

Date of decision: 30.08.2019

No. 8114 of 2009 titled as **Kishan Chand son of Jal Singh alias Zile Singh vs. The State of Haryana and others** and CWP No. 8858 of 2009 titled as **Kishan Chand son of Jal Singh alias Zile Singh vs. The State of Haryana and another.**

2. These review applications have been filed in pursuance to the orders passed by the Hon'ble Supreme Court in the Special Leave Petitions preferred by the review applicants, who were petitioners in the writ petitions where they, having withdrawn the same, were granted liberty to file these review applications. Hon'ble Supreme Court had further, in Columbia Holdings Private Limited's case, observed that if a review application is filed within one month's time from the date of the said order, High Court would consider the case in accordance with law.

3. R.A. No. 357 of 2015 in CWP No. 7090 of 2009 i.e. Columbia Holdings Private Limited's case has been preferred by S.R.Builders Limited-petitioner No. 3 who is the owner of the land measuring 2 acres (16 Kanal) out of the total land measuring 30 Kanal of land falling in Rectangle No. 40 Khasra No. 21(8-0), Rectangle No. 41 Khasra No. 24/2(4-0), 25 (8-0), Rectangle No. 46 Khasra No. 4/1 (4-15), 5/1 (3-7) and Rectangle No. 47 Khasra No. 1/1 (1-18) in Village Sarhaul, District Gurgaon.

4. It is pleaded that a Development Agreement was entered into between Columbia Holdings Private Limited and others-petitioner No.1 and 2 MGF Developments Limited-petitioner No. 2 and the review petitioner S.R.Builders Limited-petitioner No. 3 for developing the land for commercial purposes, for which application dated 28.05.2001 was submitted with the competent authority in the name of review applicant through petitioners No. 1 and 2. Certain deficiencies were pointed out by

The Director Town and Country Planning, Haryana (respondent No. 4 in the writ petition) who returned the application under Rule 7 of the Haryana Development and Regulations of Urban Area Rules. On 02.08.2001, Director of petitioner No. 3-S.R. Builders Ltd. executed Power of Attorney in favour of Columbia Holdings Private Limited-petitioner No.1 and MGF Developments Limited-petitioner No. 2 in respect of the development agreement. Petitioner No. 3 terminated the agreement dated 09.05.2001 on 15/16.07.2004 and also cancelled the Power of Attorney executed with petitioners No. 1 and 2 (Annexures P-13 and P-14 to the writ petition). On 19.07.2004, petitioners No. 1 and 2 filed a petition being O.M.P. No. 231 of 2004 before Delhi High Court and obtained stay of termination of agreement dated 09.05.2001.

5. On 26.07.2005, the Director, Town and Country Planning Department issued license to one Sh. Pradeep Singhal and others in respect of land adjoining to the land of petitioners being Licence No. 38/2005 and another license to one Inder Mohan Gupta being Licence No. 39/2005, which was also adjacent to the land of the petitioners. On this land, which together measured 1.34 acres, separate commercial complexes have been constructed. In the meanwhile, Delhi High Court referred the dispute between petitioners No. 1 and 2 with petitioner No. 3 to the sole arbitrator.

Letter dated 28.12.2005 was addressed by respondent No. 4 informing the review petitioner, at the address of the attorney, intimating therein that its application for grant of commercial license was being returned and the same may be resubmitted after completion and removal of objections, which fact, it is alleged, was not to the notice of the review applicant.

6. On 06.06.2006, notification under Section 4 of the Land Acquisition Act, 1894 was issued by the State Government for acquiring 4.44 acres of land in Village Sarhaul and 1.08 acres in Village Sukhrali for development and utilization of land for residential, commercial, Sector-25, Gurgaon, which included the land relating to 1.34 acres, for which Licence No. 38/2005 and 39/2005 both dated 26.07.2005, referred to above, had been issued. Notification under Section 6 was issued on 05.06.2007 for the land measuring 4.44 acres. Award was passed on 04.06.2009 by the Land Acquisition Collector, Gurgaon, in which land measuring 1.34 acres, which was the subject matter of Licence No. 38 and 39/2005, was not included.

