

CWP No.24494 of 2019

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

CWP No.24494 of 2019

DECIDED ON: December 20, 2019

SAMEER DALMIA

..PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

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

Present: Mr. Shailendra Jain, Senior Advocate with
Mr. Sidharath Goyal, Advocate,
for the petitioner.

Mr. P.S. Bajwa, Additional Advocate General, Punjab.

Mr. Rajinder Goyal, Advocate,
for respondent No.3.

SUDHIR MITTAL, J.

This case aptly illustrates the growing tendency among litigants to use the courts as a tool for financial advancement. The Courts are overburdened with bona fide litigation and thus steps need to be taken to curb motivated litigation. The public needs to be warned that the process of the Court is not meant for redressal of perceived wrongs.

2. The petitioner purchased a small parcel of land measuring 3K-6M comprised in Khasra No.11550 (0-7-14), 11551 (0-3-11) and 11552 (0-

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2-00) in the revenue estate of Village Kila Raipur-I, Sub-Tehsil Dehlon, District Ludhiana (Punjab) by virtue of a registered Sale Deed dated 04.11.2015. His grievance is that his land has been acquired in violation of the provisions of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as to the 2013 Act). Accordingly, he prays for quashing of the acquisition proceedings.

3. Facts of this case may be set out in brief. The Ministry of Railways has set up a Special Purpose Vehicle known as Dedicated Freight Corridor Corporation of India Limited (DFCCIL) and registered the same under the Companies Act, 1956. The said Special Purpose Vehicle has been incorporated with the aim of making rail transportation more profitable. In the first phase, two corridors namely Western Dedicated freight Corridor and Eastern Dedicated Freight Corridor have been approved. The Eastern Dedicated Freight Corridor, starts from Sahnewal near Ludhiana in Punjab and terminates at Dankuni in West Bengal. It passes through the States of Haryana, Uttar Pradesh, Bihar and Jharkhand. The Dedicated Freight Corridor involves setting up of multi modal logistic parks/terminals at various points along the corridor. Such parks facilitate value addition such as packaging, retailing, labeling, pelletizing, transportation etc. One such Integrated Multi Modal Logistic Park (hereinafter referred to as the Park) is being set up in the State of Punjab by respondent No.3 and for this purpose a Memorandum of Understanding dated 29.10.2015 has been signed between the Government of Punjab and the said respondent. The proposed investment for this Park is ₹250 crores and it has the potential of providing employment to 500 persons.

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The Park is being established in accordance with the terms of the policy guidelines dated 02.01.2015 circulated by the Government of India, Ministry of Railways for setting up of a private freight terminals. A copy of this policy titled “Policy Guidelines – Revised Private Freight Terminals (PFT) Scheme” has been placed on record as Annexure R-3/12 by respondent No.3. The policy has been framed for supplementing the in-house program of Ministry of Railways of Terminal Development by seeking private participation. It is aimed at stimulating private participation in establishing a network of freight terminals to facilitate rail transportation. The private participants are invited to establish private freight terminals on private land on a revenue sharing basis. On its part, the Ministry of Railways provides connectivity with a station on the Indian Railways network through a railway line on railway land.

4. According to the averments in the petition, respondent No.3 purchased 58.62 acres of land for establishing the Park in Villages Rangian and Kila Raipur-I, Tehsil Dehlon, District Ludhiana at its own level. This land is adjoining the railway track from Ludhiana to Ahmedgarh. The land of the petitioner forms part of the land planned for the railway siding for the Park and the project cannot be implemented without this piece of land.

5. The aforementioned piece of land was originally owned by one Harpal Singh, Balbir Singh and others represented by Pala Singh. Said Pala Singh had agreed to sell this land for ₹38.15 lacs to respondent No.3. However, vide Sale Deed dated 14.10.2015, they sold the said land for a sum of ₹4,17,000/- to one Jagdev Singh resident of Chamunda Village, Tehsil and District Ludhiana. Said Jagdev Singh sold the land to the petitioner vide Sale Deed dated 04.11.2015 for a sum of ₹41,25,000/- and

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the petitioner has refused to sell the land to respondent No.3. As stated earlier, the rest of the land was purchased by respondent No.3 during the period September, 2015 to April, 2016 and the last sale deed was executed in July, 2017. Negotiations for purchasing the land had started sometime in July, 2015. Thus, it is apparent that the petitioner purchased the land in dispute, after respondent No.3 had commenced acquiring land for the purposes of the Park through private purchase.

6. Respondent No.3, in its written statement, has averred that the petitioner is a businessman of Ludhiana and runs a business in the name and style of Balaji Enterprises. He is not an agriculturist nor does he reside in Village Kila Raipur-I. Soon after purchase of the land in dispute, he entered into an agreement to sell dated 03.03.2016 with one Ritesh Mohindra, who filed a suit for specific performance of contract in the civil Court at Ludhiana. In the suit, order dated 18.01.2018 was passed on an application under Order 39, Rules 1 & 2 CPC restraining the defendant therein (petitioner in this petition) from alienating the suit property, creating any charge thereupon and changing the nature of the suit property during the pendency of the suit. After the passing of this order, said Ritesh Mohindra sent a legal notice dated 07.07.2018 to the Collector Land Acquisition Punjab and respondent No.3 not to acquire the land in dispute as alienation thereof had been stayed by the civil Court. A similar notice dated 29.06.2018 had already been sent by the petitioner to respondent No.3. It has also been averred that in fact, respondent No.3 has purchased land measuring 61.48 acres.

