

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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C.M - 10805 -CWP of 2018 in/and
C.W.P No. 11162 of 2018
Date of decision: 02.08.2018

Suresh Kumar & Ors.

... Petitioners

Vs.

State of Haryana & Ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Sh. Shilak Ram Hooda, Advocate, for the petitioners.

Mr. Shivendra Swaroop, AAG, Haryana.

Mr. Ankur Mittal, Advocate, for respondent No.3 – HSIIDC.

G.S.SANDHAWALIA, J. (Oral)

C.M No. 10805 of 2018 in/and
C.W.P No. 11162 of 2018

Application for vacation of stay of order dated 04.05.2018 has been filed by respondent No.3. A mention of the said application had been made on earlier date i.e 30.07.2018 in the presence of the counsel for the petitioners and, accordingly, the office was directed to list the application if it was complete in all respects. The copy of the application had been supplied to the counsel for the petitioners whose associate had put in appearance in the morning session, when the case was taken up in the urgent list. However none came present in the afternoon session at 2.00 PM which had been fixed though being well aware of the proceedings. The order dated 04.05.2018 reads as under:-

“Counsel for the petitioners inter alia submits that the

process of acquisition was initiated for the land falling in village Bad Khalsa, HB No.41 comprising in Mustatil and Killa Nos.11//1/2 Min (1K-5M) and 11//20/2 Min (1K-0M), total land measuring 2 Kanals 5 Marlas by Annexure P-4 & P-5. However, when the award was passed on 26.08.2009 (Annexure P-9), the above mentioned land did not form part of the acquired land. It is further submitted that possession as such cannot be taken of the said portion, in the absence of award having been passed.

Notice of motion.

Ms. Safia Gupta AAG, Haryana, accepts notice on behalf of respondent Nos.1 and 2. Copy be supplied during the course of day.

Adjourned to 30.07.2018 for service of respondent No.3.

In the meantime, status quo be maintained qua the above said land.”

Mr. Ankur Mittal has pointed out that vide the interim order it had been demonstrated that as if acquisition proceedings initiated on 17.04.2008 and 30.07.2008 (Annexures P/4 and P/5) about the land of 2 kanals and 5 marlas of the petitioner did not find mention in the award passed on 26.08.2009 (Annexure P/9). In the absence of award not having been passed this Court had granted status quo.

It is now pointed out that the said portion of the land had already stood acquired by an award which was passed on 28.11.2008 (Annexure A-3) in pursuance to notification dated 22.06.2006 which was

not brought to the notice of this Court, rather there was concealment of facts and suppression of facts.

It is further pointed out that the petitioners herein are petitioner's Nos. 17, 9 and 13 in Civil Writ Petition No. 815 of 2017 along with another set of petitioners and even the affidavit of petitioner No.1 – Suresh Kumar has been filed in the said writ petition. A perusal of the record of said writ petition would go on to show that in paragraph 11 it has been specifically averred that award was passed on 28.11.2008 and the compensation as such was not paid on account of which the said writ petition had earlier been filed. Therefore, on account of non-payment the benefit under Section 24 of the Land Acquisition Acts of 1894 & 2013, had been sought in the said case. The Division Bench in that case vide order dated 12.05.2017 (Annexure A/2) C.M No. 7060 of 2017 had permitted the respondents/applicants to take physical possession of the land, which was required for construction of loop/inter-change of KMP. It is submitted that even the said order was not brought to the notice of this Court, when notice of motion was issued on 04.05.2018.

Further, it is a case of the applicants also that since the land was already vested with the applicants vide award dated 28.11.2008 (Annexure A/3) the same did not find mention in the subsequent award dated 26.08.2009 (Annexure P/9) and it is to be utilized for construction of KMP Express Way. There was no construction on the said portion also and therefore the order of Division Bench will also not protect the applicants. Apart from that the order of the Apex Court in **M.C.Mehta Vs. Union of India & Ors**, passed on 28.11.2014 (Annexure A-5) has also been referred

to that interim orders by Courts/Tribunals are not be passed as the Apex Court was ceased of the matter of KMP Expressway.

A perusal of prayer in the present writ petition would also go to show that the dispute is qua of award of 2 kanal 5 marlas land to be made and the land be de-notified in the alternative.

In view the fact that the land already stands acquired and petitioners are already contesting in C.W.P No. 815 of 2017, they are well aware of the proceedings and the award which has been passed. The State has taken a stand in that case that the amount already stands deposited and therefore present writ petition is also no longer maintainable. Even otherwise, on account of patent concealment of facts this Court does not feel it is a fit case to proceed further in view of the law laid down in 2010(2) SCC 114 Dalip Singh Vs. State of U.P and M/s [Prestige Lights Ltd. V. State Bank of India](#) (2007) 8 SCC 449. Rather it is case of exemplary costs which should be levied, which this court refrains itself from levying. The relevant portion reads as under :-

“34. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a Writ Court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by

deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.”

Mr. Hooda has put in appearance at 3.45 pm, at this stage, after the order was passed in open Court and has tried to argue the matter but this Court is not inclined to hear him, in view of the conduct of the petitioner and also for avoiding to appear at the appropriate time. The conduct of his clients has already been noticed in detail but he has persisted to argue the matter inspite of these facts.

Accordingly, the writ petition is also dismissed.

August 02, 2018
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(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable: Yes/No