

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-11644-2020 (O&M)
Date of Decision: 11th August, 2020

Kamlesh Rani and another

....Petitioners

VERSUS

State of Haryana and others

....Respondents

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE AVNEESH JHINGAN**

Present: Mr. Sanjiv Gupta, Advocate for the Petitioners.
Mr. Ankur Mittal, Additional Advocate General, Haryana.

Dr. S. Muralidhar, J.

1. This is a writ petition with three prayers. The first is for the quashing of a notification dated 21st December, 1998 issued under Section 4 of the Land Acquisition Act, 1989 ('LAA'); the second for quashing of a notification dated 20th December, 1999 under Section 6 of the LAA pertaining to acquisition of the land measuring 03 Kanals 02 Marlas of the Petitioners in village Basti Bhiwan, Hadbast No. 133 in District Fatehabad, Haryana and the third prayer is for quashing of an order dated 13th March, 2019 passed by the Director, Urban Estates Department, Haryana rejecting the case of the Petitioners for release of their land from acquisition.

2. The background to the present petition is that earlier the Petitioners had filed CWP No. 6320 of 2001 in this Court challenging these very notifications under Sections 4 & 6 of the LAA. The said writ petition was heard along with a batch of

similar writ petitions and was disposed of on 22nd November, 2010 by a Division Bench (DB) of this Court. The conclusion of the DB in relation to the two notifications was: “It is not possible for us to quash notifications issued under Sections 4 & 6 of the Act and award at this stage”.

3. The DB, however, considered a further prayer of the Petitioners for release of the land from acquisition “if the constructions do not interfere in the road, green belt and is not earmarked for any other public infrastructural facilities”. The DB directed the State of Haryana to constitute a Committee to consider the claim of the Petitioners within a period of three months.

4. Aggrieved by the said judgment, the Collector Land Acquisition filed Civil Appeal No(s) 16834-47 of 2017 in the Supreme Court of India. On 12th October, 2017 the appeals were disposed of by the Supreme Court by an order, the operative portion of which reads as under:

“In view of the fact that direction of the High Court is only to consider the matter, without going into the merits, we are not inclined to interfere with the direction. However, we make it clear that the consideration by the State has to be in accordance with law and if possession has already been taken and if release is not otherwise permissible or called for by any valid reason, the State will be at liberty to take such decision as may be considered appropriate by the State.

The decision by the State may now be taken within a period of three months from today.”

5. The above observation was made in the light of the specific contention raised by the State of Haryana before the Supreme Court, as recorded in its order, as under:

“In this appeal, the stand of the appellant is that the possession has

already been taken and in view of Section 48 of the Act, no part of the acquired land can be released after it is vested in the State. Moreover, there could be no parity in illegality on account of release in favour of some persons.”

6. Consequent to the above direction, the Committee constituted by the State of Haryana examined the case of the Petitioners and at its meeting held on 25th July, 2018 proposed as under:

“On perusal of report of JSIC it emerges that construction measuring 20 Sq. yds. was existing at the time of Section 4 in form of one room. Now petitioner has increased the construction to one rook and two shops measuring 91 Sq. Yds. the built up structure of petitioner falls in 30 mtr wide green belt, therefore, does not qualify for release in terms of general principles laid down in para above.”

7. Thereafter the impugned order was passed accepting the above proposal of the Committee and declining the request of the Petitioners for the release of the land from acquisition.

8. As regards the first two prayers in the present petition, with identical prayers having already been rejected by the DB of this Court while disposing of the earlier writ petition and which decision stands affirmed by the Supreme Court, they are as such declined.

9. As regards the third prayer, it is seen that the direction issued by the DB while disposing of the earlier writ petition of the Petitioners, was premised on possession not having been taken of the land in question and on that basis requiring the State of Haryana to consider release of the property in question from

acquisition under Section 48 of the LAA. However, in the Supreme Court a categorical submission was made on behalf of the State of Haryana that in fact it had taken possession of the land in question and, therefore, the question of its release under Section 48 of the LAA would not arise. This explains the directions issued by the Supreme Court in the operative portion of its order that the consideration by the State of Haryana of the request of the Petitioners for release of the land has to be “in accordance with law” and if possession has already been taken and its release is not otherwise permissible or called for any valid reason, the State would be at liberty to take such decision as to be considered appropriate by it.

10. Even if it is sought to be contended by Mr. Sanjiv Gupta, learned Counsel for the Petitioners, that the Petitioners continue to remain in possession of the land in question, the legal position as regards taking of possession has been made abundantly clear in the recent judgment dated 6th March, 2020 of the Constitution Bench of the Supreme Court in SLP (Civil) No. 9036 (CA) of 2016 (***Indore Development Authority v. Manoharlal and others etc. etc.***). In para 245 of the said decision, the Constitution Bench has explained that "when the State Government acquires land and draws up a memorandum of taking possession, that amounts to taking the physical possession of the land." It has further been clarified that the “Government is not supposed to start residing or to physically occupy it once possession has been taken by drawing the inquest proceedings for obtaining possession thereof. Thereafter, if any further retaining of land or any re-entry is made on the land or someone starts cultivation on the open land or starts residing in the outhouse, etc., is deemed to be the trespasser on land which in

possession of the State. The possession of the trespasser always inures for the benefit of the real owner that is the State Government in the case."

11. In view of the above legal position, there was no occasion, after the directions of the Supreme Court, to consider the case of the Petitioners for release of the land under Section 48 of the LAA.

12. In any event, it was made clear by the DB itself that the question of such release would not arise if the constructions raised on the land "interfered in the road, green belt....." From the impugned order dated 15th March, 2019 it is seen that factually the built up structure of the Petitioners falls in the 30 m wide green belt and, therefore, does not qualify for release. Viewed from any angle, therefore, there is no merit in the contention of the leaned counsel for the Petitioners that the decision not to release the land from acquisition, was erroneous.

13. There is no merit in this writ petition and it is accordingly dismissed.

(S. MURALIDHAR)
JUDGE

(AVNEESH JHINGAN)
JUDGE

11th August, 2020
Satyawan

Whether speaking/reasoned	Yes
Whether reportable	Yes