7. To show that the acquisition of the land of the petitioner is illegal, mala fide and malicious, the petitioner has placed on record letter

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dated 08.03.2016, written by respondent No.3 to the Deputy Commissioner, Ludhiana requesting him to restrict the further sale of the land in dispute as the petitioner was negotiating the further sale thereof. Reference has also been made to communication dated 16.03.2016 whereby, the Naib Tehsildar-cum-Joint Sub-Registrar, Tehsil Dehlon, District Ludhiana sent an intimation to the petitioner to come present at 11.00 AM on 21.03.2016, with reference to the request for restriction of further sale. The petitioner submitted his objections dated 28.03.2016 *inter alia* stating that there is no provision of law under which a land owner can be restrained from selling his property and that such notices amount to threatening a member of the public. A communication dated 18.04.2016, from respondent No.3 to the Deputy Commissioner, Ludhiana, has also been placed on record vide which, a request for acquisition of the land in dispute was made. This was followed by communication dated 17.06.2016 from the office of Collector Land Acquisition, Department of Industries and Commerce, Punjab, requesting him to inform the public purpose of the acquisition. Sub-Divisional Magistrate, Ludhiana East, wrote a communication dated 29.06.2019 to the Deputy Commissioner, Ludhiana requesting him to initiate action for acquisition of the land in dispute on the ground that establishment of a Park was part of creation of infrastructure as laid down in a Notification dated 27.03.2012. As a result, a social impact assessment study was requisitioned from the Department of Geography, Panjab University, Chandigarh and report in this regard dated November, 2017 was submitted to the Collector Land Acquisition, Department of Industries and Commerce, Punjab. Reference to this report has been made to point out that the Government requisitioned a social impact assessment study without

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issuing a Notification as required under the 2013 Act. Probably realizing its mistake, the State Government issued Notification dated 08.03.2018 under Section 4(1) of the 2013 Act directing the social impact assessment study to be carried out. In this notification, the area of the land was mentioned and its location i.e. Village Kila Raipur-I, Tehsil Dehlon, District Ludhiana was also mentioned but the khasra numbers were not mentioned. The petitioner objected to this notification vide his communication dated 29.06.2018 stating therein that the acquisition was for a private company and consent of the land owner was necessary. A social impact assessment report was submitted by the Economic and Social Science Department of Punjab Agricultural University, Ludhiana whereupon, the report was appraised by the Social Impact Assessment Appraisal Committee on 23.10.2018. The Appraisal Committee was of the opinion that legal opinion be obtained regarding whether consent of the land owner was necessary to be obtained. The report of the Appraisal Committee was allegedly not published in accordance with law, although, in its written statement, the State has averred that the proceedings were sent to the District Collector, Ludhiana and Sub-Divisional Magistrate, Ludhiana vide letter dated 24.12.2018 and uploaded on the website of the Department. This was followed by Notification dated 27.12.2018 issued under Section 11 of the 2013 Act. Objections were invited within a period of 60 days of the date of publication thereof. It may be noted that the location of the land was given but exact khasra numbers were not mentioned. The publication of this notification was also done in two daily newspapers circulating in the locality on 02.01.2019. A corrigendum dated 07.01.2019 was issued mentioning the khasra numbers also but allegedly, there was no publication thereof in the newspapers. The

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petitioner submitted his objections dated 10.04.2019 before the Collector Land Acquisition. A draft Rehabilitation and Re-settlement Scheme dated 12.04.2019 was issued by the Sub-Divisional Magistrate, Ludhiana followed by declaration dated 03.05.2019 under Section 19(1) of the 2013 Act. Award dated 12.07.2019 was published granting a total compensation of ₹33,27,619/- to the petitioner. Vide roznamcha of even date, possession was also taken. The petitioner filed the present writ petition dated 26.08.2019 and response was sought from the respondents.

8. In the written statement of respondent No.3, it has been *inter alia* averred that post acquisition, a communication dated 01.07.2019 was addressed to the Managing Director of Punjab State Industries and Export Corporation Limited for allotment of the acquired parcel of land. Vide communication dated 21.08.2019, the said Corporation communicated allotment of the land on leasehold basis for 33 years @ of ₹43,25,881/-. Respondent No.3 sent communication dated 26.08.2019, attaching therein a demand draft for 40% of the lease amount as demanded and vide communication dated 06.09.2019, the Punjab Small Industries and Export Corporation Limited permitted respondent No.3 to take over physical possession. The possession certificate is dated 09.09.2019 and registered lease deed dated 13.09.2019 was executed.

9. In the backdrop of the aforementioned factual submissions, the contentions of counsel for the parties shall be examined hereinafter.

10. Learned Senior counsel for the petitioner argues that the acquisition was malicious and thus illegal. With reference to communication dated 08.03.2016 addressed by respondent No.3 to the Deputy Commissioner, Ludhiana and communication dated 16.03.2016

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addressed by the Naib Tehsildar-cum-Joint Sub-Registrar, Tehsil Dehlon, District Ludhiana to the petitioner, it has been submitted, that since respondent No.3 was unable to purchase the land in dispute from the petitioner, it adopted arm twisting tactics with the help of the officials of the State Government and tried to restrain the petitioner from further selling his land. Such an action is patently illegal and consequently, mala fides are apparent. Attempts were made to pressurize the petitioner into selling the land under threat of acquisition but since he did not succumb to the threats, the land was got acquired. It is thus obvious that the acquisition is for private benefit of respondent No.3 and no public purpose is involved. The malicious nature of the acquisition is revealed from this fact as well. Further, it is evident from communication dated 29.06.2019 addressed by the Sub-Divisional Magistrate, Ludhiana East to the Deputy Commissioner, Ludhiana that to start with, the alleged public purpose was creation of infrastructure but while issuing notification under Section 4(1) of the 2013 Act, the public purpose was changed to 'planned development'. Thus, the State Government was bent upon acquiring the land of the petitioner although it knew fully well that no public purpose existed. All this clearly establishes the malicious nature of the acquisition and on this ground alone the acquisition deserves to be quashed. It is next contended that Section 2 of the 2013 Act specifically lists out the public purposes for which land can be acquired and the construction of a Park by a private entity such as respondent No.3 is not covered therein. There being no public purpose involved, the acquisition cannot be permitted. Further, it is submitted that Section 2 of the 2013 Act stipulates that acquisition of land can only be done if the appropriate Government requires the land for its 'own use, hold

