

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

C.W.P. No.12510 of 1994 (O&M)

Date of Decision: August 27, 2018

Gurmej Singh (since deceased) through L.Rs & others

...Petitioners

Versus

The State of Punjab & others

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Ashok Kumar Khubbar, Advocate
for the petitioners.

Ms. Anu Pal, DAG, Punjab.

AMIT RAWAL, J.

Petitioners have assailed the notification dated 22.10.1975 issued under Section 4 of the Land Acquisition Act, 1894 (for short, the Act) with further prayer to issue restraint order against the respondents for protecting the possession.

Writ petition is based upon the fact that prior to the aforementioned notification dated 22.10.1975, notification under Section 4 of the Act was issued on 27.03.1974, but the same was set-aside as per the judgment dated 15.09.1975 passed in Civil Writ Petition No.414 of 1975 titled as Gurmej Singh & others Versus The State of Punjab & others (Annexure P-1). It has been averred that from 1975 till 1991, the State had not taken any action in taking the land of the petitioners. However, only in

January, 1991, the SDM Garshanker visited the spot and, then, acquired the knowledge that the land may be taken for construction purposes for landless workers. The petitioners submitted an application dated 14.05.1991 to the Tehsildar, but it did not yield any result. Thereafter in the months of July and September, 1994, they came to know that the land had been allegedly acquired, but without notice of such proceedings nor any award was announced or possession taken.

Before the expiry of the period of receiving objections under Section 5A of the Act, the respondents proceeded to issue notification dated 16.11.1975 under Section 6 of the Act, which was not in accordance with law.

Respondent No.1 filed written statement, wherein it was stated that the acquisition proceedings were initiated for providing the land for allotment to lessless workers of rural areas.

Vide order dated 14.02.1995, while admitting the writ petition, status-quo in the following manner was passed:-

“There is a serious dispute regarding the fact as to who is in possession of the land. Both the parties claim to be in possession of the land in dispute. We hereby order that let status quo regarding possession of the land in dispute be maintained. Construction, if any, thereon would be at the risk and peril of the parties and would abide by the final order that may be passed in the writ petition.”

State counsel was apprised to file an appropriate application by raising following two questions:-

- a) Whether the petitioners are oustees or not:
- b) Whether the petitioners are entitled to plot or not.

An affidavit dated 02.02.2015 has been filed by SDM

Garhshankar, wherein it has been averred that mutation Nos.1855 and 1901 were sanctioned in favour of the Punjab Government and allottees respectively. The possession of the land in dispute was given to Secretary Housing and Urban Development Department, Punjab. The spot was inspected, but noticed that possession remained with the Government. Though allotment of 4-4 marlas plots to the homeless people was made, but it could not be given effect to owing to the pendency of the litigation.

Mr. Ashok Kumar Khubbar, learned counsel representing the petitioners submitted that the petitioners were not given any opportunity to file objections under Section 5A of the Act nor were heard by the Collector before passing of the award. The possession of the land is still with the petitioners and since the purpose for acquisition has not been achieved, land, subject matter of the notification, should be released by quashing the notifications, *ibid*.

Per contra, Ms. Anu Pal, learned Deputy Advocate General, Punjab supported the averments made in the affidavits aforementioned and urged for dismissal of the writ petition with costs.

We have heard the learned counsel for the parties, appraised the paper book and are of the view that there is no force and merit in the submissions of Mr. Khubbar.

On plain and simple reading of Report No.150 of Roznamcha Waqiyati (Annexure P-11) made by the Patwari, it is evident that the owners refused to accept the service for perusing the award, thus, proclamation of the notification was done in the village by beat of drum. Roznamcha Wakiati was recorded in the year 1975-76. However, the possession of the suit land was taken by Mustri Munadi bearing report No.151 on 07.10.1994

(Annexure P-9). Relevant portion of the same reads thus:-

“Copy of Roznamcha Vakiati year 1975-76 Patwari Halka, Paddi, Sura Singh, Had Bast No.277, Tehsil Garhshankar, District Hoshiarpur.

xxx

xxx

xxx

Delivery of possession

151 Sir,

It is requested that according to the orders of S.D.M. Garhshankar, the possession of the land measuring 19 kanals 4 marlas falling in Khasra No.16//19/2 (5-10), 20 (7-2), 21/1 (0-8), 22 (6-4) (Kite 4) had been given to the Secretary, Punjab Govt. Housing and Urban Development Department through Sh.Raghbir Chand, Overseer after demarcation in the presence of Ram Kishan Patwari Halqa Deh, Shonka Singh, Nambardar Deh and Shri Gurbachan Singh Chowkidar. The labourers were called through Gurbachan Singh, Chowkidar but no one came present. No dispute occurred at the spot in Village Saila Khurd. Announcement was made through Chowkidar by beat of drum. The publicity fee was not given as this work related to the Government. Mutation No.1855 has been entered in village Saila Khurd. Report was got entered in the Roznamcha Vakiati 1975-76 with the report No.151. After compliance report is submitted, on 18.11.75. Sd/- Ram Kishan Patwari in Punjab, Sd/- Shaunka Singh Nambardar in Urdu, Sd/- Raghbir Chand in English, Sd/-Gurbachan Singh Chowkidar in Punjabi.

Sir,

On the request of Sh.Madan Lal s/o Sh.Jawala Singh resident of village Saila Khurd, copy of Page No.25, 26 and 27 of Roznamcha Vakiati has been given to him. Fee of Rs.6/- has been received. Certified that the copy is true as per record.

Sd/-Rachhpal Singh Patwari 7.10.94.”

There is no explanation for not challenging the notification

during all this period, but the steps have been taken only when the possession was taken.

In view of the stand taken in the affidavit as notified above, the decision qua allotment could not be given effect to owing to the pendency of the writ petition and the status-quo order. Such purpose cannot be defeated by permitting the parties to challenge the notification of 1975 in 1994. The scope of judicial review is limited only when the action of the instrumentality of the State or any other party is found to be capricious, illegal and without jurisdiction. The averments made in the writ petition do not fall within the aforementioned guidelines/parameters.

As an upshot of our aforementioned findings, the writ petition is devoid of merit and the same is dismissed.

**(RAJESH BINDAL)
JUDGE**

**(AMIT RAWAL)
JUDGE**

**August 27, 2018
ramesh**

**Whether speaking/reasoned
Whether Reportable:**

**Yes/No
Yes/No**