

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

C. W.P. No.19006 of 2019

Date of Decision:- 01.10.2019

Dharamvir and others

....Petitioners

vs.

State of Haryana and others

....Respondents

**CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present:- Mr. Arun Jain, Sr. Advocate with
Mr. Chetan Salathia, Advocate,
for the petitioners.

Mr. Ankur Mittal, Addl.A.G, Haryana.

SUDHIR MITTAL, J.

The petitioners seek quashing of order dated 27.11.2018 passed by the Haryana State Industrial and Infrastructure Development Corporation Ltd. (hereinafter referred to as ‘the HSIIDC’) whereby request of respective petitioners for retention of their lands has not been accepted in view of orders passed by Hon’ble the Supreme Court of India.

The petitioners are 105 in number. They are all residents of Village Manesar, Tehsil Manesar, District Gurugram. A total of 912 acres of land was proposed to be acquired for Chaudhary Devi Lal Industrial Township, for setting up of an Integrated Complex for Residential, Recreational and other public purposes, vide notification dated 27.8.2004 issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter

referred to as 'the Act'). Certain land-owners filed Objections under Section 5-A of the Act and vide report dated 26.2.2005, the Land Acquisition Collector recommended release of 224 acres. Thereafter, Notification dated 25.8.2005 was issued under Section 6 of the Act, declaring that 688 acres of land was required for the aforementioned public purpose. Vide notice dated 2.8.2007, issued under Section 9 of the Act, the land-owners were directed to come present on 26.8.2007 for passing of the Award. However, the Government passed order dated 24.8.2007 withdrawing from the acquisition. On 20.9.2007, the HSIIDC proposed constitution of an Inter Departmental Committee for examining the issue of continuing with the acquisition process. Subsequently, vide order dated 29.01.2010, the State Government finally decided to withdraw from the acquisition proceedings.

Meanwhile, certain landholders had challenged the acquisition proceedings but their writ petitions were disposed of as infructuous vide order dated 9.10.2007 on account of the decision of the Government not to continue with the acquisition proceedings.

Immediately after issuance of Notification under Section 4 of the Act, private entities started negotiating with the landholders for purchase of their lands through 'middle men'. A large number of sales were made between the period 27.8.2004 and 29.1.2010 and the State Government granted licences to the purchasers for development of the land purchased by them. The landholders of the village were extremely agitated when the acquisition proceedings were dropped as they felt cheated. Consequently, CWP No. 23769 of 2011 was filed by 117 landholders challenging orders dated 24.8.2007 and 29.1.2010, whereby the State Government had decided

to withdraw from the acquisition. The writ petition was, however, dismissed vide judgement dated 15.12.2014 resulting in filing of an SLP. Leave was granted by the Supreme Court and the SLP was converted into Civil Appeal No. 8788 of 2015 **Rameshwar and others versus State of Haryana and others**. The said civil appeal was allowed vide judgement dated 12.03.2018 and certain directions were passed. During the pendency of the civil appeal, the Central Bureau of Investigation was directed to register an FIR and conduct an investigation as it was felt that public interest had been made to suffer for the unjust enrichment of a chosen few. While allowing the civil appeal, it was held as under: –

“32. We thus hold that: –

- a) The transactions entered into between the landholders and the concerned builders/private entities in the present case were not voluntary and were brought about by fraudulent influence. Certain ‘middlemen’ and builders enriched themselves at the expense of the landholders and public interest which was to be achieved by acquisition.
- b) The decisions dated 24.8.2007 and 29.1.2010 as well as entertaining of applications for grant of license from those who had bought the lands after the acquisition was initiated, were not bona fide exercise of power by the State machinery. The exercise of power under the Act was guided by considerations extraneous to the provisions of the Act and as a matter of fact, was designed to enrich the builders/ private entities. These decisions were nothing but fraud on power.”

From the above findings, it is apparent that the sales made by the landholders after issuance of notification under Section 4 of the Act, were held to be involuntary and fraudulent and the decision dated 24.8.2007 as well as that dated 29.1.2010 were held to be a fraud on power.