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and control'. In this case, the land has been acquired and leased out to respondent No.3 and thus, the acquisition is bad in law. If land was to be acquired for a public private partnership project or for a public purpose to be executed by a private company, consent of at least 70%/80% of the effected families respectively was necessary in accordance with Section 2(2) of the 2013 Act. The petitioner being the only land owner, his consent was necessary and in the absence thereof, the acquisition is vitiated. Learned Senior counsel for the petitioner further argues that the social impact assessment study should have been confined to the acquired land only and the same not having been done, is a violation of Section 4 of the 2013 Act. Moreover, the said report does not address the issues required to be addressed under the 2013 Act. The social impact assessment appraisal report was not published and thus, Section 7(6) of the 2013 Act was violated. Notification issued under Section 4(1) of the 2013 Act did not mention the khasra numbers and accordingly the affected area 'was not clearly identifiable'. Before publication of the notification under Section 11 of the 2013 Act, the State was required to apply its mind as provided in Section 8 of the said Act. Moreover, no publication was done as required under Section 8(3) and this too has vitiated the acquisition. The notification under Section 11 of the 2013 Act did not correctly identify the land in dispute and thus, the petitioner was prevented from filing his objections within time. A valuable right of the petitioner has thus been infringed. The acquisition is liable to be set aside on this ground also. Issuance of a subsequent corrigendum was not sufficient compliance with the requirement of Section 11 of the 2013 Act as the corrigendum was never published in local newspapers. Provisions of a land acquisition statute have to be

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construed strictly and any violation thereof vitiates the acquisition. In this case, more than one provision of the 2013 Act has been violated rendering the acquisition illegal. The same is thus liable to be quashed in its entirety.

11. Learned State counsel as well as learned counsel for respondent No.3 support the acquisition. According to them, Section 2 of the 2013 Act does not exhaustively list out all the public purposes for which the land can be acquired. Construction of a Park is a public purpose as it is part of the Eastern Dedicated Freight Corridor meant for making railway transportation more profitable. They further submit that the acquisition is neither for a public private partnership project nor is it for a private company. The State Government has acquired the land for its own purpose and leasing the same out to respondent No.3 is not a violation of the 2013 Act. Consent of the petitioner was not mandatory as the acquisition is neither for a public private partnership project nor is it for a private company. No mala fides or maliciousness is involved. The petitioner was asked to sell the land to respondent No.3 but he refused to do so for reasons best known to him. Instead, he preferred to enter into an agreement to sell dated 03.03.2016 with Ritesh Mohindra. The petitioner knew fully well that the project could not be implemented without his land as it was strategically located in the center of the planned railway siding. Thus, it was essential to take steps to ensure that the land was not further alienated as a project of great national importance would otherwise be adversely affected. On the contrary, it is submitted that the actions of the petitioner were malicious and motivated as he purchased the land in dispute at a time when respondent No.3 was acquiring the neighbouring land. He knew fully well that the land in dispute was crucial for the project and thus, he cleverly purchased 3K-06M with the

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intention of blackmailing respondent No.3. His action in entering into an agreement to sell with Ritesh Mohindra was also mala fide as he wanted to de-rail the project by obtaining a stay order from the civil Court after filing a collusive suit for specific performance. Provisions of the 2013 Act have been strictly complied with and there is no illegality in the acquisition process.

12. Learned counsel for respondent No.3 further submits that the writ petition has been filed after possession was taken. Once possession has been taken, the acquired land vests in the Government free from all encumbrances and acquisition cannot be challenged after possession has been taken. The petitioner knew from the very beginning that the land in dispute would be acquired but he sat on the fence till after the passing of the award and taking over of possession and thus, the challenge to the acquisition proceedings is delayed. Non-mentioning of the khasra numbers in the impugned notifications has not prejudiced the petitioner in any manner as the only land being acquired was that owned by the petitioner. The petition is misconceived and deserves to be dismissed.

13. We shall now proceed to examine the case based upon the pleadings of the parties and submissions of learned counsel.

14. It has been averred on behalf of respondent No.3 that the petitioner is not an agriculturist and is a businessman residing in Ludhiana. This has not been denied by the petitioner. It has also not been disputed that respondent No.3 commenced purchase of land for its Park in July, 2015 and that the first sale deed was executed sometime in September, 2015. The petitioner purchased the land in dispute vide registered Sale Deed dated 04.11.2015 and refused to sell it further to respondent No.3, although, the

