

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.529 of 1991(O&M)

Date of Order:26th June, 2018

Krishan Kumar Kapoor and others

...Appellants

Versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. M.L.Sarin, Sr. Advocate, with
Ms. Himani Sarin, Advocate,
for the appellants.

Mr. Ashok Singla, Addl. A.G.,Haryana with
Mr. Saurabh Girdhar, AAG, Haryana.

Mr. Shivoy Dhir, Central Government Counsel for
Mr. Satypal Jain, Senior Advocate (Additional Solicitor of
India) for respondent no.2.

Mr. Ashwani Kumar Chopra, Sr. Advocate with
Mr. Sandeep Jain, Advocate,
Mr. Tarun Singla, Advocate,
Mr. Ashutosh Seth, Advocate,
for respondent no.3.

Mr. Gaurav Tangri, Advocate,
for respondent no.7.

ANIL KSHETARPAL, J.

Plaintiffs-appellants are in the regular second appeal against the
concurrent findings of fact arrived at by the courts below.

FACTS

Plaintiffs filed a suit claiming that they are owners in possession

of land measuring 74 kanals and 15 marlas. It was pleaded that the aforesaid land was requisitioned for setting up a brickkiln and removal of earth for making bricks for construction of new industrial township, Faridabad as per notification No.40, dated 31.01.1950 under the provisions of the East Punjab Requisitioning and Acquisition of Immovable Property (Temporary Powers) Act, 1948 (For Short- Act of 1948). Possession of the land was taken on 02.02.1951. It is further pleaded that the aforesaid land was compulsorily acquired by the State of Punjab vide notification dated 01.04.1963 issued by the District Magistrate, Gurgaon, exercising powers under Section 7 of the Punjab Requisitioning and Acquisition of Immovable Property Act, 1953 (hereinafter referred to as "Punjab Act of 1953"). The government subsequently discovered that notification dated 01.04.1963 was illegal and void and, therefore, acquisition was cancelled by the District Magistrate, Gurgaon, vide notification dated 27.04.1971, published in Haryana Government Gazette dated 11.05.1971. Hence they are entitled to restoration of the possession. Plaintiffs impleaded three defendants, namely, State of Haryana, Union of India and M/s Gedore Tools (India) Pvt. Ltd.. The plaintiffs further stated that defendant no.3- Gedore Tools (India) Pvt. Ltd. is in possession of the suit land at the time of allotment by defendant no.2 and have raised construction thereupon.

State of Haryana and Union of India and M/s Gedore Tools (India) Pvt. Ltd. contested the suit. A joint written statement was filed by Defendant Nos.1 & 2 pleading that besides the suit land, 136 acres of land in village Mujesar was also requisitioned and subsequently acquired by notification dated 03.02.1951. It was further pleaded that the District Magistrate, Gurgaon, requisitioned the land vide order dated 31.01.1950 for

industrial purposes and possession of the land was taken by the District Magistrate on 02.02.1950. The land was placed at the disposal of Erstwhile Faridabad Development Board, predecessor-in-interest of the Union of India qua the land. The land was subsequently converted into plots along with another area of 126 acres and the entire land was developed into an industrial belt. The State of Haryana pleaded that the acquisition of the land was further validly made by vide notification dated 01.04.1963 under the Punjab Act of 1953 and, therefore, it was not within the powers and jurisdiction of the District Magistrate to cancel the notification acquiring the land. The notification was also alleged to be illegal as it is non-speaking, containing no reasons for cancellation. It was further pleaded that the Civil Court does not have jurisdiction in view of the express bar contained in Section 19 of the Punjab Act of 1953 as well as under Section 36 of the Displaced Persons(Compensation & Rehabilitation) Act, 1954. It was further pleaded by the State of Haryana that dispute regarding the payment of compensation if have not settled earlier, can be settled separately now.

The Union of India also filed a separate written statement on the same lines as was pleaded by the State of Haryana.

Defendant no.3 filed a separate written statement and pleaded that they were allotted 3 plots by the Central Government-Union of India spread over area of 9.74 acres. It was pleaded that on 03.06.1966, plot no.4 measuring 4.92 acres was allotted whereas plot nos. 1 and 2 measuring 4.82 acres was allotted on 04.11.1969. Defendant no.3 further pleaded that it is a bonafide purchaser having been allotted plots by the Government and therefore, the suit was liable to be dismissed.

