

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

220

CWP-27088-2017(O&M)
CWP-31188-2019(O&M)
Date of Order: 06.09.2021

YUDHVIR MALHOTRA

..Petitioner

Versus

STATE OF PUNJAB AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vishal Gupta, Advocate
for the petitioner.

Ms. Kanica Sachdeva, AAG, Punjab.

ANIL KSHETARPAL, J(Oral)

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

By this order, CWP-27088-2017 and CWP-31188-2019 shall stand disposed of.

Through these writ petitions, the petitioners pray for direction to the respondent-State to pay compensation in respect of their land that has been illegally occupied by the State Government.

On 17.07.2021, the following order was passed:-

“The petitioner seeks payment of compensation in respect of the land which has been encroached by the State to the extent of 6 marlas in violation of Article 300A of the Constitution of India.

Shorn of unnecessary details, it is his case that vide sale deed dated 15.02.1994 (Annexure P-27), he had purchased 7 marlas of land situated within the revenue estate of Khem Karan as per Jamabandi for the year 1990-91 bearing Khata No. 10/22, Killa No. 152/1 min. On a demarcation done by the Kanungo (Circle), Khem Karan on 26.01.2016 (Annexure P-4), it was found that 4 karams road seemed to be constructed on his plot but the same was to be verified by a computer machine and the complainant was given his right. Thereafter, vide report sent by respondent no. 4-SDM dated 05.04.2017

(Annexure P-14) to the Deputy Commissioner, Tarn Taran, it was confirmed that a road had been constructed in the said plot including the land of other persons and the market value was assessed as per the Collector rate varying between Rs. 1,70,000/- to Rs.2,00,000/- per marla.

Similarly on 27.04.2017 (Annexure P-15), the Superintending Engineer, PWD had written to the Chief Engineer that road was consuming 39 marlas (1 kanal 19 marlas) land and, therefore, sum of Rs.10,20,000/- be released by the Government to settle the case of the petitioner. It is the case of the petitioner that on 07.06.2017 also (Annexure P-22), the Chief Engineer had written for release of the amount to respondent no: 1 but of no avail. Reliance is also placed upon various communications dated 07.07.2017 (Annexure P-23) inter se the departments that the adjacent land should be got vacated which was under encroachment or that it could be exchanged with the applicant's land.

State, in its response also, has only taken the technical plea that the road was built more than 50 years back apart from the fact that it is on the gair mumkin/common passage. The response is that respondents no. 3 and 4 as such can explain how the site has been handed over to the answering respondents and how the road had been constructed and maintained. The position, thus, is apparently clear that the answering respondents no. 3 and 4 themselves, vide Annexure P-14, have already opined in favour of the petitioner but have chosen not to file any reply herein.

In such circumstances, this Court is of the opinion that it is for respondent no. 1 as such to take action on the request as to how it proposes to deal with the issue of possession of land measuring 6 marlas belonging to the petitioner which is amply proved by the sale deed (Annexure P-27). It is, thus, open for the said respondent either take steps (i) to acquire the land in question or (ii) compensate him with land of equal area by getting it vacated from the encroachers, if any.

*The third issue would also be as to the damages as the petitioner would be entitled to receive from the date of its purchase which, it would be for respondent no. 3 to decide in view of the law laid down by the Apex Court in **R.L. Jain (D) by L.Rs. v. DDA and others, 2004 (4) SCC 79** in case respondent no. 1 decides to acquire the land.*

Accordingly, steps be taken by respondent no. 1 within a period of two months. Let a status report be filed on or before the next date of hearing regarding the compliance.

Adjourned to 22.10.2018.”

Thereafter, the case was taken up on 20.08.2021 and the Principal Secretary, Department of PWD (B&R), Punjab, was requested to attend the hearing.

Sh. Vikas Pratap, Principal Secretary, PWD (B&R), Punjab, appeared and has filed an undated additional response of Jasbir Singh Sodhi, Executive Engineer, Construction Division No.2 PWD (B&R), Amritsar, wherein he it has been stated that the entire land of the private owners including the petitioners has been vacated and the possession thereof has been handed over to the owners.

It has further been stated that the damages specified in the response have also been paid.

Learned counsel representing the petitioner contends that it is not practically possible to hand over the vacant possession of the premises as the petitioner's land is part of the main road.

Be that as it may.

Once the respondents have taken a stand that they have vacated the encroachment and handed over the possession, the petitioners are relegated to the alternative remedy.

Disposed of.

All the pending miscellaneous applications, if any, are also disposed of.

A photocopy of this order be placed on the file of the other connected case

September 06, 2021

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(ANIL KSHETARPAL)
JUDGE

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