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owners of the neighbouring land sold their respective pieces of land. There is also no dispute regarding the fact that instead of selling the land in dispute to respondent No.3, the petitioner entered into an agreement to sell dated 03.03.2016 in favour of one Ritesh Mohindra. Soon thereafter, Ritesh Mohindra filed a suit for specific performance and moved an application for ad interim injunction on which the civil Court restrained the petitioner from alienating the land in dispute or from creating any charge thereupon. Thereafter, the petitioner sent a legal notice dated 29.06.2018 to the State of Punjab and the concerned Land Acquisition Collector apart from respondent No.3 advising them not to proceed further with the acquisition of the land. Ritesh Mohindra sent a notice dated 09.07.2018 informing the addressees that acquisition of the land cannot be done, in view of the stay order of the civil Court. Under the circumstances, a question arises regarding the reasons behind the petitioner purchasing the land in dispute knowing fully well that respondent No.3 was in the process of acquisition of all the surrounding land? The answer is obvious. Being a businessman, the petitioner smelt an opportunity to make easy money. He thus, purchased the land in dispute by selecting its location such that the same was essential for implementation of the project. Thereafter, he refused to sell even though a handsome price was offered. Instead, he agreed to sell the land in dispute to Ritesh Mohindra, who is incidentally a lawyer practicing at Ludhiana and contrived the filing of a suit for specific performance and obtained a stay order. This was communicated to the concerned authorities in an attempt to restrain them from acquiring the land. To us, it is thus, crystal clear, that the petitioner was demanding his pound of flesh and respondent No.3 was not willing to go to the extent desired by the petitioner. The essentiality of the

land in dispute is proved by site plan annexed as Annexure R-3/13 with the written statement of respondent No.3 and the same has not been disputed. The motivation of the petitioner in entering into the arena of dispute was not bona fide. The actions of the petitioner were motivated by greed alone.

15. The stage is now set for examining the respective arguments of the counsel for the parties. Each argument shall be considered separately under the relevant sub-headings.

Strict Interpretation of Ex-proprietary Statutes:

16. Learned Senior counsel for the petitioner has laid great stress on the nature of the statute under which the land of the petitioner has been acquired. He has submitted that a statute which deprives a citizen of his property is an ex-proprietary statute. While interpreting such a statute, a strict interpretation needs to be adopted, so that deprivation of property is done strictly in accordance with the powers provided by the statute. The powers of an acquiring authority are bound by the letter of law.

17. The right to property is a constitutional right and a citizen can be deprived of his property only in accordance with law. The law in this case is the 2013 Act and the same has sanction of the Constitution of India in recognition of the principle of eminent domain of the sovereign. This means that the sovereign can deprive a citizen of his property if the same is required for a public purpose. The process of acquisition has however to be in accordance with the provisions of a law enacted for the purpose. Such an enactment is ex-proprietary in nature and it is settled law that provisions of such an enactment must be construed strictly so that an acquiring authority is not permitted to exceed the power given to it under the enactment.

18. The statute is an expression of the collective opinion of the

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legislature on a particular subject. This opinion is expressed through the medium of language and this language must be read such that it conveys the ordinary meaning. The need for interpretation arises when there is an ambiguity in the words used or a doubt arises as to the true meaning of the language. According to the Principles of Statutory Interpretation, 14th Edition by Justice G.P. Singh:

“The problem of interpretation is a problem of meaning of words and their effectiveness as a medium of expression to communicate a particular thought. A word is used to refer to some object or situation in the real world and this object or situation has been assigned a technical name referent. ‘Words and phrases are symbols that stimulate mental references to referents’.¹⁷ But words of any language are capable of referring to different referents in different contexts and times.¹⁸ Moreover, there is always the difficulty of borderline cases falling within or outside the connotation of a word. Language, therefore, is likely to be misunderstood.”

The same publication goes on further to state how this interpretation is to be done in the following words:-

“According to BLACKSTONE the most fair and rational method for interpreting a statute is by exploring the intention of the Legislature through

the most natural and probable signs which are 'either the words, the context, the subject-matter, the effects and consequence, or the spirit and reason of the last'.⁷²

A word of caution is however struck in the following passage:-

"The rules of interpretation are not rules of law and are not to be applied like the rules enacted by the Legislature in an Interpretation Act.²¹ They serve as guides and such of them which serve no useful purpose now can be rejected by courts and new rules can be evolved in their place.²² By boldly rejecting outmoded rules, by substituting, if necessary, new rules in their place²³ and by avoiding unnecessary generalization²⁴ the superior courts can help in the task of rationalization of the rules. In applying the rules it must be kept in view that as the rules are not binding in the ordinary sense like a legislation, 'they are our servants and not masters. They are aids to construction, presumptions or pointers. Not infrequently one rule points in one direction, another in a different direction. In each case we must look at all relevant circumstances and decide as a matter of judgment what weight to attach to any particular rule'.²⁵

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19. Thus, interpretation of a statute is required to determine the true meaning that the legislature wanted to convey in the context of the purpose and object of the enactment. For this purpose, certain rules have been developed by the Courts but these rules are only guides and cannot be applied like commands of the legislature. Depending on the situation, the Courts can apply a suitable rule. These rules are not inflexible in nature and can be modified as well.

20. An ex-proprietary statute must be construed strictly. This is the general principle but the principle is not inflexible. Purposive interpretation applies to such statutes also. Principles of public policy can also be invoked in case there is some ambiguity in the application of such laws. The words of such statutes need not be given a restricted meaning under all circumstances. To make the law workable, the words used therein can be understood in a comprehensive sense. Thus, there are qualifications to the rule of strict interpretation.

Acquisition Vitiating Due to Legal Malice:-

21. Learned Senior counsel for the petitioner has argued that respondent No.3 pressurized the petitioner through government officials to sell the land in dispute. He has referred to letter dated 08.03.2016 written by respondent No.3 to the Deputy Commissioner, Ludhiana, in which, request was made to restrain the petitioner from further selling the land. Thereafter, a communication dated 16.03.2016 was sent to the petitioner by the Naib Tehsildar-cum-Joint Sub-Registrar, Tehsil Dehlon, directing him to present himself in his office. When these threats did not work, a request was made for acquisition of the land resulting in its acquisition. Accordingly, it is submitted that the acquisition is vitiated by legal malice.

