

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 7547 of 2016 (O&M)
Date of decision: 11.9.2017

Ashok Kumar

.. Petitioner

v.

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. S. K. Garg Narwana, Senior Advocate with
Mr. Naveen Gupta, Advocate for the petitioner.

Mr. Ankur Mittal, Additional Advocate General, Haryana with
Mr. Manoj Dhankhar, Assistant Advocate General, Haryana.

...

Rajesh Bindal J.

The petitioner has approached this court claiming that acquisition of land owned by the petitioner has lapsed 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, 'the 2013 Act').

Learned senior counsel appearing for the petitioner submitted that notification under Section 4 of the Land Acquisition Act, 1894 (for short, 'the 1894 Act') was issued on 5.5.1997. The petitioner filed objections under Section 5A of the 1894 Act claiming that the house had been constructed on the acquired land, in which the petitioner is residing. Even in

the report submitted by Land Acquisition Collector (for short, 'the Collector'), after hearing the objections under Section 5A of the 1894 Act, it was mentioned that there was 'A' class construction on the part of the acquired land, which was recommended to be left out of acquisition. Without considering the objections, the land was acquired as notification under Section 6 of the 1894 Act was issued on 4.5.1998. Award was announced by the Collector on 3.5.2000, however, no further action was taken for utilisation of land and the petitioner is still in physical possession thereof. He did not dispute the fact that compensation for the acquired land to the extent of his share has been taken by the petitioner. Reliance has been placed on the orders passed by this Court in CWP 16794 of 2016—Swatanter Singh Yadav v. State of Haryana and others, decided on 30.11.2016; CWP No. 17360 of 2016—Shiri Ram and others v. State of Haryana and others, decided on 30.11.2016 and CWP No. 14498 of 2016—Kishan Sahai and others v. State of Haryana and others, decided on 14.12.2016.

On the other hand, learned counsel for the State submitted that the land in joint khewat is owned by eight co-sharers, out of which seven including the petitioner have received the compensation. The petitioner, who is a Councillor of the area, is trying to mislead this court by concealing material facts. In paragraph 5 of the petition, it has been pleaded that without considering the objections filed by the petitioner, notification under Section 6 of the 1894 Act was issued, whereas out of the total area in the khewat measuring 6 Bighas and 2 Biswas, 4 Biswas and 12 Biswansis was released, where the construction was existing. It was only the balance land, which was notified under Section 6 of the 1894 Act. After the award was

announced, possession of the land was taken, though it may not have been utilised as such. The petitioner taking benefit thereof had raised construction by encroaching part thereof. In case any construction existed at the time of acquisition of land, when part of that was released, the petitioner would have certainly raised the issue immediately thereafter, as the notification under Section 6 of the 1894 Act was issued on 4.5.1998.

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

The petitioner in the present case is co-sharer in a joint khewat having total area of 6 Bighas and 2 Biswas. Notification under Section 4 of the 1894 Act was issued on 5.5.1997. The petitioner including other co-sharers filed objections claiming that there is construction on part of the acquired land, where two rooms, kitchen and verandaha have been constructed. The objections were considered. The Collector recommended for release of that portion of land. The same were accepted by the Government. Area of 4 Biswas and 12 Biswansis was not notified under Section 6 of the 1894 Act, while other part of the khewat was acquired. Out of eight co-sharers, seven including the petitioner accepted the compensation immediately thereafter. The possession of the land was taken. The award was announced on 3.5.2000. Though a plea is sought to be raised in the present petition that there existed more construction, however, no such issue was raised when notification under Section 6 of the 1894 Act was issued about nine years back. The issue was sought to be raised only after the enactment of the 2013 Act by claiming that there existed construction on the acquired land, hence, the acquisition lapsed even though the petitioner had taken the compensation. The fact that part of the land, where

construction existed, was not acquired initially while accepting the objections filed under Section 5A of the 1894 Act, has been concealed in the petition. Even though it is sought to be claimed that the petitioner is having a residential house on the area, however, the photographs annexed with the petition do not suggest the same. Apparently, some commercial activity is evident. From the photographs annexed by the respondents with the reply, it is evident that construction was quite recent and some commercial activity in newly constructed tin shed.

For the reasons mentioned above, where the petitioner had not been able to establish that he is in possession of the acquired land ever since the same was acquired and it is found that he raised the construction after accepting the compensation much after the award was announced and possession taken by the authorities, we do not find that any case is made out in the present petition for invoking the provisions of Section 24(2) of the 2013 Act for lapsing of acquisition.

The writ petition is, accordingly, dismissed.

(Rajesh Bindal)
Judge

(Gurvinder Singh Gill)
Judge

11.9.2017
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No