To balance the equities between the landholders who underwent the process of acquisition without selling their lands, landholders who sold their land in question and third parties whose interests had intervened meanwhile, detailed directions were issued as under: –

“39. Having bestowed our attention to various competing elements and issues we deem it appropriate to direct:

- (a) The decisions dated 24.8.2007 and 29.1.2010 referred to herein-above are set aside as being brought about by mala fide exercise of power. In our considered view, those decisions were clear case of fraud on power and as such are annulled.
- (b) The decision dated 24.8.2007 was taken when the matters were already posted for pronouncement of the award on 26.8.2007. Since all the antecedent stages and steps prior thereto were properly and validly undertaken, and since the decision dated 24.8.2007 has been held by us to be an exercise of fraud on power, it is directed that an Award is deemed to have been passed on 26.8.2007 in respect of lands (i) which were covered by declaration under Section 6 in the present case and (ii) which were transferred by the landholders during the period 27.8.2004 till 29.1.2010. The lands which were not transferred by the landholders during the period from 27.8.2004 till 29.1.2010 are not governed by these directions.
- (c) Subject to the directions issued hereafter, the lands covered under aforementioned direction (b) shall vest in the HUDA/HSIDC, as may be directed by the State of Haryana, free from all encumbrances. HUDA/HSIDC may forthwith take possession thereof. Consequently all licenses granted in respect of lands covered by the deemed Award dated 26.8.2007 will stand transferred to HUDA/HSIDC.
- (d) Since the dropping of acquisition on 24.8.2007 and subsequent decision dated 29.1.2010 have been set aside, the period between 24.8.2007 and upto the date of this

judgement shall not be counted for the purposes of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

- (e) All transactions entered into during the period from 24.8.2007 till 29.1.2010, pursuant to which the original landholders transferred their holdings in favour of builders/ private entities or third parties shall be subject to and the interest of the respective parties shall be governed by the directions issued hereafter.
- (f) Consistent with directions issued in para 33 of Uddar Gagan (supra), the builders/private entities will not be entitled to recover the consideration paid by them to the landholders. The sale consideration paid by the builders/private entities to the landholders shall be treated towards compensation under the award and the landholders will not be required to refund any amount to such builders/private entities. The landholders will be at liberty to prefer Reference under Section 18 of the Act within a period of three months from today. For the purposes of maintaining such Reference the reasoning that weighed while passing Awards dated 9.3.2006 and 24.2.2007 shall be the basis. If the Reference Court were to enhance the compensation, the amounts received by the landholders by way of consideration from the builders/private entities shall be appropriated towards such sum awarded by the Reference Court. If the landholders are still entitled to something more than what they had received from the builders/private entities, the differential sum shall be made over to them by the State of Haryana towards acquisition of their interest in the lands in question. If however, what the landholders had received towards consideration from the builders/private entities is found to be in excess of what is awarded by the Reference Court, the remainder shall not be recovered from them.
- (g) Consistent with the directions issued by this Court in paragraphs 33.6 and 33.7 in Uddar Gagan (supra), the builders/private entities will be entitled to refund/reimbursement of any payment made to the

landholders or the amounts that had been spent on development of the land, such payments shall be made by HUDA or HSIDC on being satisfied about the extent of actual expenditure not exceeding HUDA or HSIDC norms on the subject as the case may be. Refund will however be in respect of amount at which the landholders sold the land and not of subsequent sales. As regards subsequent transactions, the subsequent purchasers will have remedies against their respective vendors. Claims of builders/private entities are entitled to refund will be taken up after settling claims of third parties from whom the builders/private entities had collected monies. No interest will be payable on such amounts.

- (h) The third parties from whom money had been collected by the builder/ private entities will either be entitled to refund of the amount from and out of and to the extent of the amount payable to the builder/private entities in terms of above direction, available with the State, on their claims being verified or will be allotted the plots or apartments at the agreed price or prevalent price, whichever is higher. Every such claim shall be verified by HUDA or HSIDC. In cases where, constructions have been erected and the entire project is complete or is nearing completion, upon acceptance of the claim, the plots or apartments shall be made over to the respective claimants on the same terms and conditions. Except for such verified and accepted claims, the remaining area or apartments will be completely at the disposal of HUDA or HSIDC, as the case may be, which shall be free and competent to dispose of the same in accordance with the prevalent policy and procedure.

In order to facilitate such exercise all third parties who had purchased or had been allotted the plots or apartments shall prefer claims within one month from today, which claim shall be verified within two months from today.

- (i) As found by us in the preceding paragraphs, substantial sums were made over to “middle men”. In the pending investigation, the CBI may do well to unravel the truth. In

any case, such hefty sums which were made over to “middle men” cannot be said to be rightfully earned by and belonging to them. In fact, this actually represents the return for being able to garner the lands in question and getting requisite licenses under the provisions of the Haryana Act and a benefit derived out of fraud on power. In our view this money rightfully belongs to the State and none other. We direct the authorities of the State as well as the Central Government to reach the depths of such transactions and to recover every single pie and make it over to the State Government. A complete investigation in the transactions including unearthing unnatural gains received by “middle men” shall be undertaken by the CBI.