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Malice is further evident from the fact that the land has been acquired for a private entity i.e. respondent No.3 without taking the consent of 80% of the land owners as required by Section 2(2) of the 2013 Act. This is a colourable exercise of power by the State Government as the acquisition has been shown to be for a public purpose but in fact, the land has been diverted for private use. Reliance have been placed upon *The State of Punjab and another vs. Gurdial Singh and others*, 1980(2) SCC 471; *M/s Royal Orchid Hotels Limited and another vs. G. Jayarama Reddy and others*, 2011(10) SCC 608; *Uddar Gagan Properties Ltd. vs. Sant Singh and others*, 2016(11) SCC 378; *K.T. Plantation Pvt. Ltd. and another vs. State of Karnataka*, 2011(9) SCC 1; *Rameshwar and others vs. State of Haryana and others*, 2018(6) SCC 215; *The Collector (Distt. Magistrate), Allahabad and another vs. Raja Ram Jaiswal*, 1985(3) SCC 1 and *Greater Noida Indusl. Development Authority vs. Devendra Kumar and others*, 2011(12) SCC 375.

22. In response, it has been argued that the project of the Park could not have been fully implemented without the land of the petitioner. The petitioner was approached to sell his land on 25.02.2016 but he did not agree. Instead, he entered into an agreement to sell dated 03.03.2016 in favour of one Ritesh Mohindra. The land in dispute was crucial for execution of the project and thus a request was made to the concerned authorities to restrain its further sale and thereafter a request for acquisition was made. Accordingly, the appropriate Government acquired the land and leased it to respondent No.3. There is no diversion of purpose as the land has been acquired for the purpose of the Park and is being put to the same use. There is no malice involved in the acquisition.

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23. An acquisition is said to be mala fide or malicious if the power of acquisition is used with an oblique motive. It is portrayed that a particular piece of land is required for a public purpose but in fact no such public purpose exists. The actual purpose of the acquisition is to either divert the land to a private use or to deprive the land holder of his property by resorting to a process of acquisition. In either case, the object of the acquisition is different from that portrayed. This is also called colourable exercise of power and it vitiates the acquisition process.

24. Does this principle of law get attracted in the present case? The land in dispute has been acquired on the request of respondent No.3 who is setting up a Park. It is not in dispute that the land of the petitioner is crucial for execution of the project. Whether, acquisition of a small piece of land for the Park is for a public purpose or not will be examined later. To decide the issue raised by the learned Senior counsel for the petitioner, the only thing required to be seen is whether the acquired land has been diverted to some other use. That is not the case. Acquisition has been done for the Park and post acquisition, the land has been leased to respondent No.3. In this process, whether there has been a violation of the provisions of the 2013 Act shall also be seen at a later stage. The land in dispute has been put to the user for which it was acquired and there is no legal malice involved. Respondent No.3 was justified in attempting to restrain the petitioner from further alienating the land in dispute keeping in view the crucial nature thereof. We are, however, not opining on the method adopted by the District authorities in attempting to restrain the petitioner from further alienating the land as the same is not necessary for the decision of this case.

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25. The judgments relied upon by the learned Senior counsel for the petitioner are not attracted in the facts and circumstances of this case. In ***Gurdial Singh (supra)***, the land had been acquired successively despite an earlier finding of mala fides involved in the acquisition. It had been found that a Former Minister was the motivating force behind the acquisition and that the exercise was not bona fide. In ***Royal Orchid Hotels (supra)***, the land in dispute was acquired for setting up a Golf-cum-Hotel Resort but part of it was leased out for a group housing scheme and part was leased out to a private entity. Under the circumstances, it was held that the exercise of power of eminent domain was vitiated on account of legal malice. In ***Uddar Gagan Properties (supra)***, the public had been defrauded by acquisition of its land. The acquisition was for the alleged public purpose of setting up a residential/commercial sector but before passing of the Award, a private builder purchased large tracts of land from the land owners and the same was released by the Government. Under the circumstances, the finding of fraud on power was returned. In ***K.T. Plantation (supra)***, the issue was regarding the constitutional validity of a particular statute in the light of Article 300-A of the Constitution of India. There is no challenge to the constitutional validity of the 2013 Act in this case. The facts in ***Rameshwar (supra)*** are similar to the facts of ***Uddar Gagan Properties (supra)***. Under the circumstances, it was held that the acquisition was mala fide. In ***Raja Ram Jaiswal (supra)***, a particular piece of land was acquired to deny the owner thereof his right to set up a Cinema Hall. Consequently, it was held that the acquisition was hit by the vice of legal malice and was not sustainable. In ***Devendra Kumar (supra)***, the findings of mala fide exercise of power was returned, because the land had been acquired for planned

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industrial development but was diverted to private builders for construction of flats.

26. The acquisition of land in dispute cannot be said to be a colourable exercise of power by the appropriate Government and the argument of learned Senior counsel for the petitioner is rejected.

Acquisition is Violative of Statutory Provisions:

27. On behalf of the petitioner, it has been argued that an appropriate Government can acquire land only if it is for 'use, hold and control' by itself and for a public purpose as specified in Sub-Section (1) of Section 2 of the 2013 Act. The land in dispute has admittedly been leased to respondent No.3 and thus there is no 'use, hold and control' of the appropriate Government. Moreover, the acquisition is for a private entity for a private purpose and thus the acquisition is illegal. Further, it is submitted that in accordance with Section 2(2) of the 2013 Act, land could have been acquired for a private entity provided the same was for a public purpose mentioned in Sub-Section (1) of Section 2 of the 2013 Act. Even in such a case, consent of at least 80% of affected families had to be taken. Neither of these requirements have been met in this case.