It is asserted that writ petition was preferred by petitioners No. 1 and 2 by including the name of petitioner No. 3 as well, challenging these notifications and award. Review applicant when came to know of this said fact, filed an application i.e. C.M. No. 13341 of 2009 dated 05.08.2009 praying that it should be permitted to argue the petition separately.

7. During the pendency of the writ petition, award was passed by the sole arbitrator on 28.06.2010 holding the termination by petitioner No. 3 on 15/16.07.2004 of the agreement dated 09.05.2005 entered with petitioners 1 and 2, to be valid. It was further held that petitioners No. 1 and 2 were not ready and willing to take steps for obtaining license and that possession was not delivered by petitioner No. 3 to petitioners No. 1 and 2. It was also held that the document evidencing handing over of possession as also the receipt of ₹20 lacs alleged to have been signed by the Director of petitioner No. 3 were forged. Liberty was granted to the review applicant by the Arbitrator in the award to pursue its application for grant of license with the authorities.

8. It is alleged that on 09.08.2010, petitioner No. 3 (review applicant herein) filed an application in this Court in the writ petition seeking to produce additional documents relatable to the acquisition proceedings. However, the said application was returned under objections but prior to refiling of the same, this Court proceeded to dismiss the writ petition on 10.08.2010, holding therein, that the purpose, for which the acquisition was made, is a public purpose. Thereafter, two separate Special Leave Petitions were preferred, one by petitioners No. 1 and 2 and other by petitioner No. 3. The Special Leave Petition preferred by petitioners No. 1 and 2 was dismissed whereas in the Special Leave Petition of the present review applicant, liberty was granted to file a review application.

9. In this background, the review application has been filed primarily on the ground that the acquisition of land of the petitioner does not serve any public purpose as the licence No. 38 and 39/2005 qua 1.34 acres of adjacent land, which comes to 30% of the total land of 4.44 acres, notified for acquisition of Village Sarhaul, which is the subject matter of these review applications. With the non-inclusion of 30% of land in the award out of the total land, which was sought to be acquired, no public purpose would be served.

10. The other ground, which has been taken, is that in the light of the Award dated 28.06.2010 passed by the sole arbitrator, on the day when the judgment was passed by this Court i.e. 10.08.2010, the review applicant was the exclusive owner of the land, and, therefore, the statement given by the counsel for petitioners No. 1 and 2, as noted in the judgment, giving up the challenge to notification issued under Sections 4 and 6 of the Land Acquisition Act, is not binding on it. Challenge to these notifications has

been posed on the ground that the Amar Ujala and National Herald were the two daily newspapers in which the notification under Section 4 of the Acquisition Act dated 06.06.2006 has been published, out of which, National Herald was having very less circulation throughout the country what to speak of Gurgaon.

11. Another plea taken is that the land, which is the subject matter of the review applicants, is situated in Sector-25, Gurgaon, which has been developed by a private colonizer 'DLF' and acquiring of the land in question would not serve any public purpose. Apart from that, the State is seeking to acquire isolated parcel of land which is surrounded on three sides with fully developed residential and commercial properties with the fourth side facing the Mehrauli-Gurgaon Road. This would amount to clear discrimination. Reliance has been placed upon the Policy dated 26.10.2007 issued by the State of Haryana regarding release of land from the acquisition proceedings, for which an application, if moved by the owners prior to the Award for converting the land into colony under Section 3 of the Haryana Development and Regulation of Urban Areas Act, 1975, the same could be released from acquisition proceedings. Assertion has been made that since an application has been submitted for issuance and grant of commercial licence on 28.05.2001, which is prior to the date of issuance of the notification under Section 4 of the Land Acquisition Act i.e. 06.06.2006, the land is liable to be released especially in the light of the fact that there is no return of the application of the review applicant to it but to the other petitioner No 1 and 2, which has been resubmitted by the petitioner as per the award passed by the Arbitrator on 28.06.2010. On these basis, it has been asserted that there is non-application of mind by the respondents while

proceeding to acquire the land of the petitioners by issuing the notification in a mechanical manner without there being any necessity to acquire the same.