Now at this stage, it would be relevant to notice various statutory provisions. Initially the land was requisitioned under the Act of 1948. This Act provides for requisition of the land for a limited time and thereafter enables the competent authority to acquire the immovable property under Section 3 of the Act of 1948. Sections 2 and 3 of the Act of 1948 are extracted as under:-

“2. Requisitioning of property:-(1) If in the opinion of the Provincial Government it is necessary or expedient so to do, the Provincial Government may by order in writing requisition any immovable property and may make such further orders as appear to it to be necessary or expedient in connection with the requisition;

Provided that no property used for the purpose of religious worship and no property situated in a Cantonment within the meaning of the Cantonment Act, 1924(II of 1924) , shall be requisitioned under this Act.

(2) Where the Provincial Government has requisitioned any property under sub-section (1), it may use or deal with the property in such manner as may appear to it to be expedient and may, if the owner of the property requisitioned fails to make within a reasonable time after notice any repairs to the property to the satisfaction of the Provincial Government, carry out the necessary repairs and the cost thereof may be deducted from the compensation which is payable to him.

3. Power to acquire requisitioned property:- (1) The

Provincial Government may at any time acquire any immovable property requisitioned by it under the last preceding section by publishing in the official Gazette a notice to the effect that Government have decided to acquire such property in pursuance of this section.

(2) When a notice as aforesaid is published in the official Gazette, the requisitioned property shall on and from the beginning of the day on which the notice is to published vest absolutely in the Provincial Government free from all encumbrances and the period of requisition of such property shall end.

It is not in dispute that relevant provisions of the Act of 1948 were declared unconstitutional and void by a Division Bench of this Court in ***Shyam Krishan v. State of Haryana, AIR (39) 1952 Punjab, 70.***

After the aforesaid judgment, Amendment and Validation Act was passed in the year 1951.

The State of Punjab, acquired the land in dispute while exercising powers under the Punjab Act of 1953. Relevant provisions of the Punjab Act of 1953 are extracted as under:-

Preamble:- An Act to provide for the requisitioning and acquisition of immovable property for the purpose of the State.

Power to requisition immovable property

Section 3. (1) Where the competent authority is of opinion that any property is needed or likely to be needed for any public purpose, being a purpose of the State, and that the property should be requisitioned, the competent authority—

- (a) *shall call upon the owner or any other person who may be in possession of the property by notice in writing (specifying therein the purpose of the requisition) to show cause, within fifteen days of the date of the service of such notice on him, why the property should not be requisitioned, and*
 - (b) *may, by order, direct that neither the owner of the property nor any other person shall, without permission of the competent authority dispose of, or structurally alter, the property or let it out to a tenant until the expiry of such period, not exceeding two months, as may be specified in the order.*
- (2) *If, after considering the cause, if any, shown by any person interested in the property, or in possession thereof, the competent authority is satisfied that it is necessary or expedient so to do, it may, by order in writing, requisition the property and may make such further orders as appear to it to be necessary or expedient in connection with the requisitioning;*

Provided that no property or part thereof —

- (a) *which is bona fide used by the owner thereof as the residence of himself or his family; or*
- (b) *which is exclusively used either for religious worship by the public or as a school, hospital, public library or an orphanage or for the purpose of accommodation of persons connected with the management of such place of worship or such school, hospital, library or orphanage, shall be requisitioned;*

Provided further that where the requisitioned property consists of premises which are being used as a residence by a tenant for not less than two months immediately preceding the date of the service of notice under sub-section (1), possession of the property shall not be taken unless the competent authority has provided such tenant with alternative accommodation which, in its opinion is suitable.

Release from requisitioning

Section 6. (1) *The competent authority may at any time release from requisition any property requisitioned*

under this Act and shall, as far as possible, restore the property in as good a condition as it was when possession thereof was taken subject only to the changes caused by reasonable wear and tear and irresistible force :

Provided that where the purposes for which any requisitioned property was being used cease to exist, the competent authority shall, unless property is acquired under section 7, release that property, as soon as may be from requisition.

(2) Where any property is to be released from requisition, the competent authority may, after such inquiry, if any, as it may in any case consider necessary to make or cause to be made, specify by order in writing the person to whom possession of the property shall be given and such possession shall, as far as practicable, be given to the person from whom possession was taken at the time of the requisition or to the successors-in-interest of such person.

(3) The delivery of possession of the property to the person specified in an order under sub-section (2) shall be a full discharge of the State Government from all liability in respect of the property, but shall not prejudice any rights in respect of the property which any other person may be entitled by due process of law to enforce against the person to whom possession of the property is given.