28. On behalf of the respondents, it has been argued that the expression 'use, hold and control' in Sub-Section 1 of Section 2 of the 2013 Act has been used in the comprehensive sense keeping in view the object and purpose of enactment of the 2013 Act. It can't be given a restrictive meaning as argued on behalf of the petitioner. The acquisition is for a public purpose because the establishment of the Park would create infrastructure in the State, improve road transport and provide employment to the local youth. The Park would benefit the public at large. That apart, at

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the macro level, the Park is being set up as a constituent of the Eastern Dedicated Freight Corridor and its establishment would make rail transportation in the country more cost effective. Thus, it is incorrect to state that no public purpose is involved. Moreover, Sub-Section (1) of Section 2 of the 2013 Act is not exhaustive of the 'public purpose' envisaged under the 2013 Act. There was no requirement of taking consent of at least 80% of the affected families as mentioned in Section 2(2) of the 2013 Act as the appropriate Government is still in possession and control of the acquired land.

29. For appreciating the arguments of counsel for the parties, it is necessary to reproduce Section 2 of the 2013 Act.

“2. Application of Act:- (1) The provisions of this Act relating to land acquisition, compensation, rehabilitation and resettlement, shall apply, when the appropriate Government acquires land for its own use, hold and control, including for Public Sector Undertakings and for public purpose, and shall include the following purposes, namely:--

(a) for strategic purposes relating to naval, military, air force, and armed forces of the Union, including central paramilitary forces or any work vital to national security or defence of India or State police, safety of the people; or

(b) for infrastructure projects, which includes the following, namely:

(i) all activities or items listed in the notification

of the Government of India in the Department of Economic Affairs (Infrastructure Section) number 13/6/2009-INF, dated the 27th March, 2012, excluding private hospitals, private educational institutions and private hotels;

(ii) projects involving agro-processing, supply of inputs to agriculture, warehousing, cold storage facilities, marketing infrastructure for agriculture and allied activities such as dairy, fisheries, and meat processing, set up or owned by the appropriate Government or by a farmers' cooperative or by an institution set up under a statute;

(iii) project for industrial corridors or mining activities, national investment and manufacturing zones, as designated in the National Manufacturing Policy;

(iv) project for water harvesting and water conservation structures, sanitation;

(v) project for Government administered, Government aided educational and research schemes or institutions;

(vi) project for sports, health care, tourism, transportation or space programme;

(vii) any infrastructure facility as may be notified in this regard by the Central

Government and after tabling of such notification in Parliament;

(c) project for project affected families;

(d) project for housing for such income groups, as may be specified from time to time by the appropriate Government;

(e) project for planned development or the improvement of village sites or any site in the urban areas or provision of land for residential purposes for the weaker sections in rural and urban areas;

(f) project for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by the Government, any local authority or a corporation owned or controlled by the State.

(2) The provisions of this Act relating to land acquisition, consent, compensation, rehabilitation and resettlement, shall also apply, when the appropriate Government acquires land for the following purposes, namely:--

(a) for public private partnership projects, where the ownership of the land continues to vest with the Government, for public purpose as defined in sub-section (1);

(b) for private companies for public purpose, as defined in sub-section (1):

Provided that in the case of acquisition for

(i) private companies, the prior consent of at least eighty per cent, of those affected families, as defined in sub-clauses (i) and (v) of clause (c) of section 3; and

(ii) public private partnership projects, the prior consent of at least seventy per cent. of those affected families, as defined in sub-clauses (i) and (v) of clause (c) of section 3,

shall be obtained through a process as may be prescribed by the appropriate Government:

Provided further that the process of obtaining the consent shall be carried out along with the Social Impact Assessment study referred to in section 4:

Provided also that no land shall be transferred by way of acquisition, in the Scheduled Areas in contravention of any law (including any order or judgment of a court which has become final) relating to land transfer, prevailing in such Scheduled Areas.

(3) The provisions relating to rehabilitation and resettlement under this Act shall apply in the cases where,--

(a) a private company purchases land, equal to or more than such limits in rural areas or urban areas, as may be prescribed by the appropriate

Government, through private negotiations with the owner of the land in accordance with the provisions of section 46;

(b) a private company requests the appropriate Government for acquisition of a part of an area so prescribed for a public purpose:

Provided that where a private company requests the appropriate Government for partial acquisition of land for public purpose, then, the rehabilitation and resettlement entitlements under the Second Schedule shall be applicable for the entire area which includes the land purchased by the private company and acquired by the Government for the project as a whole.”

30. The 2013 Act has replaced the Land Acquisition Act, 1894 as it was felt that process of acquisition should be more participative in nature and humane so that the affected families may also become partners in the process of development. It recognizes the need for acquisition of land for progress and development, although, by making the process more transparent by inviting public participation and by making adequate provision for rehabilitation and re-settlement. This is evident from the short title of the said Act.

31. Keeping in view the above mentioned purpose, the provisions of the 2013 Act have to be interpreted. Sub-Section (1) of Section 2 provides for application of the provisions of the 2013 Act for acquisition of land provided the appropriate Government requires it for its own ‘use, hold and control’ and for a public purpose. The public purpose shall include the

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purposes set out there-under. A plain reading of this sub-section leaves no manner of doubt that the public purposes mentioned therein are not exhaustive. This is evident from the use of the word 'include'. The public purposes mentioned therein are thus not exhaustive. This sub-section must be read in conjunction with Sub-Section (3) of Section 2 of the 2013 Act which states that rehabilitation and re-settlement provisions of the 2013 Act shall apply even to cases where a private company purchases land directly from the land owners. The said provisions would also apply where a small parcel of land is acquired for the purposes of the private company, to the entire area including the area purchased by the private company. Sub-Section (3) thus, permits acquisition of land for a private company apart from the acquisition provided for such an entity under Sub-Section (2). This particular situation can only refer to Sub-Section (1) as a small parcel of land is being acquired, the rest of the land having been purchased directly. Such a situation is not envisaged under Sub-Section (2) as under the said sub-section, the entire land required for the private company is to be acquired. At the risk of repetition, it is apparent, that the expression 'use, hold and control' is to be interpreted keeping in view a situation where only a small portion of land has been acquired for the private company. Learned Senior counsel for the petitioner has argued that keeping in view the principles of strict interpretation, the expression 'use, hold and control' must be given a restrictive meaning i.e. the acquired land must be in the physical possession of the appropriate Government so that it can be put to use by the appropriate Government and is within its exclusive control. If such an interpretation was to be given, partial acquisition of land for a private company can never take place and this would render the acquisition