12. Reply to the review application has been filed wherein a preliminary objection has been raised with regard to the maintainability of the present review application on the ground that there is no mistake or error apparent on the face of the record nor is any discovery of new or important matter of evidence which was not within the knowledge of the petitioner and not produced before the Court. Apart from this, it has been mentioned that the notification under Section 4 of the Land Acquisition Act was issued in two newspapers i.e. Amar Ujala and National Herald, which had wide circulation in the locality and, therefore, the assertion of the review applicants is without any basis.

13. As regards declaration under Section 6 of the Land Acquisition Act dated 05.06.2007 is concerned, the same was published in Amar Ujala (Hindi) dated 13.06.2007 and The Tribune (English) dated 09.06.2007, which again have wide circulation in the vicinity and the area. Therefore, it cannot be said that the mandate of the Statute has not been complied with. Assertion has been made that no objections have been filed under Section 5-A of the land Acquisition Act by the petitioners deliberately and the Court has rightly proceeded to dismiss the writ petitions. No illegality has been pointed out in the notifications, which have been issued.

14. As regards the discrimination, which is alleged to have been projected by the petitioners, the reason for not including 1.34 acres of land, which was the subject matter of two licenses, is that the said licenses were issued prior to the issuance of the notification under Section 4. Change of

Land User permission was granted on 29.01.2004 and Licenses Nos. 38 and 39 were issued on 26.07.2005 whereas Section 4 notification was issued on 06.06.2006. It has further been stated that the land of the petitioners affects multilevel parking site, green belt, 9 meter wide service road and one site of clinic, whereas land, for which the license has been issued, does not, in any manner, affect public utilities, for which the land is being acquired. Award of the remaining land out of the total land i.e. 4.44 acres, falling in Village Sarhaul was announced on 04.06.2009. In an additional affidavit, which has been filed by the respondents, it has been stated that the land, which is being acquired through the notification in question, will be and is being used and utilized for the public purpose as mentioned above by the Haryana Shahari Vikas Pradhikaran.

15. Review applicants have asserted that the pleas, which have been taken, are contrary to the position as it exists at site as the underpass as also the service lanes are in operation and the site of the petitioners is being unnecessarily acquired. Assertion has also been made that there are various parking spaces available and medical facilities as well. Reference in this regard has been made to various parking places and it has been asserted that in the garb of multilevel parking site, the petitioners' land is being acquired.

16. In RA-CW-408-2015 and RA-CW-409-2015, the review applicant/petitioner-Kishan Chand has filed the same taking a plea that this Court had proceeded to take the facts from the case of Columbia Holdings Private Limited, which is different from the case of the review applicant. It has been asserted that there are two plots which belong to the review applicant, one is measuring 1 Kanal comprising of Khasra No. 40//21/2(1-0), on which he has constructed his residential house and is residing there

which is an old one and the other plot is Khasra No. 46//4/1/2 (0-10) measuring 10 Marlas, which is being used for his personal business which includes some handicraft trading work.

The subject matter in RA-CW-408-2015 in CWP No. 8114 of 2009, review application is the residential house whereas the other review application RA-CW-409-2015 in CWP No. 8858 of 2009 pertains to the personal business works of the applicant. As regards the plot measuring 10 Marlas, it is said that the same abuts Mehrauli-Gurgaon road towards the south and is enclosed from one side by a private hospital and from the other side by a fully developed area. He, however, admits that no objections under Section 5-A of the Land Acquisition Act were filed.