- (j) If CBI has filed charge sheet before the concerned Court, the same may be dealt with as per law.
- (k) The State shall give benefit of “Rehabilitation and Resettlement of Land Acquisition Oustees” policy of the State/HUDA/HSIDC to the landholders. Area so required shall be reserved out of the acquired land itself
- (l) The State may revisit its policy of change of land use and giving colonization license in respect of land which is subject matter of acquisition.
- (m) We are given to understand that a commission of enquiry was appointed by the State of Haryana to enquire into certain facts concerning acquisitions in respect of lands in Gurgaon Manesar Urban Complex and that the matter is presently subject matter of challenge in a pending writ petition in the High Court of Punjab and Haryana on account of which further steps are held up. Without expressing any opinion on the merits or demerits of such challenge, we request the High Court to deal with and dispose of the matter as early as possible and preferably within two months from the date of receipt of a copy of this order so that public interest may not suffer by delay in such decision.”

Learned senior counsel appearing for the petitioners has

submitted that the petitioners are individual landholders who are, (a) bona

fide purchasers from the original land owners;

(b) the persons who exchanged their lands with individual landowners, builders and private entities after decision dated 29.1.2010;

(c) persons who purchased land from private companies/individuals within the *Old Abadi* and adjoining land after the Government decision dated 29.1.2010; and

(d) persons who entered into agreements to sell with builders/private entities after the Government decision dated 29.1.2010 but could not get sale deed executed due to their pending litigation before the High Court. They were not parties before the Supreme Court and some of them have built houses over the land purchased by them and are residing there with their families. The land is being used for tethering cattle and livestock. Vide resolution dated 18.8.2017, Village Panchayat Manesar has approved laying of roads, sewage lines, electricity lines and other public amenities to the houses of the petitioners.

They had purchased their lands from persons who faced the acquisition proceedings and did not indulge in sales in favour of builders/private developers. Thus, their lands were exempted from acquisition as per the directions aforementioned. The HSIIDC has wrongly interpreted the said directions and accordingly, order dated 27.11.2018 is illegal and is liable to be quashed. Further, the petitioners are entitled to directions for retention of their lands.

Learned State Counsel has placed on record a detailed chart reflecting the sale transactions in respect of each of the petitioners. On the basis thereof, he submits that the petitioners are not the original landowners.

Although their purchase is after the passing of order dated 29.1.2010, the

original landowners had sold the land between the period 27.8.2004 and 24.8.2007. Thus, it cannot be said that the land of the petitioners is such in respect of which no sale deed was executed between the period 27.8.2004 and 29.1.2010. The petitioners are not entitled to retain their land and the impugned order is legal and justified.

We have carefully gone through judgement dated 12.3.2018 passed by Hon'ble the Supreme Court in the case of Rameshwar (supra). After examination of the peculiar facts of the case, the Supreme Court has found that builders and 'middle men', in connivance with each other, prevailed upon the land owners to sell their lands and then got the land acquisition process dropped. The orders passed by the State Government withdrawing from the acquisition were, thus, held malafide and a fraud on the exercise of its power by the State Government and orders dated 24.8.2007 and 29.1.2010 were consequently quashed. The award which had been prepared but not pronounced, was held to be a deemed award and 688 acres of land, subject matter of the notification dated 25.8.2005 issued under Section 6 of the Act, was declared to have been acquired. However, landowners who underwent the process of acquisition without selling their lands were given the benefit of retaining their land by declaring that their lands would not form part of the deemed award. Detailed directions quoted hereinabove have been given in respect of lands which stood acquired in view of the deemed award. The petitioners have purchased lands which were sold between the period 27.8.2004 and 29.1.2010 and thus, the submission of learned senior counsel for the petitioners that the original vendors of the lands of the petitioners had retained their lands during the period of acquisition, is incorrect. The manner in which the lands of the petitioners are

to be dealt with is clearly spelled out by the Supreme Court in the directions extracted herein-above and they cannot say that they have been left remediless.

In view of our finding that the lands of the petitioners are subject matter of the deemed award, there is no illegality in the impugned order dated 27.11.2018. The writ petition is accordingly dismissed. The petitioners will, however, be at liberty to avail the remedy available to them in view of directions of the Supreme Court.

(DAYA CHAUDHARY)
JUDGE

(SUDHIR MITTAL)
JUDGE

October 01, 2019
poonam

Whether speaking/reasoned **Yes**

Whether reportable **Yes**