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envisaged under Sub-Section (3) as non-existent. An interpretation which results in the statute being rendered unworkable has to be avoided and the expression 'use, hold and control' must be interpreted in its comprehensive sense. Thus, interpreted, lease of acquired land would be covered within the expression. The acquisition being under Sub-Section (1), there is no requirement of consent of the affected families as envisaged under Sub-Section (2).

32. There is thus, no infraction of the statutory provisions.

Incomplete description of land in the notifications:-

33. The argument in this regard is that the notifications issued under Section 4(1) and 11 of the 2013 Act did not mention the specific khasra numbers of the acquired land and thus, the acquisition was vitiated.

34. In response to this argument, learned counsel for the respondents have submitted that the specific khasra numbers were omitted to be mentioned by mistake. The petitioner has not been prejudiced thereby as he was well aware that his land was being acquired. Apart from the land of the petitioner, no other land was subjected to acquisition. There is thus no illegality involved.

35. From the facts of the case, it is apparent that the petitioner is not a resident of Village Kila, Raipur-I. He is not an original owner of land in the said revenue estate and he became an owner only after he purchased 03K-06M of land vide registered Sale Deed dated 04.11.2015. This sale deed was executed after respondent No.3 had approached the original owners and they had been willing to sell that land for a sum of `38.15 lacs. Even after the petitioner purchased the land, respondent No.3 made an offer to him on 25.02.2016 but he rejected the same. Thereafter, request was

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made by respondent No.3 to the appropriate Government to acquire the land in dispute and the petitioner was aware of the proposal. Moreover, the petitioner filed objections dated 29.06.2018 to the Notification dated 08.03.2018 issued under Section 4(1) of the 2013 Act and published on 16.07.2018. This can only lead to one conclusion and that is the petitioner was aware of the impending acquisition and was closely following the process thereof. Even though, the specific khasra numbers were not mentioned in the notification under Section 4(1) of the 2013 Act, he filed objections thereto although, the law does not envisage filing of such objections. He cannot therefore argue that he was misled by incomplete description of the land in the impugned notifications. Complete description of the land sought to be acquired is insisted upon so that the land owner is made aware of the impending acquisition and he can take appropriate steps based on his right to property. The importance of this principle is in cases of large acquisitions because rights of many land owners are involved. In the present case, the only land being acquired was that owned by the petitioner and he was well aware that the same would be acquired. Thus, no prejudice has been caused by incomplete description of the land in the impugned notifications.

Reliance is placed upon the observation of the Supreme Court in *Raja Ram Jaiswal (supra)* wherein, in para 17, it has been stated that the concept of prejudice would be attracted even in land acquisition cases.

36. This argument is also consequently rejected.

Social Impact Assessment (SIA) is illegal:

37. With reference to the SIA report, a two-fold argument has been raised. The first argument is that the said report should have restricted itself

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to the acquired land only and should not have ventured to assess the social impact of the purchase of the remaining land by respondent No.3. The second argument is that the said report has not addressed the issues required to be addressed by it by Section 4 of the 2013 Act.

38. We take up the first limb of the argument. A social impact assessment study is required under the 2013 Act to assess the adverse impacts of the acquisition vis-à-vis the positive impacts and whether the positive impacts out-weight the adverse impacts. Based on the study, a Social Impact Management Plan is drawn up so that the adverse impacts of the acquisition can be mitigated. The 2013 Act envisages acquisition of land by private purchase and the applicability of the rehabilitation and re-settlement provisions under the said Act to such land as well. That being the case, the social impact assessment study has to cover the entire area and cannot be confined to the affected area as defined in Section 3(b) of the 2013 Act. The expression 'affected area' in Section 4(1) of the 2013 Act has to be accordingly interpreted by reading the Act as a whole. The first limb of the argument of learned Senior counsel for the petitioner is thus rejected.

39. The second argument is that issues required to be addressed by Section 4 of the 2013 Act have not been addressed. Sub-Section (4) of Section 4 of the 2013 Act *inter alia* lists the matters to be included in the SIA study. A perusal of the report which is Annexure P-26 on the record reveals that all the aspects mentioned in the said sub-section have been taken into consideration. As stated earlier, the purpose of the SIA study is to examine the impact that acquisition of land is likely to have on the society whose land is being subjected to acquisition. For this purpose, The

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Department of Economics and Sociology, Punjab Agriculture University, Ludhiana has been notified as State Social Impact Assessment Unit and Experts form part of the said Unit. The study carried out by such experts cannot be subjected to judicial review unless some perversity is pointed out therein. No such perversity has been pointed out in this case. Thus, the second limb of the argument also deserves rejection.

Violation of Section 7(6) of the 2013 Act:

40. It has been argued that according to the provisions of the 2013 Act, the SIA study is to be assessed by a Social Impact Assessment expert group as laid down in Section 7 of the said Act. After the appraisal, the recommendations need to be published as provided in Sub-Section (6) of Section 7 of the 2013 Act. The same having not been done the acquisition is vitiated.