(4) Where any person to whom possession of any requisitioned property is to be given is not found and has no agent or other person empowered to accept delivery on his behalf, the competent authority shall cause a notice declaring that the property is released from requisition to be affixed on some conspicuous part of the property and shall also publish the notice in the official Gazette.

(5) When a notice referred to in sub-section (4) is published in the official Gazette, the property specified in such notice shall cease to be subject to requisition on and from the date of such publication and shall be deemed to have been delivered to the person entitled to possession thereof and the State Government shall not be liable for any compensation or other claim in respect of the property for any period after the said date.

(6) Where any property requisitioned under this Act or

any material part thereof is wholly destroyed or rendered substantially and permanently unfit for the purpose for which it was requisitioned by reason of fire, earth-quake, tempest, flood or violence of an army or of a mob or other irresistible force, the requisition shall, at the option of the State Government be void :

Provided that the benefit of this sub-section shall not be available to the State Government where the injury to such property is caused by any wrongful act or default of that Government.

Section 7. (1) Where any property is subject to requisition the State Government may, if it is of opinion that it is necessary to acquire the property for a public purpose, at any time acquire such property by publishing in the official Gazette a notice to the effect that the State Government has decided to acquire the property in pursuance of this section :

Provided that before issuing such notice the State Government shall call upon the owner of, or any other person who, in the opinion of the State Government may be interested in, such property to show cause why the property should not be acquired; and after considering the cause, if any, shown by any person interested in the property and after giving the parties an opportunity of being heard, the State Government may pass such orders as it deems fit.

(2) When a notice as aforesaid is published in the official Gazette, the requisitioned property shall, on and from the beginning of the day on which the notice is so published, vest absolutely in the State Government free

from all encumbrances and the period of requisition of such property shall end.

(3) No property shall be acquired under this section except in the following circumstances, namely :-

- (a) where any works have, during the period of requisition, been constructed on, in or over, the property wholly or partially at the expense of the State Government and the Government decides that the value of, or the right to use, such works should be secured or preserved for the purposes of Government ; or
- (b) where the cost of restoring the property to its condition at the time of its requisition would, in the determination of the State Government, be excessive and the owner declines to accept release from requisition of the property without payment of compensation for so restoring the property,

(4) Any decision or determination of the State Government under sub-section (3) shall be final and shall not be called in question in any court.

(5) For the purposes of clause (a) of sub-section (3) "works" includes buildings, structures and improvement of every description.

Principles and methods of determining compensation

Section 8. (1) Where any property is requisitioned or acquired under this Act there shall be given

compensation which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say: —

(a) where the compensation can be fixed by agreement, it shall be given in accordance with such agreement ;

(b) where no such agreement can be reached, the State Government shall appoint as arbitrator a person, who is, or has been, or is qualified for appointment as a Judge of a High Court ;

(c) the State Government may, in any particular case, nominate a person having expert know- ledge as to the nature of the property requisitioned or acquired to assist the arbitrator and where such nomination is made, the person to be compensated may also nominate an assessor for the same purpose :

(d) at the commencement of the proceedings before the arbitrator, the State Government and the person to be compensated shall state what in their respective opinion is a fair amount of compensation :

(e) the arbitrator shall, after hearing the dispute, make an award determining the amount of compensation which appears to him to be just and specify the person or persons to whom such compensation shall be paid; and in making the award, he shall have regard to the circumstances of each case and the provisions of sub-sections (2) and (3), so far as they are applicable.

(f) where there is any dispute as to the person or persons who are entitled to the compensation, the arbitrator shall decide such dispute and if the arbitrator finds that more persons than one are entitled to compensation, he shall apportion the amount thereof amongst such persons ;

(g) nothing in the Arbitration Act, 1940, shall apply to arbitrations under this section.

(2) The compensation for the requisitioning of any property shall consist of— .

(a) a recurring payment, in respect of the period of requisition of a sum equal to the rent which would have been payable for the use and occupation of the property, if it had been taken on lease for that period; and

(b) such sum, or sums, if any, as may be found necessary to compensate the person interested for all or

any of the following matters, namely: —

(i) pecuniary loss due to requisitioning ;

(ii) expenses on account of vacating the requisitioned premises

(iii) expenses on account of re-occupying the premises upon release from requisition; and

(iv) damages (other than normal wear and tear) caused to the property during the period of requisition, including the expenses that may have to be incurred for restoring the property to the condition in which it was at the time of requisition.

