R-1). At that time it was a vacant piece of land. The petitioners never filed any objections under Section 5A of the Act. The grand-parents of the petitioners had earlier filed CWP No.5616 of 2003 titled 'Leelawati and another vs. State of Haryana and others', which was disposed of vide order dated 10.5.2011 giving liberty to the respondents to get demarcation of the land falling in Khasra No.17 (*abadi*). It was directed that rest of the land which was acquired vide notifications issued in the year 1969, falling in Khasra Nos.28, 10/27, 5/25, 5/3, 5/4 and 5/5 be taken in possession.

6. It is the positive case of the respondents that the petitioners were never in possession of the aforesaid remaining acquired land. It is asserted that in CWP No.5616 of 2003 the petitioners never claimed to be in possession of the land in dispute nor did they raise any grievance regarding non payment of compensation, rather, they filed the petition only because the possession of their land had already been taken by the respondent and they claimed that they had been illegally dispossessed from their land without its acquisition.

7. Heard Ld. Counsel for the parties and perused the record including the paper book of CWP No.5616 of 2003.

8. The case set up by the petitioners in CWP No.5616 of 2003 was that they had constructed a residential house on the area owned and possessed by

them. Besides, there exists a temple, *smadh* and other pucca constructions. The area owned and possessed by the petitioners earlier was Abadi No. 17 (Old No. 189). It was alleged that the respondent authorities had tried to disturb the possession of the petitioners on the pretext that the area in the possession of the petitioners was, in fact, the land acquired by notification dated 9.1.1969. The relevant averments from CWP No.5616 of 2003 are reproduced below:

“3. That the petitioners had constructed a residential house on the area owned and possessed by the petitioners besides there exists a temple, Smadh and other pucca constructions as would be evident from the two photographs, being annexed with this writ petition as Annexure P-2 and P-3. The area owned and possessed by the petitioners earlier is Abadi No.17 (Old No.189). The petitioners are continuing in possession for all these years.

4. That the Respondent Authorities, on the pretext that the area in possession of the petitioners was, in fact, acquired land vide notification, Annexure P-1, tried to disturb the possession of the petitioners. The Respondent Authorities have been maintaining that the land owned and possessed by the petitioners in Abadi No.17, is in fact, Khasra No.28, 10/27, 5/25. 5/3, 5/4 and 5/5 which was acquired. The petitioners faced with this situation even filed civil suits for permanent injunction which were decreed.

5. That the petitioners maintained that Khasra No.5/25 is not even part of the acquisition as would be evident from the notification, Annexure P-1, but the same appears to have been recorded in the name of the State Government in the revenue record erroneously. No compensation for this area has been paid to the petitioners. The petitioners submit that the land owned and possessed by them is Abadi Deh comprised in Abadi No.17 and was never acquired. Since a dispute was being raised by the Respondent Authorities alleging that the area owned and possessed by the petitioners was acquired

one, the petitioners in view of their long and established possession, not effecting the planning of the Respondent Authorities, even requested the Respondent Authorities to release the area in question from acquisition under Section 48 of the Act. Even the Respondent Authorities took a policy decision to regularize the construction of the petitioners. A copy of letter dated 23.02.2001 in the case of the petitioners is being annexed with this writ petition as Annexure P-7. It is also pertinent to mention here that the Respondent Authorities despite acquisition have been releasing the areas of various persons, as would be evident from the communications, copies of which are being annexed with this writ petition as Annexures P-8 to P-11.

9. *That a perusal of the facts and circumstances of the instant case would show that despite acquisition in the year 1969 the petitioners having not taken any compensation in respect of the area in question and the petitioners are continuing in actual possession thereof for more than 32 years thereafter, the action of the Respondent Authorities in not releasing the area from acquisition/regularizing the area owned and possessed by the petitioners, is patently illegal, arbitrary, malafide, ultra vires of the provisions of Section 48 of the Act and is patently unconstitutional.”*

Based on these averments, this Court in CWP No.5616 of 2003 had formulated the precise grievance of the petitioners as under:

“It is the case of the petitioners that in the year 1969, 128.65 acres of land in village Daultabad, District Faridabad was acquired to develop the residential area in Sector 16-A, Faridabad. It is case of the petitioners that they have constructed residential house, Samadh and a temple in the temple owned by them falling in Abadi No.17(Old No.189). The land owned by them is an ancestral property and it was not acquired vide the notifications, mentioned above. It is further stated that the land owned by them falling in Abadi No.17

adjoins the land falling in khasra No.28, 10/27, 5/25, 5/3, 5/4 and 5/5 which was subject matter of acquisition. When the respondents made an attempt to interfere in the land owned by the petitioners, they filed a civil suit in the year 1983, which was decreed in their favour on 19.11.1984(Annexure P-4). They were held owners of the land in dispute and further a decree of permanent injunction was granted to them restraining the respondents from interfering in their possession forcibly and otherwise in due course of law.”

The case was disposed of by directing as under:

“From the pleadings of the parties, it is coming out that there is a serious dispute regarding location/identity of the land in dispute. The petitioners allege that the land under their possession with construction is a part and parcel of Abadi No.17, whereas it is a specific case of the respondents that the construction has been raised by encroaching upon a portion of the land which was acquired vide notifications issued in the year 1969. Such like serious disputes cannot be gone into by this court while exercising a jurisdiction under Article 226 of the Constitution. The parties have went thrice before the civil court and it was held that after getting the land demarcated, the respondent authorities can take over possession of the land, other than the land which falls in Abadi No.17.”

It is not known as to whether the demarcation, as directed, was carried out or not.

9. In the present petition, the petitioners are seeking a declaration that the acquisition has lapsed in view of the 2013 Act on the ground that the petitioners are in physical possession of the land in question on which their construction exists as per photographs annexed and that they have not received compensation in relation thereto.

petition and CWP No.5616 of 2003), it appears that the claim of the petitioners is that the area, which is in their possession and over which the temple, *smadh* and other pucca construction exists, falls in Abadi No.17 (old No.189). It was not the case of the petitioners in the earlier petition that they are in possession of any part of the acquired land. A major part of the present petition also refers to averments in CWP No.5616 of 2003, wherein, the dispute was held to be only one of demarcation of the land.

11. There is no averment in this petition or the earlier petition that the construction alleged to exist is on the acquired land. The respondents on the other hand have positively asserted that possession of the acquired land had been taken on 5.7.1969. If there has been illegal encroachment on the acquired land subsequently, no benefit thereof can accrue to the petitioners.

12. In view of all this, there is no merit in the petition and the same is dismissed.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

April 18, 2017
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<i>Whether speaking/ reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>