

CWP No.17287 of 2010

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.17287 of 2010

Date of Decision: 15.09.2021

Varinder Kaur

...Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: None for the petitioner.

Mr. Ankur Mittal, Addl. A.G., Haryana.

AUGUSTINE GEORGE MASIH, J.

By filing the present writ petition, petitioner has challenged notification dated 26.09.2007 (Annexure P-5) issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as '1894 Act'), notification dated 25.09.2008 (Annexure P-8) issued under Section 6 of the 1894 Act with a prayer to direct the respondents to exclude the house of the petitioner constructed in Khasra No.286 in Village Islam Nagar from acquisition proceedings.

2. It has been asserted by the petitioner in the writ petition that she is residing with her family in the house constructed in Khasra No.286 in Village Islam Nagar, which she had purchased in the year 2004. She has submitted that her house was constructed many years prior to issuance of notification dated 26.09.2007 issued under Section 4 of 1894 Act. She

asserted that she had submitted her objections dated 20.10.2007 under Section 5-A of 1894 Act but the same have not been decided. Petitioner has pressed into service a plea of discrimination which is alleged to have been meted out to her because similarly situated persons have been given the benefit of exclusion of their buildings from the acquisition process. She has further pleaded in the writ petition that even the persons who have not filed any objection have also been given the said benefit. On this basis, it has been asserted that notifications dated 26.09.2007 (Annexure P-5) and dated 25.09.2008 (Annexure P-8) cannot sustain and deserve to be set aside.

3. Learned counsel for the respondents, referring to para 3 of the affidavit filed by the Land Acquisition Collector, Urban Estate, Haryana, Panchkula, dated 30.11.2010, submits that the petitioner had not filed the objections under Section 5-A of the 1894 Act within the prescribed period of limitation and the objections which were filed within the limitation period, were duly heard on 27.05.2008 and 29.05.2008 and only after providing proper opportunity of hearing, report was made and sent to Government for final decision. Counsel states that when objection was not filed by the landowners, only then their land was subsequently acquired for the beneficiary department i.e. HUDA.

4. It is submitted that the present petition is not maintainable in the light of the fact that the petitioner is claiming herself to be the owner of land in question on the basis of agreement to sell dated 22.06.2004 (Annexure P-2) and it is a settled proposition of law that an agreement to sell does not confer any title/right on the buyer and the title passes only if

the valid conveyance deed has been executed. Therefore, the petitioner cannot claim herself to be the owner of the land in question. To substantiate his contention, he has placed reliance upon the judgment of the Hon'ble Supreme Court in **Suraj Lamp Industries Pvt. Ltd. Through Director Vs. State of Haryana & another** (2012) 1 SCC 656.

It is also submitted that even in the agreement to sell dated 22.06.2004 (Annexure P-2) on the basis of which petitioner is claiming herself to be the owner of land, it has been mentioned that she is purchasing a plot measuring 10 marla and as per the record, it was an under construction site existing on the land in question and there was no house at the time of acquisition. It is further alleged that the khasra number, in which land in question falls, does not form part of village abadi.

5. As regards the plea with regard to the discrimination, which has been taken by the petitioner is concerned, it has been answered by observing that no ground for discrimination is made out as merely by referring to that similarly situated persons have been given the benefit of exclusion of their buildings from the acquisition proceedings, would not be enough to make out a case for discrimination and therefore, is violative of Article 14 of the Constitution. The petitioner was required to make out a case that the land which has been released of the other persons was identical to the one of the petitioner and the reason given by the Government for refusing to release her land are irrelevant or extraneous. He contends that the said details are not forthcoming. To support this contention, learned counsel for the respondents has referred to pleadings in para Nos.13 and 14 of the writ

petition. A perusal of the said paras would indeed leave no manner of doubt that these are bald assertions made in the writ petition bereft of any details whatsoever what to say of making out a case of discrimination.

6. Learned counsel for the respondents has placed reliance upon the judgment of the Hon'ble Supreme Court in **Shanti Sports Club & another Vs. Union of India & others** {2009 (5) SCC (Civil) 707} to submit that this plea would not be sustained in the absence of pleadings.

7. Counsel for the respondents has, with reference to the reply/affidavit of Land Acquisition Collector, Urban Estate, Panchkula, dated 07.09.2021, stated that the possession of the land was taken vide Rapat No.72, dated 24.09.2010 and total amount of award i.e. ₹2,59,77,50,090/- was tendered, out of which, an amount of ₹1,52,22,64,983/- has already been disbursed. So far as the amount of compensation of the land in question is concerned, the payment is lying pending as the original owners did not come to collect/receive the same.

Since the compensation amount has been duly deposited with the Land Acquisition Collector and further, the possession has been taken vide Rapat No.72, dated 24.09.2010, the land in question cannot be released and therefore, the writ petition deserves to be dismissed.

8. We have considered the pleadings in the writ petition and submissions made by the learned counsel for the respondents and with his assistance have gone through the pleadings as well as records of the case.

The judgments passed by the Hon'ble Supreme Court in the cases of **Indore Development Authority Vs. Manoharlal and others** 2020 (AIR) SC

1496, *Suraj Lamp Industries Pvt. Ltd.* and *Shanti Sports Club* (supra) have also been perused and considered.