17. Assertion has been made that in the notification issued under Section 9 of the Land Acquisition Act on 08.05.2009, the property in the name of the petitioners has been mentioned as *Banjar Kadim* and merely on this basis, it has been stated that there is no construction thereon. Reliance has been placed upon the *Jamabandis* to assert that the land had a house in one of the *Jamabandis* where it is mentioned as having four walls built around the area. He asserts that because of the wrong entries, petitioner cannot be denied the benefit of the Policy dated 26.10.2007 formulated by the Government of Haryana. Reliance in this regard is placed upon the judgment of the Supreme Court in **Patasi Devi vs. State of Haryana and others**, 2012 (9) SCC 503. Assertion has also been made by relying upon the house tax assessment dated 26.11.2010 where it is mentioned that the building was 10 years old which would show its construction to be prior to the date of notification under Section 4 of the Land Acquisition Act. It is contended that the Change of Land User/licenses i.e. 38 and 39/2005, which

have been issued although prior to the notification under Section 4 of the Act, pertained to land which was vacant at that time and, therefore, there cannot be any discrimination with the petitioner. On the basis of this discrimination, it is asserted that review-applicant is entitled to the benefit of release of land.

18. Reply to the review application has been filed, wherein it has been positively asserted that as per the revenue record/*khasra girdawari* Jamabandi from the year 2002 to 6.3.2007, land bearing Khasra No. 40//21 is shown as *Banjar Kadim* and the land bearing Khasra No. 40//21/2 measuring 1 Kanal is shown as four sided boundary walls. There is no entry in the *khasra girdawari* for the period 2002 to 2007 and the Jamabandi 2006 to 2007 regarding the residential house. These revenue records are appended as Annexure R-1 and R-2 with the reply to the review applications. It has been stated that the land of the petitioners has rightly been acquired as no residential house was built and no objections under Section 5-A of the Land Acquisition Act have been filed. The multilevel parking and the green belt as also the 9 meter wide service road and one site of clinic are the public utility which are being sought to be created. Ground that there is ample parking space provided outside the Metro Station, malls etc. and further there are two private hospitals which are functional apart from various other small clinics is unsustainable. Assertion has also been made that the document, which has been produced i.e. receipt of property tax has been responded by stating that the same has not been duly attested by the competent authority and in any case, is of the year 2010 which is much after the acquisition proceedings having been finalized. No document has been produced which would show construction of a residential house

prior to Section 4 notification. The relevant date for consideration would be the date of issuance of notification under Section 4 of the Land Acquisition Act which is dated 06.06.2006. No discrimination has been made viz-a-viz the petitioners and, therefore, the review applications deserve to be dismissed.

19. Counsel for the review petitioners as well as the counsel for the respondents have been heard at length who have taken us through pleadings as well as the judgment under review. They have put forth their submissions relating to the pleadings in the review applications as also the affidavits and documents brought on record, including the site plans and maps, in compliance with the orders passed by this Court from time to time and on considering the same, we do not find any merit in any of the review applications preferred by the applicant-petitioners.

20. All the pleas, which have been taken by the review-applicants, which have been referred to above, when considered and analyzed within the ambit of Summary of the Principles as have been laid down by the Hon'ble Supreme Court in the judgment of **Kamlesh Verma vs. Mayawati and others**, 2013 (8) SCC 320, would not fall within the grounds when the review will be maintainable rather it would be covered by the grounds laid down when it would not be maintainable.

In para-16 of this judgment, it has been held as follows:-

“Summary of the principles:

16. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

(A) When the review will be maintainable:-

(i) Discovery of new and important matter or evidence

which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

- (ii) Mistake or error apparent on the face of the record;
- (iii) Any other sufficient reason.

