

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

214

CWP-4543-2020 (O&M)

Date of decision: 26.11.2021

SHAYAM SUNDER AND OTHERS

..Petitioners

Versus

STATE OF HARYANA AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ram Pal Verma, Advocate for the petitioners.
Mr. Samarth Sagar, Addl. AG, Haryana.

ANIL KSHETARPAL, J (Oral)

The hearing of the case is being held through video conferencing on account of restricted functioning of the Courts.

Through this writ petition, the petitioners pray for issuance of a writ in the nature of mandamus to direct the respondents to release the payment/compensation of excess land measuring 1 kanal possessed by respondent No.3.

The petitioners claim that they were owners of land in village Rai, Tehsil and District Sonapat. The State vide a notification dated 07.07.2011 initiated the proceedings for acquiring 12 kanals 2 marlas of land. However, at the spot, the respondents took over the land measuring 13 kanals 2 marlas. The petitioners have ever since been making efforts to get the amount of compensation for the unacquired land.

While issuing notice of motion on 19.02.2020, the following order was passed:-

“Inter alia submits that compensation on acquisition was given only for 12 kanals 02 marlas of land as per statement No.19, dated 15.03.2013 (Annexure P-2) whereas on the spot 13 kanals 02 marlas are in possession of the respondents, therefore, for the balance 01 kanal, compensation has not been paid. Reliance is also placed upon the demarcation report dated 07.11.2019 (Annexure P-5) and the Jamabandi for the year 2014-15 (Annexure P-8) in support.

Notice of motion.

Ms. Vibha Tiwari, AAG, Haryana accepts notice on behalf of the State-respondent Nos.1 to 3 and prays for time to file the reply.

Adjourned to 22.05.2020.”

Thereafter, on 15.11.2021, while noticing that the no reply to the writ petition has been filed and the counsel representing the State does not have complete instructions, the case was adjourned to 22.11.2021, by observing that if the department fails to give complete instructions to the counsel representing the State, then the Chief Administrator, Haryana Shehri Vikas Pradhikaran shall be required to be present in the Court. On 22.11.2021, neither the complete instructions were given to the learned State counsel nor the Chief Administrator attended the hearing. On the request of learned counsel for the respondents, once again the matter was adjourned to today.

Learned State counsel has made a statement, on instructions from Sh. Dinesh, DDA, HSVP, Panchkula, that the Chief Administrator has once again got the land demarcated and it has been observed that the Haryana

Shehri Vikas Pradhikaran has wrongly possessed land measuring 13 kanals 2

marlas although the acquisition is only to the extent of 12 kanals 2 marlas. He submits that the Haryana Shehri Vikas Pradhikaran, has assessed the compensation @ Rs.36,39,508/- which has been forwarded to the Director General, Urban Estate for approval.

In the opinion of the Court, immovable property of the citizens cannot be taken away without adopting the due process of acquisition as prescribed by law. Now, the new Act i.e. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 shall be applicable. Now the question the arises is, that, whether the Court should issue the writ of mandamus or not? It is evident that the petitioners as well as the other co-sharers, if any, have been deprived of their 1 kanal land, unauthorisedly, for the last 8 years.

Keeping in view aforesaid facts, the writ petition is disposed of with a direction to the State Government, to initiate proceedings for acquisition of the aforesaid 1 kanal land, in accordance with law and complete the same within a period of one year, from today, positively. In the meantime, the petitioners and other co-sharers, if any, shall as an interim measure pay the amount already assessed, which shall be liable to be deducted/adjusted from the amount payable to the petitioners on acquisition of the land.

If the respondents still fail to pay the amount within one month

from today, the petitioners shall be entitled to get back the possession even at the cost of inconvenience to the public. This order has been passed in the peculiar facts of the case, particularly when the citizens of the country have been deprived of their property by the State Government and its officials without due acquisition thereof and they have been made to run pillar to post for the last 8 years.

All the pending miscellaneous application(s), if any, are also disposed of.

26.11.2021

ashok

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)

JUDGE