9. The assertion of the petitioner that the objections filed by her have not been considered and decided by the respondents, cannot be accepted in the light of the fact that the same were not filed within the prescribed period of limitation. The objections which were filed within the limitation period, were duly heard on 27.05.2008 and 29.05.2008 and only after providing proper opportunity of hearing, report was made and sent to Government for final decision. It is specifically pleaded that when objection was not filed by the landowners of the land in question, only then the respondents proceeded to acquire the same. At this stage, this plea of the petitioner cannot be accepted when the acquisition proceedings have been finalized.

10. Further, the petitioner cannot be said to be the owner of the land in question in the light of the fact that she is claiming herself to be the owner of the land in question on the basis of an agreement to sell dated 22.06.2004 (Annexure P-2) which does not confer any title/right on the buyer. In this regard, reliance can be placed upon the judgment of the Hon'ble Supreme Court in *Suraj Lamp Industries Pvt. Ltd.*'s case (supra), where it has been held the immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Therefore, the petitioner cannot claim herself to be the owner of the land in question.

11. Even in the agreement to sell dated 22.06.2004 (Annexure P-2) on the basis of which petitioner is claiming herself to be the owner of land, it

has been mentioned that she is purchasing a plot measuring 10 marla. Even as per the record of the respondents, there was under construction site existing on the land in question and there was no house at the time of acquisition. It is further alleged that the khasra number, in which land in question falls, does not form part of village abadi. Therefore, the plea of the petitioner that she had purchased an already constructed house in the year 2004, cannot be accepted.

It may be added here that the ration card and electricity bill which are appended along with the writ petition as Annexures P-3 and P-4 respectively are subsequent to the date of agreement to sell i.e. after about two years.

12. The plea of discrimination as sought to be raised by the petitioner is not spelt-out from the pleadings and these are merely bald assertions. Nothing has been placed on record which would indicate about the location of the land, its similarity or the comparison thereof with that of the petitioner nor has it been spelt-out in the pleadings.

The case of the petitioner, therefore, is covered against her by the judgment of the Hon'ble Supreme Court in the case of *Shanti Sports Club* (supra) wherein, in a similar matter where plea of discrimination had been taken, the Hon'ble Supreme Court has dealt with the aspect of the plea of discrimination and violation of Article 14 of the Constitution of India and had held that this Article can be invoked for seeking a direction to the respondents to withdraw from the acquisition of the land in question in case the asserting person is able to prove that he has been subjected to invidious

or hostile discrimination. The concept of equality enshrined in Article 14 is a positive concept and the Court can command the State to give equal treatment to similarly situated persons but cannot issue a mandate that the State should commit illegality or pass wrong orders because in another such case an illegality has been committed or wrong orders have been passed. Article 14 of the Constitution cannot be invoked for perpetuating illegalities and irregularities.

13. Further, the possession of the land was taken vide Rapat No.72, dated 24.09.2010.

Paras 244 and 245 of the judgment in *Indore Development Authority's* case (supra) deal with the vesting of the land in the State on taking of possession of the acquired land, for which the award has been passed free from encumbrances. The taking of possession through Rapat Roznamacha entry has been held to be a valid mode of taking possession of land. The person retaining possession thereafter is to be treated as a trespasser as he does not have any right to continue in possession of the land, which has vested in the State. Possession of the land has been taken vide Rapat Roznamacha No.72, dated 24.09.2010, thus, fulfilling one of the conditions with regard to the possession having been taken over especially in the light of the fact that the possession through rapat roznamacha has been held to be valid mode of taking possession of the land.

14. As regards the compensation amount is concerned, it has been specifically averred in the reply that total amount of award i.e. ₹2,59,77,50,090/- was tendered and out of the same, an amount of

₹1,52,22,64,983/- has already been disbursed. So far as the land in question is concerned, the payment is lying pending as the original owners did not come to receive the same. Merely because the petitioner has not collected the amount of compensation, it would not entitle her to assert that the compensation has not been disbursed to her.

15. Para 203 of the judgment in *Indore Development Authority's* case (supra) deals with the word 'paid' and it has been concluded in para 206 that when the amount has been tendered, the obligation has been fulfilled by the Collector. In case a person does not collect the amount, he cannot take the benefit of the same by asserting that the amount has not been paid to him and as such, there is a lapse of proceedings. Apart from that, it has been held in para 224 of the said judgment that word 'paid' used in Section 24 (2) of 2013 Act does not include within meaning the word 'deposited', which has been used for proviso to Section 24 (2). It has, therefore, been concluded that the acquisition proceedings would not lapse, if the compensation amount is deposited with the Land Acquisition Collector, which is available for disbursement to the land owner(s).

16. It may be added here that to the affidavits, which have been filed by the Land Acquisition Collector, Urban Estate, Haryana, Panchkula, dated 30.11.2010 and dated 07.09.2021 and to the written statement filed by respondents No.2, 4 and 6, no counter has been filed by the petitioner, meaning thereby the stand taken by the respondents in their affidavits/written statement have been admitted by the petitioner.

17. In view of the above, we do not find any merit in the present writ petition and therefore, dismiss the same.

(AUGUSTINE GEORGE MASIH)
JUDGE

15.09.2021
Harish

(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No