

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-20627-2016(O&M)

Date of Decision: 09th November, 2020

Subhash Chander Kataria

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: JUSTICE S. MURALIDHAR
JUSTICE AVNEESH JHINGAN

Present: Mr.O.P. Goyal, Senior Advocate with
 Ms.Mamta B.Jain, Advocate for the Applicant-Petitioner.

Mr.Ankur Mittal, Additional Advocate General, Haryana.

Dr. S. Muralidhar, J.**CM-10305-CWP-2020**

1. For the reasons stated therein, the application is allowed. The order dated 31st August, 2020, dismissing the main writ petition CWP No. 20627 of 2016 for non-prosecution, is hereby recalled and the writ petition is restored to file.

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2. This is a petition praying for the quashing of a notification dated 28th March, 1985 issued under Section 4 of the Land Acquisition Act, 1894 ('LAA'); a declaration dated 15th / 16th January, 1986 under Section 6 of the LAA, in respect of the acquisition *inter alia* of land in khasra no.2813 (0B-1B-8B) i.e. 240 square yards in village Gurugram for the purpose *inter alia* of development and utilization of land for residential, commercial and widening of road in Gurugram.

3. The writ petition also challenges a speaking order dated 15th September,

2016 passed by the Chairperson-cum-Zonal Administrator HUDA-cum-
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Additional Director Urban Estate Gurgaon, dismissing the representation made by the Petitioner pursuant to the liberty granted by this Court by the order passed dated 29th May, 2015 in CWP No.11907 of 2015, earlier filed by the present Petitioner.

4. This Court had heard the submissions of Mr.O.P. Goyal, learned Senior Counsel appearing for the Petitioner and Mr.Ankur Mittal, Additional Advocate General, Haryana, appearing for the Respondents.

5. At the outset, it requires to be noticed that the land in question in khasra No.2813 is stated to have been initially in the name of Chaudhary Partap Singh son of Chaudhary Bakhtawar Singh. In para 2 of the writ petition, it is stated that “the Petitioner filed a suit for declaration that he is owner in possession of 1 Biswa 8 Biswani measuring 240 square yards measuring 26’ x 50’ which is a part of khasra no.2813 marked as EFGEHL.” The suit is stated to have been decreed by the learned Senior Sub Judge, Gurugram on 24th October, 1978 and mutation in the revenue record is stated to have thereafter been effected in the name of the present Petitioner. It is asserted that the Petitioner is owner in possession of khasra No.2813(1) and had constructed a house thereon prior to the issuance of the notification under Section 4 LAA.

6. After the notification dated 28th March, 1985 was issued under Section 4, which included the land in khasra No.2813, the Petitioner is stated to have filed objections under Section 5A LAA. Negating those objections, the declaration dated 16th January, 1986 under Section 6 LAA was issued.

7. At that stage, CWP No.913 of 1986 was filed in this Court challenging the acquisition proceedings. One of the grounds raised in the said petition was that since the construction on the land in question was raised prior to the issuance of the Section 4 LAA notification, the land should be released from acquisition. Even while the said writ petition was pending, Award No.15 for the year 1987-88 was pronounced on 14th January, 1988 by the Land Acquisition Collector (LAC), Urban Estate, Gurugram on 14th January, 1988.

8. It is stated in para 8 of the present petition that the earlier writ petition, i.e. CWPNo.913 of 1986 was filed by the Petitioner's father Shri Ishwar Singh. An order was passed on 1st October, 1991 by this Court disposing of the said petition with liberty given to the Petitioner to file a civil suit for ascertaining whether or not construction on the land in question had been raised prior to the Section 4 LAA.

9. Thereafter, Shri Ishwar Singh and the present Petitioner (his son) and certain others filed a civil suit in the trial Court. A categorical factual finding was rendered in the suit by the trial Court that the construction on the land in khasraNo.2813 was raised after the issuance of the Section 4 LAA notification.

10. Although the Petitioner's assertion is that the possession of the land in khasraNo.2813(1) remained with him, and that he raised the construction thereon prior to the Section 4 LAA notification, the fact is that possession was, according to the Respondents taken on the date of the Award itself as per the *rapat roznamcha*. Interestingly, it was never the case of the Petitioners that the land in Khasra No. 2813 (1) was not part of the lands notified for acquisition in the Section 4 LAA notification and subsequently, in the Section 6 LAA declaration.

11. In the second round, the Petitioner filed CWP No.11907 of 2015 in this Court, again questioning the aforementioned notification under Section 4 LAA and declaration under Section 6 LAA and further praying that the said acquisition proceedings had lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (hereinafter 'the 2013 Act'). It was claimed that the Petitioner was still in physical possession of the land in question and that compensation had not been paid to him.

12. According to the Respondents, possession of land was taken away back on 14th January, 1988 under *rapat* no.321. Further, it is pointed out that a co-sharer Shri Ishwar Singh, father of the present Petitioner, accepted the compensation amount.

