

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

CM No.17350 -CII of 2019 in/and
CR No.3571 of 2016 (O&M)
Date of decision: 30.08.2019

Union of India

.... Petitioner

Versus

Balkrishan and Ors.

.... Respondents

Before: Hon'ble Mr. Justice. B.S. Walia.

Present: Ms. Sonia Madan, Advocate for the petitioner.
 Mr. S.K. Chaudhary, Advocate for respondent No.1.

B.S. Walia, J. (Oral)

CM No.17350-CII of 2019

For the reasons as are mentioned in the application, the same is allowed. Annexures P/5 to P/10 are taken on record subject to all just exceptions while granting exemption from filing true typed/certified copies of the same.

CR No.3571 of 2016 (O&M)

[1] Civil Revision petition has been filed under Article 227 of the Constitution of India for setting aside order, Annexure P/4 dated 11.02.2016 passed by the Court of Shri Randhir Verma, learned Civil Judge (Sr. Div.), Pathankot dismissing the application filed by the petitioner/defendant under Order 7 Rule 11 CPC.

[2] Brief facts of the case leading to the filing of the revision petition are that respondent No.1/plaintiff filed civil suit No. 739/14 praying for decree of possession of land acquired by the petitioner NHAI for the

purpose of construction of four lanes on G.T. Road near Mast Baba Chowk, Malikpur.

[3] The petitioner/defendant filed an application under Order 7 Rule 11 CPC for rejection of the plaint on the ground that the suit was barred by law as acquisition proceedings had been completed, possession taken over, compensation of ₹ 30,167.14/- as per share of respondent No.1./plaintiff paid where after the land vested in the Central Government, thus, the Civil Court had no jurisdiction to try the suit.

[4] Respondent No.1/plaintiff filed reply Annexure P/3 dated 08.09.2015 to the application under Order 7 Rule 11 CPC and on consideration of the pleadings, the learned Civil Judge (Sr. Div.) Pathankot dismissed the application vide order, Annexure P/4 dated 11.02.2016.

[5] The impugned order has been challenged *inter alia* on the ground that on acquisition proceedings having been completed, possession having been taken over and compensation for the acquired land to the tune of ₹ 30,167.14/- having been paid to respondent No.1/plaintiff, the land as per the National Highways Act vested with the Central Government free from all encumbrances and persons whose land had acquired became persona non-grata and could not claim restoration of the land on any ground whatsoever. Secondly, that it was not concern of the land owner whether the land was being used for the purpose for which it was acquired or for any other purpose and the only right the land owner had, was to receive compensation for the acquired land unless the acquisition proceedings itself were challenged and since respondent No.1/plaintiff had received compensation, the suit was not maintainable and the jurisdiction of the Civil Court was barred and the only remedy available to respondent No.1/plaintiff,

no jurisdiction to take cognizance of cases arising under the National Highways Act etc. It is further contended that the learned Civil Judge (Sr. Div.) Pathankot dismissed the application solely on the ground that an arbitration clause could not bar the civil remedy of a party although there was no arbitration agreement and /or any arbitration clause.

[7] Learned counsel for the petitioner has relied upon the decision of Hon'ble the Supreme Court in case titled as **The Market Committee Hodal Through its Secretary vs Smt. Sukhdevi and Ors., 2016 (1) SCC 290** and **V. Chandrasekaran and another vs Administrative officer and others, 2002 (12) SCC 133** to contend that once the land had been acquired, suit for possession could not have been filed nor decreed, secondly, that once land had vested in the State, free from all encumbrances, it could not be divested and proceedings under the Land Acquisition Act, 1894 would not lapse, even if an award was not made within the statutorily stipulated period and further that land once acquired could not be restored to the persons-interested, even if it was not used for the purpose for which it was so acquired and the proceedings could not be withdrawn/abandoned under the provisions of Section 48 of the Land Acquisition Act, 1894 or under Section 21 of the General Clauses Act, once the possession of the land had been taken and the land vested in the State, free from all encumbrances. Relevant extract of the decision in **V. Chandrasekaran's case (Supra)** is reproduced as under:-

16. It is a settled legal proposition, that once the land is vested in the State, free from all encumbrances, it cannot be divested and proceedings under the Act would not lapse, even if an award is not made within the statutorily stipulated period. (Vide: Avadh Behari Yadav v. State of Bihar & Ors., 1995 (3) RRR 445; (1995) 6 SCC 31; U.P. Jal Nigam v. Kalra

Properties (P) Ltd. (Supra); Allahabad Development Authority v. Nasiruzzaman & Ors., 1997 (1) RCR (civil) 25 : (1996) 6 SCC 424, M. Ramalinga Thevar v. State of Tamil Nadu & Ors., 2000 (2) RCR (Civil) 726: (2000) 4 SCC 322; and Government of Andhra Pradesh v. Syed Akbar & Ors., AIR 2005 SC 492).

17. The said land, once acquired, cannot be restored to the tenure holders/persons-interested, even if it is not used for the purpose for which it was so acquired, or for any other purpose either. The proceedings cannot be withdrawn/abandoned under the provisions of Section 48 of the Act, or under Section 21 of the General Clauses Act, once the possession of the land has been taken and the land vests in the State, free from all encumbrances. (Vide: State of Madhya Pradesh v. V.P. Sharma, AIR 1966 SC 1593; Lt. Governor of Himachal Pradesh & Anr. v. Shri Avinash Sharma, AIR 1970 SC 1576; Satendra Prasad Jain v. State of U.P. & Ors., 1993 (3) RRR 597; Rajasthan Housing Board & Ors. v. Shri Kishan & Ors., 1993 (1) RRR 635: (1993) 2 SCC 84 and Dedicated Freight Corridor Corporation of India v. Subodh Singh & Ors., 2011 (5) RCR (civil) 217: (2011) 11 SCC 100).

[8] Learned counsel for the petitioner contends that in the circumstances, the revision petition is liable to be allowed, impugned order set aside and the Civil suit dismissed.

[9] Faced with the aforementioned position, learned counsel for respondent No.1/plaintiff states that he does not oppose the relief prayed for in the revision petition but only prays for grant of liberty to avail his remedy qua his grievance by invoking his remedy before a Constitutional Court.

[10] In view of the admitted position that acquisition proceedings had been completed, possession had been taken, compensation for acquired land to the tune of ₹ 30,167.14/- paid to respondent No.1 and the land vested

No.1/plaintiff had become persona non grata and could not claim restoration of the land by way of a civil suit. At best, respondent No.1/plaintiff, if aggrieved, could have sought redress before a Constitutional Court.

[11] In the light of the position as noted above, the revision petition is allowed. Impugned order, Annexure P/4 dated 11.02.2016 is set aside and the civil suit dismissed while leaving it open to respondent No.1/plaintiff, if aggrieved, to avail of his remedy in accordance with law.

(B.S. Walia)
Judge

30.08.2019
amit

1. Whether speaking/reasoned: Yes/No.
2. Whether reportable : Yes/No.