

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-4397-2019

Date of decision:07.09.2021

Kiran Bansal and another

...Petitioners

V/s.

State of Haryana and others

....Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. Rahul Sharma, Advocate for the petitioners.

Mr. Ankur Mittal, Addl.A.G., Haryana with
Mr. Saurabh Mago, A.A.G., Haryana.

Ritu Bahri, J.

The petitioners are seeking quashing of the notification dated 11.07.2006 (Annexure P-15) issued under Section 4 of Land Acquisition Act (hereinafter referred to as the 'Act') and the notification dated 16.07.2007 (Annexure P-16) issued under Section 6 of the Act alongwith order dated 23.12.2014 (Annexure P-24) whereby their representation dated 22.08.2012 (Annexure P-23) under Section 48 of the Land Acquisition Act, 1894 for release of land measuring 3080 square yards falling in Khasra No. 3252 in Revenue Estate Karnal, had been rejected.

A perusal of the order dated 23.12.2014 (Annexure P-24) shows that the representation dated 22.08.2012 (Annexure P-23) had been rejected by observing that for the said land there was no CLU granted and the land was lying vacant.

Learned counsel for the petitioners argued that said land was acquired for setting up of Industrial Estate Sector-3, Karnal. Petitioners planned to set up industry in the name and style of M/s. Bansal Packers and

they made a request for change of land use alongwith project report (Annexure P-1). Vide letter dated 07.06.2006 (Annexure P-3), respondent No.2 intimated that a decision had been taken for granting permission for change of land use and certain documents were required for final permission. The petitioners replied and vide letter dated 01.08.2006 (Annexure P-5), they were called alongwith a witness for signing agreement. Annexure P-6 is the copy of the agreement. Permission for change of land use for setting up industry was granted vide letter dated 14.08.2006 (Annexure P-7). As per the clause 8 of this letter, the permission was valid for two years. However the petitioners were required to start construction within a period of six months as per clause 1(e) of the agreement (Annexure P-6). Vide letter dated 10.07.2007 (Annexure P-8), permission for change of land use was withdrawn by respondent No.2 as the petitioners had not started construction within six months. The petitioners made a representation on 16.07.2007 (Annexure P-9) against letter dated 10.07.2007, which was rejected vide order dated 20.07.2007 (Annexure P-10). Finally on 09.01.2008, petitioners were given personal hearing but no final intimation was received regarding the outcome of hearing. Thereafter, notification dated 11.07.2006 under Section 4 of the Act (Annexure P-15) was issued and the land of the petitioners was included in this notification. Then notification dated 16.07.2007 under Section 6 of the Act (Annexure P-16) was issued.

Heard learned counsel for the parties and perused the case file.

The petitioners had earlier filed CWP-12906-2008 which was disposed of on 01.08.2008 by giving direction to respondent No. 3 to pass speaking order. The petitioners, thereafter, filed an appeal on 26.09.2008

(Annexure P-20) which was rejected vide order dated 30.10.2009 (Annexure P-21). The petitioners, thereafter, again approached the Court and vide order dated 20.04.2012, the writ petition was dismissed as withdrawn to avail the remedy under Section 48 of the Land Acquisition Act (as reflected at page 30 of the paper-book). The petitioners, thereafter, gave a detailed representation on 22.08.2012 (Annexure P-23) for release of the land and this representation was rejected vide communication dated 23.12.2014 (Annexure P-24). The petitioners had also placed on record copy of the order dated 16.07.2018 (Annexure P-25) passed in CWP-4757-2015, whereby they had approached this Court for releasing of land in view of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short 'Act, 2013'). This writ petition was dismissed by the Division Bench of this Court on 16.07.2018 by observing that award had been announced by the Land Acquisition Collector for the land in question on 23.04.2009 and since five years had not been lapsed from the date of the award, provisions of Section 24(2) of the Act, 2013 could not be invoked.

In the present case, the petitioners were actually seeking setting aside order dated 30.10.2009 (Annexure P-21) whereby permission for change of land use granted vide letter dated 14.08.2006 (Annexure P-6) by the Director, Urban Local Bodies had been withdrawn. In this order, it had been observed that petitioners had violated condition 1(e) of the agreement by which he should have started construction within six months from the date of grant of permission i.e. on 14.08.2006. After granting CLU permission, notification under Section 4 of the Land Acquisition Act and a notification under Section 6 of the Act had also been issued on 11.07.2006

and 16.07.2007 (Annexures P-15 and P-16) respectively. Finally, it was observed in this order that no case to extend the period of submission of building plan was made out at this belated stage.

