

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

C. W.P. No.4649 of 2018

Date of Decision:- 13.11.2019

New Vidya Niketan Education Society and othersPetitioners

vs.

State of Haryana and othersRespondents

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

Present:- Mr. Shailendra Jain, Senior Advocate with
Mr. Sushil Jain, Advocate,
for the petitioners.

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

SUDHIR MITTAL, J.

Petitioner No. 1 is a Society registered under the Haryana Registration and Regulation of Societies Act, 2002 (hereinafter referred to as 'the Societies Act'). Its Certificate of Registration is dated 30.10.2013. Petitioner Nos. 2 to 5 are the owners of the land subject matter of the acquisition.

2. Vide Notification dated 07.02.2008 issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act), the State of Haryana notified its intent to acquire some lands including the land of petitioner Nos.2 to 5 for the alleged public purposes of residential and commercial Sectors 76, 77 and 78, Faridabad. This was followed by Notification dated 06.02.2009 issued under Section 6 of the Act. Award

dated 04.02.2011 was passed. Petitioner Nos. 2 to 5 allege that they had leased 14 Kanal 8 Marlas of land to petitioner No.1–Society vide registered lease deed dated 6.10.2004 for a period of 20 years for the purposes of running a school, which period was extended upto 30 years vide another registered lease deed dated 27.9.2007. Construction of the school building was raised sometime in the year 1999–2000 and since then a school is functioning there. Recognition was granted in the year 2000 up to the secondary level. In the year 2009, petitioner No. 1–Society was granted permission for running a senior secondary school by the Haryana Education Department.

3. The acquisition has been challenged, *inter alia*, on the ground that a school was in existence on the date of issuance of Notification under Section 4 of the Act and in accordance with the policy of the State of Haryana, the entire land of the school should have been released. Discrimination is also alleged.

4. Learned State counsel has referred to judgement dated 05.04.2011, a copy of which has been annexed as Annexure P-19 as well as order dated 10.05.2012 passed by Hon'ble the Supreme Court, a copy of which has been annexed as Annexure P- 20, to contend that the present writ petition is barred by *res judicata*. It is also submitted that the petitioners are guilty of attempting to over-reach the Court.

5. In rebuttal, learned senior counsel for the petitioners submits that a fresh cause of action arose in favour of the petitioners on passing of judgement dated 7.5.2014 in CWP No. 4134 of 2013, a copy of which is on record as Annexure P-25 and thus, the bar of *res judicata* is not attracted.

6. Earlier, CWP No. 7711 of 2009 was filed by petitioner No. 1

alone and the same was titled as New Vidya Niketan Educational Society vs. The State of Haryana and others. The said writ petition was dismissed by a detailed judgement dated 05.04.2011, a copy of which is annexed as Annexure P-19 on the record. A perusal of the said judgement shows that the acquisition was challenged on the ground of a running school being in existence. The challenge was rejected on the ground that the petitioner had not come to the Court with clean hands. It was found that the construction was raised without obtaining change of land use permission and without getting building plans sanctioned and, a person who defies the law cannot get any relief from writ Court. The said judgement was challenged by way of SLP (Civil) No. 13348 of 2012 but the same was dismissed in limine vide order dated 10.5.2012, a copy of which is on record as Annexure P- 20.

7. After the dismissal of the aforementioned SLP, petitioner No.1 submitted a representation dated 13.6.2016, a copy of which is on record as Annexure P-29, before the Additional Chief Secretary, Department of Town and Country Planning-cum-Urban Estates, Haryana, a perusal of which shows that the petitioners raised the plea of a running school once again. Since no order was passed thereupon, a writ petition viz. CWP No. 12755 of 2016 was filed during the summer vacations with the prayer that the State of Haryana may be directed to decide the aforementioned representation within a limited time-frame. Accordingly, the writ petition was disposed of vide order dated 23.6.2016, a copy of which is on record as Annexure P-30. Thereafter, a speaking order dated 15.9.2017 has been passed rejecting the representation made by the petitioners and the same has been assailed in the present writ petition.

8. Learned senior counsel for the petitioners, to begin with, raised

the same arguments as had been raised in CWP No. 7711 of 2009. When confronted with the fact that the matter had already become final between the parties after dismissal of SLP (Civil) No. 13348 of 2012, learned senior counsel submitted that a fresh cause of action had arisen in favour of the petitioners because after dismissal of the earlier writ petition, it was realized that lands of identically situated persons had been released by the State. He has also placed reliance upon judgement dated 07.05.2014 passed in CWP No. 4134 of 2013 **Ram Kanwar and another** vs. **State of Haryana and others**, a copy of which is on record as Annexure P-25.

9. The second submission is considered first.

10. Vide judgement dated 07.05.2014, a Division Bench of this Court allowed the case of **Ram Kanwar** (supra) *inter alia* on the ground that a running school was in operation and that the school could be well accommodated in the development plan. The plea of discrimination also found favour with the Court. However, a later judgement can never give rise to a fresh cause of action. Consequently, this argument of the learned senior counsel is rejected.

11. To succeed with the plea of discrimination, the petitioners were required to establish that a person identically situated had been given benefit after the dismissal of their earlier writ petition. No such instance has been cited by the learned senior counsel for the petitioners.

12. It is, thus, obvious that the petitioners have attempted to create a fresh cause of action by submitting a representation four years after the dismissal of their special leave petition. The action of the petitioners needs to be deprecated in the strongest terms. Their act and conduct shows that they are willing to go to any extent to get relief. The observations of the

Division Bench while deciding CWP No. 7711 of 2009 filed by petitioner No. 1 earlier have been proved to be completely accurate. Such a litigant is debarred from seeking relief under the equity jurisdiction of the High Court.

13. The writ petition is accordingly dismissed with costs of ₹ 1 lac. Costs shall be paid in the Registry of this Court within 4 weeks of the date of receipt of certified copy of the order, failing which the Registry is directed to place the case before the Bench for further orders.

(SUDHIR MITTAL)
JUDGE

November 13, 2019

poonam

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes