

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-13237-2000 (O&M)

Reserved on : 10.08.2022

Pronounced on : 26.08.2022

Lakhwinder Singh

....Petitioner

VS

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present:- Mr. Amit Jhanji, Sr. Advocate with
Ms. Nikita Garg, Advocate and
Ms. Sangita Dhanda, Advocate
for the petitioner

Mr. Arun K. Kaundal, DAG Punjab

Mr. S.C. Pathela, Advocate with
Ms. Kavita Arora, Advocate
for respondents No. 5 and 6

SUDHIR MITTAL, J.

The Central Government acquired a tract of land on 27.05.1955 under Section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (for short 'the Act'). Out of this land one Santokh Singh son of Gian Singh was allotted some land inclusive of the land in dispute. *Sanad* was issued on 19.06.1958. Possession, however, was not taken by Santokh Singh. After his death the land was inherited by his legal heirs i.e. widow Harpal Kaur and daughter-in-law Nirmal Kaur etc. Mutation No. 6065 of inheritance was entered and sanctioned. Their names were also recorded in the subsequent jamabandies. It appears that Improvement Trust, Pathankot, District Gurdaspur – respondent No. 6 was in need of some land for implementation of a Town Planning Scheme and it made a request to the rehabilitation authorities for allotment of surplus evacuee

property. Notification dated 15.03.1967 was issued under Section 36 of the Punjab Town Improvement Act, 1922 for acquisition of land for Development Scheme Area No. 1 Part 1. Provisional possession of land measuring 287 Kanals 1 Marla was handed over to respondent No. 6 by the Tehsildar Pathankot on instructions dated 18.03.1969 issued by the Settlement Officer, Jalandhar. Out of this parcel, land measuring 94 Kanals 18 Marlas was sold to respondent No. 6 on payment on 09.09.1974.

2. The land in dispute measures 7 Kanals 11 Marlas and is comprised in Khasra No. 1708/923. It is in two parcels measuring 2 Kanals 13 Marlas and 4 Kanals 18 Marlas respectively and is reflected in the revenue record as such : 1708/923 (Min.) (2 Kanals 13 Marlas) and 1708/923 (Min.) (4 Kanals 18 Marlas).

The parcel measuring 4 Kanals 18 Marlas was part of the land, possession of which was delivered to respondent No. 6 by virtue of instructions dated 18.03.1969. It is also part of the land purchased by respondent No. 6 on 09.09.1974. The revenue record continued to reflect the names of heirs of Santokh Singh as owners as is evident from the copy of Jamabandi for the year 1989-90 annexed as Annexure P-

1. Mukand Lal and Sardha Ram sons of Chhagan Ram were recorded in possession of the parcel measuring 2 Kanals 13 Marlas whereas respondent No. 6 was recorded as in possession of parcel measuring 4 Kanals 18 Marlas.

3. Vide registered sale deed dated 20.04.1998, heirs of Santokh Singh sold a total of 10 Kanals 5 Marlas of land to the petitioner inclusive of land measuring 7 Kanals 11 Marlas in dispute. Since the petitioner was unable to obtain possession he wrote a communication (Annexure P-5) to the Joint Secretary to Government of Punjab, Revenue & Rehabilitation Department, Sector 34-A, Chandigarh seeking market value of the land in dispute after its acquisition. No action having been taken, the present writ petition was filed.

4. Written statement on behalf of respondents No. 1 to 4 has been filed wherein the title of the petitioner has been denied, even though acquisition by the Central Government dated 27.05.1955 is admitted and the land in dispute being part thereof is also admitted. Subsequently, affidavit dated 06.01.2015 was filed by Deputy Commissioner, Pathankot wherein he admitted that the land in dispute was allotted to Santokh Singh. It has also been admitted that possession of land measuring 4 Kanals 18 Marlas was transferred to respondent No. 6 pursuant to communication dated 18.03.1969 and that the same parcel was also part of 94 Kanals 18 Marlas of land purchased by respondent No. 6 on 09.09.1974. It has further been averred that said land measuring 4 Kanals 18 Marlas was acquired vide award dated 02.06.1976. Another affidavit dated 06.10.2016 has been filed by the Deputy Commissioner, Pathankot wherein apart from reiterating the earlier submissions it has been mentioned that land measuring 2 Kanals 13 Marlas is neither in possession of the State Government nor of respondent No. 6. It is in illegal possession of S/Shri Mukand Lal and Sardha Ram. At the spot a temple of 'Guru Ravidas' has been constructed in 13 Marlas and eight or nine houses exist in the remaining area.

5. Award dated 02.06.1976 has been annexed as Annexure R-5 with the affidavit dated 06.10.2016 which shows that the parcel measuring 4 Kanals 18 Marlas had been purchased from the Central Government and that the parcel measuring 2 Kanals 13 Marlas is "Built up area under Scheme Area No. 1 Part 1".