The words “any other sufficient reason” have been interpreted in [Chhajju Ram v. Neki, AIR 1922 PC 112](#) and approved by this Court in **Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius & Ors.**, (1955) 1 SCR 520, to mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principles have been reiterated in **Union of India v. Sandur Manganese & Iron Ores Ltd. & Ors.**, 2013 (3) Recent Apex Judgments (R.A.J.) 436: [JT 2013 \(8\) SC 275.](#)

(B) When the review will not be maintainable:

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
- (ii) Minor mistakes of inconsequential import.
- (iii) Review proceedings cannot be equated with the original hearing of the case.
- (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.
- (v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated.”

21. The assertions and submissions, which have been made in R.A. No. 357 of 2015, primarily are based upon the plea that the objections under Section 5-A of the Land Acquisition Act could not be filed by the review applicant as the notices were issued to the power of attorney holder of the petitioner i.e. petitioners No. 1 and 2 although the same had been cancelled. This plea cannot be accepted in the light of the fact that the decision of review-applicant terminating the agreement dated 09.05.2001 on 15/16.07.2004 as also cancelling the power of attorney executed with petitioners No. 1 and 2 was challenged by petitioners No. 1 and 2 in the High Court of Delhi, which was stayed on 19.07.2004 which stay order continued till the passing of the award by the Arbitrator on 28.06.2010. The review applicant-petitioner was well aware of the pendency of the writ petition as it had moved an application for arguing the case before this Court on 05.08.2009 but still chose not to appear before the Court when the case was heard and decided on 10.08.2010.

The plea that an application dated 09.08.2010 (Annexure

RA/1) had been filed (this alleged application (original) has not been placed on record and only a copy there of has been placed on record) but the same was returned with objections by the registry but prior to re-filing of the same, the judgment was pronounced, also would not make any difference as the facts, as detailed in this application dated 09.08.2010, were on record and all these aspects and pleas raised in the review application have been duly considered and dealt with by this Court in its judgment, review of which is being sought.

22. The plea with regard to the less circulation of English Daily, National Herald, in which notification under Section 4 was published, would not lie at the hands of the petitioners as no details or data with regard to the copies published by the newspapers and their circulation have been given by the petitioners in the writs or review petitions to substantiate the plea sought to be taken. On the other hand, the specific reply of the respondents is that the circulation of National Herald in Gurgaon is significant and Hindi Newspaper Amar Ujala had wide circulation in the area. In the absence of any date/details relating to circulation of English newspaper, the plea of the applicant cannot be accepted.

23. As regards the question of fulfilling the mandate and requirement of Sections 4 and 6 of the Land Acquisition Act and the publication of the notifications is concerned, this Court is satisfied that the provisions, as contained in the Statute, have been duly complied with. The details in this regard have been given in the reply to the writ petitions as well as to the review applications which have been filed and referred to in the judgment under review.

It is admitted that no objections under Section 5-A of the Land

Acquisition Act have been filed by any of the review applicants. The effect and consequences thereof have been dealt with in the judgment.

24. The assertion of the counsel for the petitioners that the counsel for petitioners No. 1 and 2 was not representing petitioner No. 3 before this Court after the passing of the award by the Arbitrator and thus went unrepresented, suffice it to say that as mentioned above, the review applicant chose not to appear before this Court on the date when the case was heard and even on the date when the pronouncement of the judgment took place. The plea that an application for pointing out the additional facts, which have been made the subject matter of present review application, are concerned dated 09.08.2010 (Annexure RA/1), the said facts would not make any difference as the Court does not find any merit in the review application on the ground that these facts were on record and the same have been mentioned, considered and dealt with in the judgment.

25. That apart, the plea of discrimination, which is being sought to be raised by the petitioners, is without any basis especially in the light of the fact that the land, which has not been included in the award, although the same was a part of the notification issued under Sections 4 and 6 of the Land Acquisition Act, pertains to License Nos. 38 and 39, for which the Change of Land User was issued on 29.01.2004 and Licenses on 26.07.2005 which was prior to the issuance of the notification on 06.06.2006 under Section 4 of the Land Acquisition Act. In this view of the matter, there is no merit. This has also been dealt with in the earlier judgment and rejected.

