

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

CWP-11283-2019

Date of decision : 17.03.2020

Hyderabadi Devpuri Shamshan
Bhumi Dharmarth Samiti

...Petitioner

V/s

State of Haryana & ors.

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present: Mr. Vikram Singh, Advocate for the petitioner.
Mr. Ankur Mittal, Addl. A.G. Haryana.
Mr. Priyavrat Parashar, Advocate for respondents no. 2 to 4.

RAJAN GUPTA J.

The genesis of the issue starts with the issuance of notice dated 22.04.2019, vide which petitioner has been asked to remove the construction over Khasra no. 15/7, measuring 1 Kanal 18 Marlas of land which is part of Funeral ground (Shamshan Bhumi). As per the narration of petitioner, they are a registered society and are working for religious and social works since the year 1947 when their predecessors came to India from Pakistan and occupied the land in question and started using the same as Shamshan Bhumi. However, petitioner has admitted that the land in question is ownership of Central Government as the same was acquired by the 'State' in the year 1979. It is mentioned that petitioner Society is maintaining the Shamshan Bhumi and the land falling within its boundaries, having some small shops and till date they are continuing to do so because neither anyone has taken compensation of this land nor the possession of the same has been taken by HUDA from the petitioner Society. Now, after HUDA raised its claim over the land in question, petitioner Society and other members requested Chief Administration, HUDA for releasing of the land in question in their favour, on the rate, on which it was acquired but vide letter dated 13.11.2018 HUDA has

asked the petitioner Society to pay the amount for the land in question on current rate i.e. Rs. 50600/- per square yard and being a Society meant for social work, petitioner is not able to pay such a huge amount. Petitioner expressed its difficulty before HUDA and in response thereto vide letter dated 12.04.2019 the Estate Officer asked the petitioner to appear before him on 16.04.2019 but despite their personal appearance and requests, petitioner has received impugned notice dated 22.04.2019 vide which the Society has been asked to remove the shops and vacate the land in question. In response to the above claim of petitioner, respondent no. 2 to 4 have filed reply vide which they have submitted that Hyderabad Devpuri Shamsan Bhumi Dharmarth Samiti (Petitioner Society) was served with various show cause notices in order to seek an explanation as to why an order of eviction under section 18(3)(b) of the Haryana Shahri Vikas Pradhikaran Act, 1977 should not be passed to evict them from the premises of HSVP and after considering the reply of the petitioner, eviction notice has been sent. They have stated that the land in question was acquired vide award no. 15 dated 14.02.1979 for the development and utilization of residential sector 11, Panipat where Plots no. 516 to 530 were kept reserved for weaker sections of the Society and the possession of the same had already been handed over to HUDA (now HSVP) vide Rapat Roznamcha dated 14.02.1979. Thus, petitioner Society is encroacher and has no legal right over the land in question. They have further mentioned that a complaint in this regard was also lodged by one P.P. Kapoor before the Lokayukta. Office of Lokayukta has given its report dated 09.01.2019 vide which he has recommended that encroachment should be demolished.

Arguments addressed heard and considered.

These are admitted facts on record that the land in question is subject matter of ownership of Central Government as the same was acquired vide award

no. 15 dated 14.09.1979, however, the same is being looked after and maintained by the petitioner Society. It has come on record that the petitioner Society has constructed 22 shops over the land in question, though under the veil that they are indulged in social work and are maintaining the funeral ground. Apparently, the crust which petitioner Society is trying to build is different from the core and just to protect their personal interest, they have filed instant writ petition by reflecting on record that the land in question is the only burial ground available to the people of the locality with 3.5 lacs of population. Petitioner Society has failed to explain that by running 22 shops over the land in question, what kind of social work they are doing and where they are investing the funds collected therefrom. If the Government has not taken the physical possession of the land then also, factum of constructive possession, from the date of acquisition of the land, cannot be overlooked. It is settled proposition of law that when a property/chunk of land is acquired by the State in accordance with law and with the provisions of Article 31(2), the said acquisition cannot be assailed on any valid ground open to the person concerned, be it a religious or social institution. The right to own that property vanishes as that right is transferred to the State. Thereafter, there is no question of any right to own particular property subject to public order, morality or health.

As such, instant writ petition stands dismissed with no order as to costs.

(RAJAN GUPTA)
JUDGE

March 17, 2020
Ajay

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No