Order dated 30.10.2009 (Annexure P-21) has attained finality and the petitioners did not challenge this order by way of filing any writ petition. The petitioners at the same time had filed writ petition which they withdrew to avail the benefit of release of land under Section 48 of the Land Acquisition Act, 1894 as reflected at page 30 of the paper-book. Hence, for the purpose of release of land under Section 48 of the Act, their case survives only for filing writ petition. As far as claim for release of the land under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 is concerned, writ petition was already dismissed on 16.07.2018 (Annexure P-25).

Learned counsel for the State has argued that the date of the award in the present case is 23.06.2009. He has given details of writ petitions which have been dismissed with respect to the same notifications on the ground that the writ petitions had been filed after a period of six years of the announcement of award dated 23.06.2009 and compensation was deposited by the Land Acquisition Collector for the land lying vacant at the time of issuance of the notifications. Following are the writ petitions which have been dismissed:-

1. CWP-13543-2008 titled as M/s. Maruti Rice Mills V/s. The State of Haryana and others, decided on 09.11.2017
2. CWP-18041-2008 titled as Rajiv Kumar V/s. The State of Haryana and others, decided on 08.11.2017
3. CWP-27101-2016 titled as Ram Kumar and another V/s. The State of Haryana and others, decided on 09.11.2017
4. CWP-1543-2016 titled as Pawan Kumar and others V/s. The State of

Haryana and others, decided on 09.11.2017

5. CWP-1126-2016 titled as Ved Parkash and others V/s. The State of Haryana and others, decided on 09.11.2017
6. CWP-2235-2016 titled as Meena V/s. The State of Haryana and others, decided on 08.11.2017
7. CWP-19132-2007 titled as Samaj Punar Rachna Kendra V/s. The State of Haryana and others, decided on 09.11.2017
8. CWP-26084-2015 titled as Uma Devi and others V/s. The State of Haryana and others, decided on 08.11.2017
9. CWP-25944-2015 titled as Karam Chand V/s. The State of Haryana and others, decided on 08.11.2017
10. CWP-3685-2017 titled as Mohinder Pal V/s. State of Haryana and others, decided on 16.11.2017
11. CWP-4950-2017 titled as Asha V/s. State of Haryana and others, decided on 16.11.2017
12. CWP-25263-2015 titled as Shamsher Singh V/s. The State of Haryana and others, decided on 16.11.2017
13. CWP-3893-2017 titled as Vinod Kumar V/s. State of Haryana and others, decided on 16.11.2017
14. CWP-1375-2016 titled as Pawan Kumar and another V/s. The State of Haryana and others, decided on 16.11.2017
15. CWP-12669-2008 titled as Mohinder Pal Goel V/s. The State of Haryana and others, decided on 30.11.2017
16. CWP-19085-2016 titled as Satish Kumar V/s. The State of Haryana and others, decided on 16.11.2017
17. CWP-20916-2015 titled as Madan Lal Sharma V/s. The State of Haryana and others, decided on 16.11.2017

As far as change of land use is concerned, learned counsel for the State has referred to judgment of Supreme Court passed in ***State of Haryana Vs. M/s. Vinod Oil and General Mills and another***, 2014(15) SCC 410 whereby Civil Appeals filed by the State had been allowed. He has referred to this judgment on the proposition that even if permission for change of land use had been granted and a factory had been built up with

the approval of the authority, it would not be bar for acquiring the land where factory is set up, and is not immune from any acquisition.

The Supreme Court in *State of Haryana Vs. M/s. Vinod Oil And General Mills and Another*, 2014(15) SCC 410 was examining a case where a petition challenging notification for acquisition of land had been allowed. In this case, the land of an industrial unit had been acquired. The State of Haryana had gone in SLP. The Supreme Court had observed that land had been acquired for residential and commercial purposes in Sector 9 and 11, Hissar and was not for public interest. The fact that the land owners had set up an industry and had done construction, cannot be made a ground for quashing of the acquisition proceedings. Even the factory and building was put up in the lands with the approval of the authority, cannot be a bar for acquisition of the land. Public interest overrides individual's interests. In paras 8, 9 and 10, the Supreme Court observed as under:-

“8. Permission for change of land use and developing the area as an industry, in our view, has no relevance while considering the validity of acquisition. If we are to hold that once permission is granted for change of land use for developing the area as an industry and thereafter State cannot acquire it, then a situation may arise that for all time to come, the particular area cannot be acquired which may not be in the larger public interest. We are also unable to agree with the view taken by the High Court that the action of the respondents/State in approving setting up of a factory and then acquiring the same is unreasonable. It is not as if the lands where factories are set up are immune from any acquisition. The only effect of permission for such change in land use and approval for construction and developing the area as an industry can be recognised as valid only to the extent as to confer right upon the land owners to recover the appropriate compensation.