(3) Where any property is acquired in connection with the new Capital of the State of Punjab compensation may be paid, whether by agreement or by award of the arbitrator, either in money or in kind or partly in money and partly in kind, and where there is no person competent to alienate the property or there is a person with limited interest in such property or there is any dispute as to the persons entitled to receive the compensation or as to the apportionment thereof, the arbitrator shall make an award in such manner or make an arrangement in such a way as may be equitable having regard to the interests of the persons concerned.

(4) The compensation for the acquisition of any property under section 7, in the absence of an agreement shall be-

(a) the price which the requisitioned property would have fetched in the open market, if it had remained in the same condition as it was at the time of requisitioning and been sold on the date of acquisition, or

(b) twice the price which the requisitioned property would have fetched in the open market if it had been sold on the date of requisition, whichever is less.

(5) Where there are several persons interested in the compensation, it shall be lawful for the State Government, either on its own motion, or on an application from any person interested to appoint the same or any other arbitrator to make an award or supplementary award in respect of the dispute.

Bar of jurisdiction of civil courts

Section 19. *Save as otherwise expressly provided in this Act no civil court shall have jurisdiction in respect of any matter which the competent authority or arbitrator is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.*

Learned first appellate court has relied upon provisions of Section 48 of the Land Acquisition Act, 1894 to uphold the acquisition.

Section 48 of the Land Acquisitions Act, 1984 is extracted as under:-

48. Completion of acquisition not compulsory, but compensation to be awarded when not completed:--(1)
Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

Trial court held that acquisition of the land was invalid, however, dismissed the suit on the ground that defendant no.3 has become owner by adverse possession as the suit filed by the plaintiff is barred by time as also the plaintiffs are estopped from filing the suit. However, the first appellate court gave different reasons to dismiss the appeal filed by the plaintiffs. The first appellate court held that once the property had been acquired and vested absolutely with the Government, there was no power to cancel the notification. Hence, subsequent notification cancelling the acquisition is

illegal. The first appellate court further held that with respect to land measuring 4.92 acres, consisting of plot no.4, defendant no.3 has become owner by way of adverse possession, whereas defendant no.3 has not become owner by way of adverse possession with respect to land comprised in plot nos.1 and 2 measuring 4.89 acres. However, the first appellate court has further held that the suit filed by the plaintiffs is barred by limitation. The first appellate court, however, held that the plaintiffs are not estopped from filing the suit.

At this stage, it would be appropriate to extract paragraph 3 of the plaint and paragraph 3 of the joint written statement filed by defendants no.1 and 2, are extracted as under:-

Paragraph 3 of the plaint

“That the land described in para no.1 of the plaint (hereinafter described as the land in suit) was stated to have been acquired by the State of Punjab vide Notification No.4500/DRA dated 1.4.1963 issued by the Additional District Magistrate, Gurgaon, under provisions of Section 7 of the Punjab Requisition and Acquisition of Immovable Property Act, 1953 (Act No.11 of 1953) as amended by Punjab Act No.24 of 1954 published in Panjab Government Gazette dated 0.04.963. That it is however submitted that proceedings for assessment and payment of compensation were not started and compensation for the said acquired land was neither assessed nor was paid to the plaintiffs.”

Paragraph 3 of the Joint written statement

“Contents of para No.3 of the plaint are admitted to the extent that the land in question was acquired vide Notification dated 1.4.1963 issued by the then District Magistrate and subsequently published in the official gazette. However, the matter regarding payment of compensation if not settled earlier can be settled separately now and the same has no bearing on this case of the plaintiffs.”

Learned counsel for the appellants has proposed the following substantial questions of law on 08.11.2006, which are extracted as under:-

1. *Whether the notification of acquisition of the suit land which rightly stood cancelled by the District Magistrate could be relied upon by the respondents?*
2. *Whether after cancellation of the notification of acquisition the suit land reverted to the original owners i.e. the appellant-plaintiffs?*
3. *Whether respondent no.3 has become owner of the suit land by way of adverse possession when in fact it had purchased it from respondent no.2 and hence their intention could not be termed hostile?*
4. *Whether the possession of the suit land acquired by respondent no.1 for respondent no.2 and sold/transferred to respondent no.3 could be held to be adverse to the original owners upon cancellation of the notification of acquisition by the District Magistrate?*
5. *Whether the State can compulsorily acquire land*

without payment of compensation and also transfer the same to a third party?