6. Learned senior counsel for the petitioner has argued that from the facts aforementioned it is evident that Santokh Singh became owner of the land measuring 7 Kanals 11 Marlas by virtue of *sanad* dated 19.06.1958. The allotment in his favour was never cancelled and after his death his legal heirs inherited the same. They sold this land to the petitioner vide registered sale deed dated

20.04.1998. Thus, the petitioner acquired valid title. Possession was, however, illegally transferred by the Rehabilitation Department in favour of respondent No. 6, who has remained in unauthorized possession till date. Third party rights have also been created by the said respondent and it is, thus, not possible for the petitioner to get possession of his land. He is, accordingly, entitled to grant of compensation after acquisition in accordance with the law governing acquisition of land as on date. Reliance is placed upon order dated 27.10.2021 passed in CWP No. 9017 of 2019 titled as ***Shrikant Dahiya and others vs. State of Haryana and others.***

7. In view of the affidavits dated 06.01.2015 and 06.10.2016 filed by the Deputy Commissioner, Pathankot, learned State counsel has no option but to admit that the parcel measuring 4 Kanals 18 Marlas out of the land in dispute was transferred to respondent No. 6. It is, however his case that the same has been acquired vide award dated 02.06.1976. In this view of the matter, the petitioner is not entitled to grant of any relief. Regarding the parcel measuring 2 Kanals 13 Marlas it has been argued that possession of the said land is with third persons who are private parties and, thus, the petitioner is at liberty to take possession from them in accordance with law. Reliance has been placed upon order dated 03.04.2012 passed by Division Bench of this Court in CWP No. 6250 of 2012 titled as ***Jai Singh and others vs. State of Haryana and others.***

8. The fact that the land in dispute measuring 7 Kanals 11 Marlas was allotted to Santokh Singh and that *sanad* was also issued in his favour is not in dispute. However, possession was never taken by him as is evident from Jamabandi for the year 1969-70 (Annexure P-8), Jamabandi for the year 1974-75 (Annexure P-9) as well as Jamabandi for the year 1989-90 (Annexure P-1). Respondent No. 6 came in possession of the parcel of land measuring 4 Kanals 18

Marlas after the same was transferred to it by the Rehabilitation Department and was subsequently purchased by it on 09.09.1974. Its possession is recorded in Jamabandi for the year 1974-75 (Annexure P-9) as well as Jamabandi for the year 1989-90 (Annexure P-1). The possession of the parcel measuring 2 Kanals 13 Marlas has all along been recorded with private parties. Santokh Singh has never been recorded in possession of the land measuring 7 Kanals 11 Marlas. Sale in favour of the petitioner by the legal heirs of Santokh Singh has not been denied. The petitioner is, thus, proved to be the owner of the land in dispute but not in possession.

9. On the basis of Award No. 2 of 1976 dated 02.06.1976, it has been argued that possession of the parcel measuring 2 Kanals 13 Marlas is also with the Improvement Trust. This assertion is made on the basis of an Annexure with the award titled as "Built up area under Scheme Area No. 1 Part 1" in which Khasra No. 1708/923 Min. (2-13) is mentioned. Undoubtedly, the award was passed on account of acquisition of land for scheme for Area No. 1 Part 1. However, the evidentiary value of the Annexure referred to has to be seen in the context of Jamabandies on record and Affidavit dated 06.10.2016 filed by the Deputy Commissioner, Pathankot. A perusal of the Jamabandies on record show that the possession of the parcel of land measuring 2 Kanals 13 Marlas has always been with private persons. The Affidavit dated 06.10.2016 also states that a temple of "Guru Ravidas" has been constructed in 13 Marlas and eight or nine houses exist in the remaining area. The revenue record has evidentiary value. Affidavit of the Deputy Commissioner, Pathankot also has evidentiary value and is entitled to great weightage. Thus, in my considered opinion, the evidence afforded by the Annexure to Award No. 2 of 1976 pales into insignificance when considered against the evidence of jamabandies and Affidavit afore-stated. This is

particularly so because the basis of the entries in the Annexure to the Award are not forthcoming.

10. The submission made on behalf of the State that the parcel of land measuring 4 Kanals 18 Marlas had been acquired by the Improvement Trust is falsified by Award No. 2 of 1976. The said Award is for an area measuring 52 Kanals 14 Marlas only and Khasra No. 1708/923 has not been mentioned therein. Accordingly, the argument deserves to be rejected.

11. Since the parcel of land measuring 2 Kanals 13 Marlas has neither been acquired by respondent No. 6 or the State Government nor possession thereof is with them, the petitioner is at liberty to take possession from the persons in possession at the spot as they are obviously encroachers. For this purpose proceedings will have to be initiated in accordance with law. The remaining parcel of land measuring 4 Kanals 18 Marlas is in the possession of respondent No. 6 without acquisition. It has never acquired title to the same and, therefore, the petitioner is entitled to grant of compensation in accordance with law. For this purpose the parcel of land would need to be acquired in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'Rehabilitation Act'). Respondent No. 6 is, accordingly, directed to take steps to acquire this parcel of land within a period of four weeks from the date of receipt of certified copy of this order. The argument raised on behalf of the State on the basis of ***Jai Singh (supra)*** is rejected. In the said case, the prayer for acquisition had been rejected on account of delay and laches. That is not the situation here as the petitioner has filed this writ petition in the year 2000 after having acquired title in the year 1998. A related argument that the land having been purchased being fully aware that possession thereof was not with the vendor disentitles the petitioner to

relief, is also rejected. The writ petition has been filed with the intention of seeking compensation and there is no illegality in a person purchasing land for the said purpose.

12. The writ petition is allowed in the aforementioned terms.
13. Since the main case has been decided, pending miscellaneous applications also stand disposed of.

26.08.2022
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(SUDHIR MITTAL)
JUDGE

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