9. The land was acquired for development and utilisation of the same for residential and commercial purposes in Sector 9 & 11, Hissar. So far as the purpose of acquisition of land is concerned, the High Court observed that 'the acquisition is not for essential public services such as development of infrastructure, railways, metro or the purpose related thereto, irrigation, water supply, drainage, road, communication etc.....'. High Court was not correct in observing that only development of infrastructure, railways or irrigation, water supply, drainage, road etc. are primary public purposes. Public purpose includes a purpose involving general interest of community as opposed to the interest of an individual directly or indirectly involved. Individual interest must give way to public interest as far as public purpose in respect of acquisition of land is concerned.

10. The concept of 'public purpose' was dealt with in detail in *Daulat Singh Surana & Ors v. First Land Acquisition Collector & Ors* 2007(1) RCR (Civil) 260:(2007) 1 SCC 641, in which this Court has held as under:-

“49. In *United Community Services v. Omaha Nat. Bank* (77 NW 2d 576, 585, 162 Neb 786) the Court observed that a public purpose has for its objective the promotion of the public health, safety, morals, security, prosperity, contentment and the general welfare of all the inhabitants.

50. In *People ex-rel Adamowski v. Chicago R.R. Terminal Authority* (151 NE 2d 311, 314, 14 III 2d 230) the Court observed that public purpose is not static concept, but is flexible and is capable of expansion to meet conditions of complex society that were not within contemplation of framers of the Constitution.

51. In *Green v. Frazier* (176 NW 11, 17, 44 ND 395), the Court observed that a public purpose or public business has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within a given political division, as for example, a State, the sovereign powers of which are exercised

to promote such public purpose or public business.

52. In the words of Lord Atkinson in *Central Control Board v. Cannon Brewery Co. Ltd.* {1919 AC 744: 88 LJCh 464: 121 LT 361 (HL)} the power to take compulsorily raises by implication a right to payment.

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59. In *Somavanti v. State of Public* (1963) 2 SCR 774: AIR 1963 SC 151 the Court observed that public purpose must include an object in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned. Public purpose is bound to change with the times and the prevailing conditions in a given area and, therefore, it would not be a practical proposition even to attempt an extensive definition of it. It is because of this that the legislature has left it to the Government to say what is a public purpose and also to declare the need of a given land for a public purpose.

60. The Constitution Bench of this Court in *Somavanti* observed that whether in a particular case the purpose for which land was needed was a public purpose or not was for the Government to be satisfied about and the declaration of the Government would be final subject to one exception, namely, that where there was a colourable exercise of the power the declarations would be open to challenge at the instance of the aggrieved party.

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73. Public purpose cannot and should not be precisely defined and its scope and ambit be limited as far as acquisition of land for the public purpose is concerned. Public purpose is not static. It also changes with the passage of time, needs and requirements of the community. Broadly speaking, public purpose means the general interest of the community as opposed to the interest of an individual.”

In the facts of the present case, permission for change of land

(Annexure P-6) by which he should have started construction within six months from the date of grant of permission i.e. 14.08.2006 and since the petitioners violated this condition, permission for change of land use was withdrawn. In the present case, there was no construction done by the petitioners and land was vacant when notification dated 11.07.2006 (Annexure P-15) under Section 4 of the Act and the notification dated 16.07.2007 (Annexure P-16) under Section 6 of the Act were issued. After passing of the award on 23.06.2009, compensation amount has already been deposited as per the submission of learned counsel for the State. Hence, for all intents and purposes, acquisition proceedings had been completed as per law. The petitioners, in the present case, had not challenged order dated 30.10.2009 (Annexure P-21) whereby appeal against the order dated 14.08.2006 (Annexure P-6) withdrawing permission for change of land use, was rejected. Order dated 30.10.2009 (Annexure P-21) has attained finality. Further, the award was passed wayback on 23.06.2009 and the petitioners cannot claim release of their land under Section 48 of the Land Acquisition Act, 1894 especially keeping in view that 17 writ petitions challenging above said notifications have already been dismissed by this Court as per the details given above by observing that if there was any construction existing on the plots of the petitioners prior to issuance of notification under Section 4 of the Act, the petitioners cannot seek release of their land on this ground now and on account of filing writ petitions after more than 7 years of the announcement of award i.e. 23.06.2009. In the present case also, writ petition has been filed on 01.08.2018 i.e. after 9 years of passing of the award dated 23.06.2009.

Keeping in view above observations, writ petition is dismissed.

(RITU BAHRI)
JUDGE

07.09.2021
Divyanshi

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No