6. *Whether respondent nos.1 and 2 having not paid a penny in compensation for the suit land could sell/transfer the same in favour of respondent no.3.?*
7. *Whether the State of a transferee from it can be permitted to raise the plea of adverse possession?*
8. *Whether the judgments and decrees of the Courts below are perverse and liable to be set aside?*

During the pendency of the appeal, on 20.03.2018, the following order was passed:-

“After learned senior counsel for the appellants has concluded his arguments, when the counsel for the State of Haryana and Central Government counsel were called upon to respond, they came up with a request for an adjournment. They submits that the officials may be permitted to survey the area and report about the existing state of affairs at the site.

Although, there is no justification to adjourn the case midway when the arguments have been heard for more than 1 hour and 10 minutes, however, in the interest of justice, State of Haryana and the Central Government are granted one opportunity to place on file the material which they desire to produce.

Adjourned to 23.03.2018.

The Advocate General, Haryana and the

Assistant Solicitor General of India are requested to assist the Court on the next date of hearing.

To be listed in urgent.”

A status report was filed along with an affidavit of the Deputy Commissioner, Faridabad, dated 26.03.2018. It was reported that Plot Nos.1, 2 and 4 were sold to M/s Gedore Tools (India) Pvt. Ltd. by the Central Government against payment and plot Nos.1 and 2 comprised of 8.70 acres consist of 48 shops, one old building in an area of 217 Sq. feet and remaining area measuring 8.13 acres is lying vacant covered by pacca boundary walls. Whereas Plot No.4, comprised in an area of 4.91 acres, there is an old building and a room existing on the spot and the property is secured by boundary walls of 6 feet height.

An application was also filed for impleading Morgan Signatures Towers Private Limited claiming that the applicants had purchased the property in the sale conducted by the official liquidator attached to the Delhi High Court and, therefore, they should be granted opportunity of hearing. Although, the application was opposed by learned counsel for the appellants, however, the same was allowed vide order dated 02.04.2018.

On 06.04.2018, arguments were once again heard at length and the judgment was reserved. On 09.05.2018, the case was ordered to be put up for re-hearing and two issues were carved out seeking clarification from the parties. The order dated 09.05.2018 is extracted as under:-

“This appeal was heard on 06.04.2018 and the judgment was reserved. However, while examining the file and the record, this Court is of the view that certain issues needs to be clarified, which are as under:-

(i) Once the competent authority has withdrawn acquisition of the land vide notification dated 27.04.1971 under the Requisitioning and Acquisition of Immovable Property Act, 1952, the appropriate Government without taking any further step is justified in pleading that such notification is illegal and void.

(ii) State of Haryana and the Union of India be called upon to disclose this court as to whether any compensation for compulsory acquisition of the land was ever paid to the plaintiffs or not.

List the matter for re-hearing in urgent on 14.05.2018.

Learned Advocate General, Haryana and learned Additional Solicitor General for Union of India are requested to assist the Court on the date fixed.”

On 16.05.2018, Mr. Shivoy Dhir, Advocate, appeared on behalf of the Additional Solicitor General of India and on his request, it was adjourned to 24.05.2018. On 24.05.2018, learned counsel appearing for the Union of India placed on file a communication received from the Government of India, Ministry of Home Affairs, addressed to the Additional Solicitor General of India, dated 18.05.2018, operative part of the communication is extracted as under:-

“3. It is mentioned that the administration and management of the remaining acquired land, developed plots, Government built up properties and realization of

arrears of rent, damages, installments etc. in Faridabad stands transferred along with concerned records to the State Government of Haryana, Rehabilitation Department, Chandigarh under a package deal issued vide this Ministry's letter No.18(2)/73-Spl. Cell/SS.II dated 31st March, 1981 (copy enclosed).

4. As mentioned in para 3 above, all litigation matters will be dealt by the Revenue & Rehabilitation Department, State Government of Haryana and case is supposed to be defended on behalf of State Government. Hence, you are requested to apprise the above facts to the Hon'ble Court and request also be made to the Hon'ble Court to pass suitable directions to the Revenue & Rehabilitation Department, State Government of Haryana on the next date of hearing i.e. 24.05.2018 keeping in view of the above facts and apprise this Ministry.”

Hence, Union of India washed hands of by putting entire onus on the State of Haryana.