13. CWP No.11907 of 2015 was disposed of by a Division Bench of this Court on 29th May, 2015. The operative portion of the said judgment reads as under:

“After hearing learned counsel for the petitioner, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by granting liberty to the petitioner to file a detailed and comprehensive representation raising all the pleas as raised in the present writ petition before the appropriate authority. It is directed that in the event of a representation before filed by the petitioner within a period of the two months from today the same shall be decided in accordance with law by passing in speaking order and after affording an opportunity of hearing to him within a period of four months from the date of receipt of representation. The petitioner shall be entitled to lead any evidence to substantiate his claim before the concerned authority. Till the matter is decided by the said authority status quo shall be maintained by the parties. It is, however, made clear that in case no such representation is filed within the stipulated period as noticed above, the interim order shall cease to operate, thereafter.”

14. Thus, the writ petition in the second round was also disposed of by declining to interfere with the notification under Section 4 LAA and the declaration under Section 6 LAA. The trial Court having decided the question regarding the date of construction against the Petitioner by holding that the construction was raised after the notification under Section 4 LAA and with that order having become final, the Petitioner can no longer to be heard to say that the construction on the land in question was prior to the notification under Section 4 LAA and that, therefore, the land in question is outside the purview of the acquisition proceedings.

15. This is the third round of litigation challenging the impugned order dated 15th September, 2016 rejecting the Petitioner's representation. The impugned order sets out certain factual details which require to be noted at this stage. On the aspect of possession, it has been categorically stated that the possession was handed over to the HUDA on the date of Award itself, i.e. 14th January, 1988. As regards compensation, it is stated that the “compensation amount of acquired land as per their share has been taken by Sh. Ishwar Singh S/o Kartar Singh father of the applicant”. It is further stated that the land in question has been planned for the purpose of Primary

School. As regards the construction on the subject land, it is stated that “there was no structure at the relevant time and the construction was raised at a later stage”. It is stated that the Estate Officer-I, HUDA had reported that while the land in question was still in possession of the Petitioner, unauthorized construction had been raised over the land

16. With the Respondents having taken possession of the land in question, in the terms noted hereinabove, it is no longer open to the Petitioner, after the decision of the Constitution Bench of the Supreme Court in ***Indore Development Authority v. Manoharlal AIR 2020 SC 1496***, to contend that possession of the subject land still remains with the Petitioner. As regards payment of compensation, it is pointed out by the Respondents that the compensation amount as per their share had already been received by the father of the Petitioner. The Petitioner cannot therefore now contend that he is yet to receive compensation. Accordingly, the essential conditions for the grant of the relief of deemed declaration of the land acquisition proceedings under Section 24 (2) of the 2013 Act are not fulfilled.

17. It was contended by Mr.O.P. Goyal that the land belonging to the Petitioner in khasraNo.2813/1 is not included in the notification under Section 4 LAA. According to him it mentions khasra No.2813 and not khasra No. 2813/1. Although Mr. Goyal does not dispute that this was not pleaded in the earlier two rounds of litigation, and even in the present writ petition, he contends that it was raised in the replication filed to the reply of the Respondents in the present petition.

18. With the validity of the acquisition proceedings i.e. the legality of the notification under Section 4 LAA, the declaration under Section 6 LAA, as well as the Award having been upheld in two rounds of litigation, the Court sees no reason why it should entertain yet another writ petition seeking the same relief. This would clearly amount to an abuse of the process of Court. Once the question of validity of acquisition proceeding has attained finality it ought not to be permitted to be reopened just because the Petitioner has chanced upon on another ground for the first time. In this regard, the observations of the Constitution Bench of the Supreme Court in para 363

(9)of its judgment in *Indore Development Authority v. Manoharlal (supra)*are relevant:

“9. Section 24(2) of the Act of 2013 does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the Act of 2013, i.e., 1.1.2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition.”

19. In the present case, in any event, as pointed out by Mr. Ankur Mittal, both the Section 4 LAA notification and the Section 6 LAA declaration covered a number of lands, which included the land in khasra No.2813. As asserted by the Petitioner himself, in para 8 of the present writ petition, the land to which he is laying claim viz., the land in Khasra No. 2813/1 “is a part of khasra No.2813.” Consequently, the Court negates the plea of the Petitioner, raised for the first time, that the record should be called for from the Respondents to verify whether the Petitioner’s land in Khasra No. 2813(1) was included in the lands in respect of which the notification under Section 4 LAA and the declaration under Section 6 LAA were issued.

20. In these circumstances, the rejection of the Petitioner’s representation by the impugned order dated 15th September, 2016 cannot be faulted.

21. For the aforementioned reasons, the Court finds that there is no ground made out for grant of the reliefs prayed for in this petition. The petition is accordingly dismissed, but with no order as to costs. The interim order, if any, stands vacated.

(S. MURALIDHAR)
JUDGE

(AVNEESH JHINGAN)
JUDGE

09th November, 2020

Davinder Kumar