41. In response, the written statement of the State avers that the recommendations were uploaded on the website of the appropriate Government and thus, the requirement of publication was fulfilled.

42. The requirement of publication incorporated in Sub-Section (6) of Section 7 of the 2013 Act is to make the public aware of the various steps involved in the acquisition process. In the present case, the public was well aware of the acquisition process as 99.33% of the total land was acquired through private purchase. The petitioner was more than aware of the acquisition process and even if the publication was not done as provided, we fail to see the prejudice caused. Learned Senior counsel for the petitioner has not dilated on how the lack of publication has rendered the acquisition illegal and thus, we are unable to appreciate his argument. Moreover, as has been mentioned in the written statement of the State, the

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publication was done on the website of the appropriate Government and thus substantial compliance has been made.

43. Consequently, this argument is also rejected.

Non-Publication of Section 11(1) Notification:

44. According to Section 11(1) of the 2013 Act, a notification under the said provision is required to be published in the official gazette, two daily newspapers circulating in the locality one of which is in the regional language, in the office of the concerned local self Government body, on the website of the appropriate Government and in the affected area.

45. Learned Senior counsel for the petitioner has submitted that the publication of the notification was improper inasmuch as the specific khasra numbers were not mentioned in the initial notification. Thereafter, a corrigendum was issued mentioning the specific khasra numbers but the said corrigendum was not published in two daily newspapers and thus, the acquisition is vitiated.

46. The fact that the corrigendum was not published in two daily newspapers has not been denied by the respondents.

47. The purpose of publication is to make the general public aware that the process of acquisition has started. In the present case, only the land of the petitioner was being acquired and he was well aware that the acquisition process was underway. He had filed objections to the notification under Section 4(1) of the 2013 Act although, the law does not envisage any objection at that stage. The argument raised on behalf of such a petitioner that on account of improper publication, he has been deprived of his valuable right of filing objections, has to be taken with a pinch of

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salt. As has already been noticed, after execution of agreement to sell dated 03.03.2016, the petitioner sought to impede the execution proceedings through orders of the Civil Court passed under Order 39 Rules 1 & 2 CPC. The agreement to sell was in favour of an Advocate and the circumstances of the execution thereof leave no manner of doubt that the same was collusive in nature. The petitioner was taking legal advice at every step and this is evident from the fact that he chose to purchase the land in dispute just at the moment when respondent No.3 was acquiring the surround land through private purchase. The objections to the notification under Section 11(1) of the 2013 Act were in fact filed but deliberately delayed so as to be able to claim that the provisions of an ex-proprietary statute have been violated.

48. Although, the State was required to make the publication of the corrigendum also in accordance with the provision of Sub-Section (1) of Section 11 of the 2013 Act, the petitioner cannot get any benefit therefrom. No prejudice has been caused to the petitioner as he has all-along been following the acquisition proceedings very closely. Further, as has been held hereinabove, the acquisition is for a bona fide public purpose and public policy can be invoked for denying relief to the petitioner. Larger public good would prevail over the private interest of the petitioner as has been held by Division Bench of this Court in ***Prithvi Singh and others vs. Union of India, 2013 AIR CC 3415***. In that case, the petitioners had challenged the acquisition of their land for setting up a nuclear power plant in Haryana. In view of the fact that a large number of the petitioners had already accepted the compensation and in view of the principle that larger public interest has to prevail over inconvenience to a smaller number of

people, challenge to the acquisition was rejected.

49. The petitioner cannot succeed on account of our
aforementioned view.

Infraction of Section 8(2) and (3) of the 2013 Act:

50. Sub-Section (2) of Section 8 requires the appropriate
Government to examine the report of the Collector and of the expert group
on the social impact assessment study and then recommend such area for
acquisition which requires minimum displacement, minimum disturbance to
the infrastructure, ecology and minimum adverse impact on individuals.

51. The argument raised on behalf of the petitioner is that no such
examination was done by the appropriate Government and there was no
application of mind.

52. The above has however been denied by the State in its written
statement and there is no counter thereto.

53. Except raising a bald argument in this regard, no details have
been given for arguing that the appropriate Government did not apply its
mind and thus, the argument deserves to be rejected.

54. Sub-Section (3) of Section 8 requires the appropriate
Government to publish its decision as prescribed by the said sub-section.
The argument is that publication was not done in accordance therewith.

55. Although, the allegation has been denied by the State, assuming
that no such publication was done, we fail to see how the petitioner has
been prejudiced. Publication of notification under Section 19 of the 2013
Act is conclusive evidence of requirement of the land for a public purpose
and there is no challenge to the said notification. Thus, it has to be held that
the appropriate Government did apply its mind to the report of the expert

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group on the social impact assessment study. Assuming that the publication was not done in accordance with Sub-Section (3), learned Senior counsel for the petitioner has failed to show how the same has prejudiced the rights of the petitioner. An unscrupulous litigant cannot be granted any relief on account of technicalities and larger public interest must prevail.

56. This argument is also consequently rejected.

Delayed Challenge to the Execution:

57. On behalf of the respondents, it has been argued that the writ petition is liable to be dismissed at the threshold as the same has been filed after passing of the Award. No writ petition lies at this stage and thus, the same should be dismissed. It has also been argued that the writ petition is hit by delay because the petitioner could have challenged the acquisition right at its inception but he delayed the filing thereof till after the Award was passed.

58. In view of the fact that we have examined the writ petition on its merits, we are not inclined to go into the aforementioned arguments.

Conclusion:

59. We find no merit in the writ petition and the same is dismissed.

**(DAYA CHAUDHARY)
JUDGE**

**(SUDHIR MITTAL)
JUDGE**

December 20, 2019

Ankur

Whether speaking/reasoned	Yes
Whether Reportable	Yes