

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

Sr. No.207

**CWP-7120-2015 (O&M)
Date of decision : 20.09.2019**

Ram Singh and another

..... Petitioners

VERSUS

State of Haryana and others

..... Respondents

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

Present: Mr. Ashwani Kumar Chopra, Sr. Advocate for
Mr. Akshit Chaudhary, Advocate, for the petitioners.

Mr. Ankur Mittal, Addl. AG, Haryana

Mr. Anil Chawla, Advocate, for respondent No.2.

Mr. Nitin Rathee, Advocate for
Mr. Anil Rathee, Advocate, for respondent No.5.

SUDHIR MITTAL, J.

The petitioners allege that the land in dispute was purchased by them vide registered sale deed dated 26.9.1990. The total land thus, purchased was five kanals, nine marlas and the same was mutually partitioned for construction of respective residential houses. They raised the construction in the year 2000. The construction of petitioner No.1 was over 303.71 sq. yds. while that of petitioner No.2 was over 274 sq. yards. Various electricity bills and photographs have been placed on record in respect of the assertion that the construction was raised prior to issuance of Notification dated 18.12.2008 under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act').

On 18.12.2008, the State of Haryana issued a notification under Section 4 of the Act for acquisition of 139.08 acres of land for Residential Sector-9 Part and Sector-10 part Dadri. The petitioners submitted their objections dated 15.1.2009 under Section 5-A of the Act, but the same were arbitrarily rejected. A total of 3.08 acres of land was released on account of objections under Section 5-A of the Act, but in doing so a pick and choose policy was adopted. Even thereafter, another five odd acres of land was released before passing of the impugned award. Notification dated 17.12.2009 was issued under Section 6 of the Act followed by Award dated 16.12.2011. Certain persons similarly situated as the petitioners challenged the acquisition vide CWP No.23386 of 2011 and other connected matters. These were disposed of vide judgment dated 20.8.2013 by a Division Bench of this Court by directing the respondents to verify the claims of the petitioners therein once again after conducting a fresh survey and then determine the area to be released. Such determination be made in accordance with policy dated 26.10.2007 and wherever constructed area has to be released, proportionate open space be also released. Even partially built plots and vacant plots be also released in case they cannot be used for the public purpose for which acquisition has been made and if their release does not affect any public utility. However, maximum size of vacant plots that may be released should be restricted to 250 sq. yards. The petitioners and some others challenged the acquisition vide CWP No.26763 of 2013 and the same was disposed of vide order dated 6.12.2013 in terms of judgment dated 20.8.2013. Filing of a contempt petition was necessitated as the State

Government did not pass any order despite directions of this Court. During pendency of the said contempt petition, the authorities concerned hurriedly passed order dated 10.12.2014 without notice to the petitioners and without granting them any opportunity of hearing. The claim of the petitioners has been wrongly rejected vide order dated 10.12.2014 and thus, the same deserves to be quashed.

Detailed written statement has been filed on behalf of the respondents, wherein it is stated that the construction on the land of the petitioners is post issuance of notification under Section 4 of the Act and thus, the land of the petitioners is not liable to be released under the policy dated 26.10.2007. It is, further averred that the present writ petition has been filed after passing of the award and thus, it is not maintainable. Wherever construction existed prior to notification under Section 4 of the Act, relief has been granted to the concerned persons and there is no arbitrariness on behalf of the State. No pick and choose policy has been adopted and all claims have been decided on their merits.

The petitioners have controverted the written statement by filing replication thereto.

Since the petitioners are heavily relying upon telephone bills and electricity bills in support of their plea that their construction was in existence on the date of notification under Section 4 of the Act, it is necessary to refer to the written statements of Dakshin Haryana Bijli Vitran Nigam Limited and Bharat Sanchar Nigam Limited. In the written statement of Dakshin Haryana Bijli Vitran Nigam Limited, it has been stated that an electricity connection dated 25.6.1999 was released in

favour of petitioner No.2 and another dated 14.6.2001 was released in favour of petitioner No.1. However, the connection dated 25.6.1999 was permanently disconnected in the month of May-June, 2002. The connection in favour of petitioner No.1 was issued at a site near Mahendergarh Chungi, but whether the said site corresponds to the acquired land cannot be ascertained. The Bharat Sanchar Nigam Limited has also stated that it is not in a position to say with any amount of certainty that the telephone connections released were for a house in the acquired land. These written statements remain unrebutted.

Learned senior counsel for the petitioners submits that the order dated 10.12.2014 is liable to be set aside on the short ground that no opportunity of hearing was granted to the petitioners before passing the same and that it amounts to violation of the judgment dated 20.8.2013. Further, arbitrariness is writ large as persons who did not file their objections under Section 5-A of the Act have been given the benefit of release of their land. In the case of one Jai Bhagwan a partially constructed structure has been released by recording the same to be self-occupied. In the case of one Manbai, land has been released, even though, it lies within 12 meters wide road. The evidence on record in the shape of telephone bills and electricity bills clearly show that the construction was raised by the petitioners prior to the notification under Section 4 of the Act and thus, the rejection of the claim of the petitioners is illegal. Only a very small portion of the land of the petitioners falls under the road and apart from that the rest of the land deserves to be released. The plan of Sector-10 Dadri has not yet been finalized as is

evident from the communication dated 12.1.2015 received from the office of the District Town Planner, Bhiwani, under the Right to Information Act, 2005 and the petitioners' land can be easily adjusted in the lay out plan. The writ petition accordingly, deserves to be allowed.