Again arguments were heard and judgment was reserved on 24.05.2018, which is now being released.

Learned first appellate court has relied upon Section 48 of the Land Acquisition Act, 1894 and has held that the land covered by Plot No.4, measuring 4.92 acres allotted on 03.06.1966 on the ground that defendant no.3 has perfected its title by adverse possession.

Although, lengthy arguments were addressed by respective counsels appearing for the parties, however, learned counsel for the respondents could not draw attention of the Court to any pari materia provision as is available under Section 48 of the Land Acquisition Act, 1894 in Punjab Act of 1953. In absence of any pari materia provision in the Punjab Act of 1953, the non-availability of power to cancel the notification after compulsorily acquisition of the land is complete and possession has been delivered, cannot be read into Punjab Act of 1953. Therefore, the reliance placed by the learned first appellate court on the judgments passed by the Hon'ble Supreme Court interpreting Section 48 of the Land Acquisition Act, 1894, would have no application.

However, learned counsel for the newly added respondent has submitted that the Punjab Act of 1953 does not make any provision for cancelling the acquisition after the land had been acquired and acquisition is complete. While elaborating he has submitted that a competent authority has been empowered to release any property requisitioned under the Act as provided under Section 6 of the Punjab Act of 1953 as extracted above. However, he pointed out that after the acquisition of the land under Section 7 of the Punjab Act of 1953, competent authority has no power to cancel the notification.

In response thereto, learned senior counsel appearing for the appellants, has drawn the attention of the Court to Section 19 of the Punjab General Clauses Act, 1898, to contend that the power to issue notifications includes a power exercisable in the like manner and subject to sanction and conditions, if any, to add, to amend, vary or rescind any notifications. He submitted that this is a similar provision as provided under Section 21 of the

General Clauses Act, 1897. He submitted that the competent authority in the present case, cancelled the notification issued on 01.04.1963. Hence, he submitted that the resultant effect is that there is no notification acquiring the land after District Magistrate, Gurgaon, took a decision on 27.04.1971 and the Government of Haryana, issued Gazette notification published on 11.05.1971. The decision of the District Magistrate, Gurgaon, which was subsequently published in the Gazette on 11.05.1971 is extracted as under:-

“The undersigned hereby cancels the notification issued by my predecessor vide No.4500/DRA, dated 1st April, 1963, published in the Punjab Govt, Gazette (Extra Ordinary) dated the 10th April, 1963, under Section 7(i) of the Punjab Requisitioning and Acquisition of Immovable Property Act, 1953 9XI of 1953) and subsequently amended by Punjab Act No.XXIV of 1954 for the acquisition of 64 acres 1 kanals 18 marlas of land in villages Meola Maharajpur, Mujessar, Adronda and Daulatabad Tehsil Ballabgarh and District Gurgaon.”

He submitted that as per the Punjab Act of 1953, District Magistrate is the competent authority to issue notification under Section 7 of the Punjab Act of 1953 and even the notification dated 01.04.1963 was issued by the District Magistrate, Gurgaon.

This court has considered the submissions of respective counsels and with their able assistance gone through the relevant provisions. Section 19 of the Punjab General Clauses Act, 1898 and Section 21 of the General Clauses Act, 1897 are extracted as under:-

The Punjab General Clauses Act, 1898.

“19. Power to make to include power to add to, amend, vary, or rescind orders, rules or bye-laws.-Where, by any Punjab Act, a power to issue notifications or make orders, rules or bye-laws is conferred, then that power includes a power exercisable in the like manner and subject to like sanction and conditions (if any), to add, to amend, vary or rescind any notifications, orders, rules or bye-laws so issued or made.

The General Clauses Act, 1897.

21. Power to issue, to include power to add to, amend, vary or rescind, notifications, orders, rules or bye-laws.-Where, by any Central Act or Regulation, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any) to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued.”

Under Section 48 of the Land Acquisition Act, power to withdraw from the compulsorily acquisition is regulated and the compulsorily acquisition of the land can be withdrawn only as per the provisions of Section 48 of the Land Acquisition Act. In the present case, acquisition was not under the Land Acquisition Act, 1894. The acquisition was carried out under the Punjab Act of 1953.

