

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-7415-CWP-2017 in/and RA-CW-265-2017 in CWP-9718-2009

Date of Decision: 22.09.2017

Vivek Coop. House Building Society Ltd.

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE ANIL KSHETARPAL**

Present: Mr. Om Parkash Sharma, Advocate
for review-applicant/respondent No.12

SURYA KANT, J. (Oral)

(1) This review application seeks to recall the judgment dated 16.09.2016 whereby the challenge which the writ petitioners laid to the notifications dated 31.03.2008 and 03.02.2009 issued under Section 4&6 of the Land Acquisition Act, 1894 *qua* acquisition of their land/properties within the revenue estate of Hisar City was repelled and their plea of negative discrimination on the ground that Banquet Hall along with open area owned by the review-applicant who was impleaded as respondent No.12 in the writ petition was exempted/released from acquisition, was answered with a direction to the official respondents to acquire the review-applicant's released property and conclude the acquisition proceedings within a period of six months. The said direction was necessitated with a view to eliminate the ground of discrimination established by the writ petitioners for seeking exemption of their land/properties from acquisition.

(2) The review-applicant (Respondent No.12) in the writ petition (as also writ-petitioners) preferred Special Leave to Appeal before the Hon'ble Supreme Court but withdrew the same on 20.02.2017 with liberty to file the instant review application.

(3) We have heard learned counsel for the review-applicant at a considerable length and gone through the record.

(4) A brief reference to the relevant facts is necessitated.

(5) State of Haryana vide the impugned notifications acquired land measuring 132.05 acres for the public purpose of developing “Commercial Sector 25, Hisar”. The acquisition included the land measuring about 24 acres owned by a Cooperative Housing Building Society, namely, the writ petitioner in CWP No.9718 of 2009 as well as the residential house of writ petitioner in CWP No.1365 of 2011. Both the writ petitioners challenged the acquisition primarily on the ground that the State Government had released a part of the acquired property in favour of respondent No.12 (review applicant) in a totally discriminatory manner and for that reason they too were entitled to seek release of their acquired properties. It was in the backdrop of the said plea that the second question formulated by this Court for determination was “*whether the petitioners have made out a case of discrimination within the ambit of Article 14 of the Constitution, and if so, to what effect?*”

(6) While answering that question, this Court found that the land of the review-applicant measuring 45K 17M was proposed to be acquired. He filed objections under Section 5A taking a plea that out of the above-stated land, he had constructed a Banquet Hall (Marriage Palace) on the land measuring 23K 17K and the remaining 22 kanal vacant land was being used for car parking and that his entire property was four-walled with a 9ft. height wall and he had spent crores of rupees on it. The Collector recommended the release of 23K 17M of the land of the review-applicant where Marriage Palace was constructed but those recommendations were not accepted by the Joint Site Inspection Committee and the Director, Urban Estate, who unanimously recommended to

issue Section 6 notification in respect of the entire area which was notified under Section 4 of the Act. Respondent No.12 – the review-applicant apparently exerted his influence at the highest level in the Administrative hierarchy and consequently the land where the Marriage Palace (Banquet Hall) was constructed was ordered to be exempted from acquisition.

(7) This Court vide judgment under review found the release/exemption of that land totally untenable for the reasons as recorded in para 39 of the order which reads as follows:-

“(a) The subject property is admittedly located within the municipal limits and is also regulated by provisions of 1975 Act;

(b) No permission for Change of Land Use was obtained by respondent No.12;

(c) No development charges were paid for the construction of banquet hall-cum-marriage palace;

(d) The building plans were neither presented nor sanctioned by the competent authority;

(e) It was a totally unauthorized and illegally developed commercial empire, obviously, in collusion and connivance with the local administration;

*(f) There was no verification done or a report submitted whether the marriage palace fulfilled the requisite and mandatory norms, the non-compliance whereof by such like hundreds of Marriage Palaces came to be later on seriously viewed by this Court from time to time in PIL jurisdiction in **CWP No.21547 of 2011 (Jagjit Singh vs. State of Punjab & Ors.)** which was finally disposed of on 21.01.2013.”*

(8) On a specific query by us to learned counsel for the review-applicant as to whether or not the Banquet Hall was constructed after obtaining the Change of Land Use permission and after getting the building plan

sanctioned from the Municipality, he candidly admits that no such permissions were obtained from any Authority. It is obvious that Banquet Hall (Marriage Palace) was constructed in a totally unlawful manner and it was nothing but an illegal and unauthorized construction. Even if it is true that the review-applicant had spent crores of rupees, the fact remains that neither he obtained the CLU permission nor building plans were got sanctioned from the Municipality before raising such construction. No other statutory permissions needed for raising a commercial building were also secured. Still further the land was proposed to be acquired for developing a 'Commercial Sector' comprising Markets etc. where Banquet Hall (Marriage Palace) is impermissible in the same manner as a residential house cannot be constructed in Commercial Sector. If the review-applicant is permitted to run Banquet Hall (Marriage Palace) in a market area, the same analogy could be applied to permit the writ petitioners to utilize their land for residential purposes. It is with a view to eliminate such element of discrimination that this Court directed the official respondents to acquire the released property of the review-applicant.

(9) Learned counsel for the review-applicant relies upon **Patasi Devi v. State of Haryana & Ors., (2012) 9 SCC 503** to urge that since Banquet Hall was constructed before issuance of Section 4 notification, it can be exempted from acquisition in terms of Government policy, a reference to which has been made in para 19 of the report. We are, however, not impressed by the submission. Part construction was raised by the members of the petitioner-Cooperative Society or other writ petitioner as well before Section 4 notification. This Court did not set aside the acquisition *qua* those properties primarily for the reason that the acquisition was made for development of commercial sector. In the case of review-applicant, the construction being

totally unauthorized and illegal no premium can be granted for such an act merely because the review-applicant bull-dozed the law and raised the construction before Section 4 notification was issued.

(10) Dismissed.

(Surya Kant)
Judge

22.09.2017
vishal shonkar

(Anil Kshetarpal)
Judge

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| 1. Whether speaking/reasoned? | Yes |
| 2. Whether reportable? | No |