Learned State counsel, however, opposes the claim of the petitioners. According to him, the petitioners have raised construction after issuance of notification under Section 4 of the Act. This is evidenced by the report of the Land Acquisition Collector on the objections under Section 5-A of the Act filed by the petitioners as well as shajra plan dated 13.3.2007 prepared after survey was conducted before issuance of notification under Section 4 of the Act. Apart from that, the present writ petition is not maintainable as the same has been filed after passing of the award. Opportunity of hearing was not required to be granted as the authorities were already in possession of the record pertaining to the constructions and the petitioners could not have supplemented the same. There is no arbitrariness in the action of the State and only those deserving have been given benefit under policy dated 26.10.2007. The final lay out plan has now been approved and according to the same the land of the petitioners falls within the area meant for construction of a judicial complex.

The earlier writ petition filed by the petitioners viz. CWP No.26763 of 2013 was disposed of on the first date of hearing i.e. 6.12.2013. Thus, it is evident that the same was filed after passing of the award in the present case, which is dated 16.12.2011. It is settled law that no writ petition is maintainable after passing of the award. Further, the

High Court can refuse to exercise its jurisdiction under Article 226 of the Constitution of India if the claim is belated or delayed. Reference can be made to **Sawaran Lata etc. Vs. State of Haryana and others, 2010 (4) SCC 532**. However, this Court entertained the writ petition and disposed it off with certain directions and thus, the petitioners are only entitled to raise a challenge for violation of the directions given therein or any illegality committed while doing an act directed by this Court. This Court had directed the authorities concerned to conduct a fresh survey and then take a decision in accordance with policy dated 26.10.2007. The said policy is on record as Annexure P-11 and perusal of the same shows that for consideration thereunder objections under Section 5-A of the Act should have been filed and the structure should have existed prior issuance of notification under Section 4 of the Act apart from the same being inhabited. Thus, the crucial question is whether the finding in order dated 10.12.2014 that the construction of the petitioners is post notification under Section 4 of the Act, is legal and valid or not.

Whether a construction was in existence on a particular date or not is a question of fact. The claim of the petitioners is primarily based on photographs, telephone bills and electricity bills. Photographs cannot show the age of construction and thus, the same cannot be relied upon. Regarding telephone bills and electricity bills, specific replies have been filed by the concerned departments stating that the said bills are not conclusive of the fact that construction was raised prior to issuance of notification under Section 4 of the Act. The location of installation of the telephone and electricity meter cannot be pin pointed based on the bills.

The petitioners have not filed any rejoinders to these written statements. It is also evident from the record that the report of the Land Acquisition Collector on the objections filed under Section 5-A of the Act states that the construction is post notification under Section 4 of the Act. The shajra plan prepared after conducting a survey before issuing the notification under Section 4 of the Act also does not record the construction of the petitioners. Thus, we are unable to accept the submission of learned senior counsel for the petitioners that the construction was raised prior to issuance of notification under Section 4 of the Act. Under these circumstances, the case of the petitioners is not covered by the policy dated 26.10.2007 and they are not entitled to any relief. Reliance by learned senior counsel for the petitioners on the case of one Jai Bhagwan and Manbai is also misplaced because the submission is that in case of Jai Bhagwan, an incomplete structure has been released and in case of Manbai, the land released falls in 12 meters wide road, which would mean that the illegality committed in their case should also be committed in the case of the petitioners. Article 14 provides for equality, but it does not provide for negative equality. In this regard, judgment of the Supreme Court in **M/s Anand Buttons Limited Vs. State of Haryana and others AIR 2005 SCC 65**, can be referred to.

Since material was available with the concerned authority on the basis of which a determination regarding the date of construction could have been made, there was no necessity to grant an opportunity of hearing to the petitioners. Grant of such an opportunity would have been a useless formality and thus, contention of learned senior counsel for the

petitioners that the impugned order has been passed without hearing the petitioners, is also liable to be rejected.

In passing, we may also refer to the submission of learned senior counsel that the direction of the Division Bench in judgment dated 20.8.2013 to release even vacant plots which are less than or upto 250 sq. yards has been violated. In the case of the petitioners, the acquired land of petitioner No.1 is 1400 sq. yards whereas that of petitioner No.2 is 1650 sq. yards and thus, we are unable to understand the relevance of the argument. The same is consequently rejected.

For the aforementioned reasons, there is no merit in this writ petition and the same is dismissed.

(DAYA CHAUDHARY)
JUDGE

(SUDHIR MITTAL)
JUDGE

20.09.2019

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No