Learned counsel for the private respondent while drawing attention of the Court to Section 19 of the Punjab General Clauses Act, 1898, further submitted that power to rescind can be exercised in the like manner and subject to like sanction and conditions. He while elaborating has submitted that such notification could not be issued by the District Magistrate in the year 197 without issuing notice to defendant no.3, the allottee of the land. He has further submitted that in the absence of such notice having been issued, the notification issued on 27.04.1971 was void-

ab-initio. This argument was also supported by learned Additional Advocate General, Haryana.

This court has considered the submission of learned counsel and with their able assistance examined the provisions of the Punjab General Clauses Act, 1956.

On careful examination of Section 19 of The Punjab General Clauses Act, 1898, which is some what *pari materia* with Section 21 of the General Clauses Act, 1897(Central Act), it is apparent that no doubt enabling power has been given to the competent authority to add, to amend, vary or rescind orders, rules or bye-laws. However, such power is subject to the exercise of power in the like manner and subject to sanction and conditions, if any. In the present case, land was requisitioned in the year 1950, possession of the land was taken on 02.02.1951. Thereafter, the land was compulsorily acquired by the then State of Punjab on 01.04.1963. The notification issued on 01.04.1963 was with respect to huge chunk of land, of course, including the land belonging to the appellants. It is further not in dispute that the Central Government on receipt of valid sale consideration allotted the plots which had been carved out to defendant no.3 in the year 1966 and 1969. In such circumstances, it was obligatory for the District Magistrate to at least give notice to the allottees. The District Magistrate issued the notification, cancelling the acquisition without even noticing the subsequent developments. The District Magistrate was also oblivious of the fact that the land has been allotted to the industries, utilised for construction of a factory buildings. A reading of the notification issued on 11.05.1971, does not show that any reason was given by the District Magistrate to cancel the validly acquired land. As noticed, the notification issued in the year

1963 was with respect to large chunk of land measuring 64 acres 1 kanal and 18 marlas. While cancelling the notification, learned District Magistrate did not even analyze what would be the result of such notification cancelling the acquisition.

Hence, it is held that notification dated 11.05.1971 was not a valid notification and the State is entitled to defend the valid acquisition, while defending the suit, calling upon the Court to ignore the illegal notification issued by the District Magistrate cancelling the compulsorily acquisition of the land. The District Magistrate, the competent authority did not exercise its power in accordance with Section 19 of the Punjab General Clauses Act, 1898.

Now the stage is set to answer the proposed questions of law.

QUESTION NO.(1)

Whether the notification of acquisition of the suit land which rightly stood cancelled by the District Magistrate could be relied upon by the respondents?

In view of the discussion made in the foregoing paragraph, it is concluded that the notification issued on 27.04.1971 was not a valid notification and the land which had been compulsorily acquired as per notification dated 01.04.1963 would remain acquired. The District Magistrate while issuing notification dated 27.04.1971 did not exercise its powers in accordance with law and exercise the powers without even realising the effect of notification cancelling the earlier acquisition or gave an opportunity to show cause to the persons who were going to be effected by the aforesaid cancellation of the notification.

Hence, question no.1 is answered against the appellants.

QUESTION NO.(2)

Whether after cancellation of the notification of acquisition the suit land reverted to the original owners i.e. the appellant-plaintiffs? (Needs change)

In view of the answer to Question No.1, the cancellation of notification of acquisition is bad in the eyes of law and, therefore, not sustainable.

In any case, the interest of the subsequent purchaser from defendant no.3 is also to be protected. M/s Gedore Tools (India) Pvt. Ltd., defendant no.3, had been allotted the plots for a valuable consideration by the Union of India, therefore, defendant no.3 was a bonafide purchaser of the property. Still further, defendant no.3 constructed factory building and started running its business. Of course, M/s Gedore Tools (India) Pvt. Ltd., defendant no.3 went into liquidation and property has been purchased by Morgan Signatures Towers Private Limited. Even Morgan Signatures Towers Private Limited is a bonafide purchaser of the property. Much water has passed under the bridge.

In view of the aforesaid, Question No.2 is also answered against the appellants.

QUESTION NOS.(3), (4) & (7)

3. ***Whether respondent no.3 has become owner of the suit land by way of adverse possession when in fact it had purchased it from respondent no.2 and hence their intention could not be termed hostile?***
4. ***Whether the possession of the suit land acquired by respondent no.1 for respondent no.2 and sold/transferred to respondent no.3 could be held to be adverse to the original owners upon cancellation of the notification of acquisition by the District Magistrate?***
7. ***Whether the State of a transferee from it can be permitted to raise the plea of adverse possession?***

Question No.3 does not pose any difficulty as defendant no.3 cannot claim that it has perfected its title by adverse possession. Once it is admitted fact that defendant no.3 came into possession on allotment of the land by the Union of India in its favour, therefore, the findings of the first appellate court even with regard to 4.92 acres of land, holding that defendant no.3 has become owner by way of adverse possession are set aside. Defendant no.3 has not become owner by way of adverse possession. Defendant no.3 was required to plead and prove as to from which date their possession become adverse, hostile to the owners. In the absence of any such pleadings, finding of the first appellate court in this regard cannot be sustained.