26. The contention of the applicants that the land is being acquired for the benefit of DLF, a private colonizer, does not hold any force as the stand of the respondents is clear and specific that the land, which is being

sought to be acquired, would only be utilized by the Haryana Shahari Vikas Pradhikaran and will not be handed over to the private builders or even to the private colonizer DLF which has developed Sector 25 as apprehended and sought to be projected in the application. It has been specifically stated that the land of the petitioners is required for the public purpose which is for the purpose of multilevel parking site, green belt, for 9 meter wide service lane and for the site of the clinic.

The plea of the review applicants that there are other parking spaces available such as at metro station and malls which would be sufficient, cannot be accepted as the sufficiency or otherwise and the requirement of parking space is for the planners and executors of the projects to decide and the Courts would better avoid delving into such fields which should be left to the experts. Similar would be the position with regard to the availability of the other hospitals and clinics. This plea, therefore, cannot be accepted. This plea has also been duly considered by the Court in its judgment under review and dealt with.

27. As regards R.A. Nos. 408 and 409 of 2015 are concerned, the plea taken is that this Court had proceeded to take the facts from the case of Columbia Holdings Private Ltd. only without taking into consideration the facts in the case of the petitioner which is contrary to the records. A perusal of the judgment under review would show that all the facts have been duly considered including the pleas which have been taken. The revenue records have also been referred to, on the basis of which, the Court had proceeded to give its conclusion that the land is required for the public purpose, as has been referred to above, and are open spaces. The revenue record clearly establishes that there was no construction on the land except for the four

boundary walls around the plot measuring 1 Kanal. There was no residential house as the same is not reflected in the revenue record. Detailed reply has been filed by the respondents as mentioned in para 18 above of this order which leaves no manner of doubt that the construction, if any, has been carried out by the petitioner after the issuance of the notification under Section 4 of the Land Acquisition Act. The receipt with regard to the payment of the house tax by the petitioner is dated 26.11.2010 which has come into existence subsequent to the date of decision of this Court. Further, it does not establish the age of the house especially when seen in the context of the revenue record which has been produced by the respondents and has not been denied by the review petitioner. No document has come on record which would indicate, what to say of establishing, that the house was in existence at the time when the notification under Section 4 of the Land Acquisition Act was issued. The judgment in Patasi Devi's case (supra) would not be of any help to the review applicant as the facts of this case are different.

28. That apart, the Site Plans, which have been produced by the review applicants and respondents, have been explained by their counsel, on considering their submissions, we are satisfied that the land, which is the subject matter of the present review applications, is required for providing public road and other public utilities and facilities to be used for the public purposes as detailed above and the same cannot, therefore, be exempted from acquisition.

29. In the light of the above, it can be said that there is no error apparent on the face of the record nor there is any new evidence which would have come to the knowledge of the review applicants which they

could not produce when the case was pending before this Court. Nothing new or material has been pointed out which would result into miscarriage of justice, if not corrected. It appears that in the garb of these review applications, effort is being made to re-open the case so as to re-argue the whole case which is not permissible in law. An effort has been made to persuade this Court to re-appreciate the evidence on record which would not fall within the purview of a review application. All the pleas, which have been taken by the applicants, have already been considered and rejected by this Court in judgment dated 10.08.2010, which is under review. Further, the relief, which has been sought by the review applicants and that too, based upon the pleadings and the documents which were already on record at the time of arguing the main case, cannot be permitted to be re-agitated in a review application. There is no sufficient reason which would make these review applications maintainable. In the light of the above, these review applications would not be maintainable.

30. In our considered view, no ground is made out to review order/judgment dated 10.08.2010 passed by this Court.

31. The review applications are, therefore, dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

(LISA GILL)
JUDGE

August 30, 2019

pj

Whether speaking/reasoned: Yes/No.

Whether Reportable: Yes/No