Question No.7 has not been correctly framed. However, keeping in view the discussion made above, question nos.3, 4 and 7 are answered in favour of the appellants.

QUESTION Nos.(5) & (6)

5. ***Whether the State can compulsorily acquire land without payment of compensation and also transfer the same to a third party?***
6. ***Whether respondent nos.1 and 2 having not paid a penny in compensation for the suit land could sell/transfer the same in favour of respondent no.3.?***

At the time when the notification for compulsorily acquisition was issued, right to property was one of the fundamental rights under Article 19 (1)(f) of the Constitution of India which of course was omitted with effect from 20.06.1979. However, compulsorily acquisition of the land was permissible under Article 31 of the Constitution of India, which was omitted with effect from 20.06.1979. Before 20.06.1979, Article 31 read as under:-

“31. Compulsory acquisition of property.-(1) No

person shall be deprived of his property save by authority of law.

(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of law which proves for acquisition or requisitioning of the property for an amount which may be fixed by such law or which may be determined in accordance with such principles and given in such manner as may be specified in such law; and no such law shall be called in question in any court on the ground that the amount so fixed for determined is not adequate or that the whole or any part of such amount is to be given otherwise than in cash:

Provided that in making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in cl.(1) of Art. 30, the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

(2-A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property,

notwithstanding that it deprives any person of his property.

(2-B) Nothing in sub-cl.(f) of cl.(1) of Art.19 shall affect any such law as is referred to in cl.(2)

(3) No such law as is referred to in cl.(2) made by the Legislature of a State shall have effect unless such law, having been reserved for the consideration of the President, has received his assent.”

Compulsorily acquisition of the property under Article 31 was permissible saved by authority of law. Punjab Act of 1953 is law in that context.

Section 8 of the Punjab Act of 1953, mandates the authority to give compensation to the land owners whose land or property has been compulsorily requisitioned or acquired. However, validity of acquisition under Section 6 is not dependent on the payment of compensation as determined under Section 8 of the Punjab Act of 1953. In other words, before valid acquisition of the land under Section 7 of the Punjab Act of 1953, it is not necessary that the compensation payable is assessed and is paid.

Hence, question nos. 5 and 6 are answered against the appellants.

However, the matter does not end here. Here is a case where no evidence has been produced to prove the fact that any compensation has been paid or determined or any steps were taken to determine the compensation as required under Section 8 of the Punjab Act of 1953.

Still further, there was a subsequent development in the year 1971 when the acquisition was cancelled by the District Magistrate which of

course has been found to be wrong. Keeping in view the aforesaid facts, this Court is tempted to grant some compensation to the plaintiffs who have been deprived of their immovable property without payment of the compensation.

However, when one looks at the provisions of Section 19 of the Punjab Act of 1953, it is clear that jurisdiction of the Civil Court is barred in respect of any matter which the competent authority or arbitrator is empowered by or under this Act to determine. Section 8 of the Punjab Act of 1953 provides that in absence of any agreement fixing the compensation payable, the State Government shall appoint an arbitrator. Hence, this court is of the considered opinion that rather than venturing into the aspect of determining compensation payable, when jurisdiction of the civil Court is barred, this Court grants liberty to the appellants to seek remedy as available under Section 8 of the Punjab Act of 1953. It is made clear that if such an application is filed in this behalf by the appellants, the same shall not be dismissed on the ground of delay in the peculiar facts of the present case.

In view of the aforesaid, questions no.5 and 6 are answered accordingly.

QUESTION NO.(8)

Whether the judgments and decrees of the Courts below are perverse and liable to be set aside?

In view of the discussion made above, the judgments and decrees passed by the courts below are accordingly modified and upheld for different reasons.

Hence, while upholding the judgments and decrees passed by the courts below, appellants are granted liberty as noticed by this court while

answering question nos.5 and 6.

The regular second appeal is dismissed.

26th June, 2018
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No