

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP-9126-2022

Date of decision : 06.05.2022

Davinder Kumar and another

....Petitioners

V/s

Union of India and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

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

G.S. SANDHAWALIA, J. (ORAL)

The prayer is for quashing of the action of demolition dated 25.03.2022 regarding the shops and residence (first floor) of the petitioners situated at village Maheshpur, Tehsil and District Panchkula on the ground that respondent Nos.2 to 4 had not followed any procedure as envisaged under Section 3(E) of The National Highways Act, 1956 or non-payment of compensation. Damages were also claimed for the sum of Rs.45.00 lacs for demolishing the building and prayer is also made to undertake a similar exercise with regard to all other properties similarly situated along National Highway-22.

The claim as such is on the basis of purchase of two marlas of land vide sale-deed No.149 dated 15.04.1982 by the father of the petitioners namely Bachna Ram. On the own showing of the petitioners, the purchase of the said two marlas was out of joint holding of one kanal from Khatauni No.16/19, Khasra No.84/1. The petitioners have also brought on record the factum that four marlas of land out of the aforesaid one kanal in Khasra No.84/1 had been notified to be acquired vide notification No.S.O.1422(E) dated 16.08.2007 (Annexure P-6) under the provisions of the National Highways Act, 1956. It has also been brought on record that an award dated 02.09.2008 (Annexure P-7) had been passed for

acquisition of 13 kanals and 10 marlas for which compensation was determined to the tune of Rs.44,71,875/- and the said compensation was subject to technical assessment with regard to the building and structure.

It has not been clarified by the petitioners whether the said award included the land comprised in Khasra No.84/1 (out of which claim is made for 2 marlas by the petitioners). The petitioners have also placed on record notification bearing No.S.O. 1631(E) dated 06.07.2009 (Annexure P-8) whereby an additional 3 marlas of land was acquired out of the aforesaid Khasra No.84/1, village Maheshpur. The petitioners have also placed on record award No.7 for the year 2010-11 announced on 30.07.2010, with respect to land measuring 1 kanal and 5 marlas. It has also not been clarified whether the said award was with regard to the joint holding in Khasra No.84/1 or not. On the basis of jamabandi for the year 2015-16 (Annexure P-13), it is urged that the 16 marlas land out of 1 kanal comprised in Khasra No.84/1 remained in joint ownership of the father of the petitioners along with others and 4 marlas stood mutated in favour of the Central Government.

Referring to the communication from the Tehsildar, Panchkula to Registrar, Haryana Human Rights Commission dated 29.08.2018 (Annexure P-15), it has been claimed that out of the remaining area in Khasra No.84/1/2 measuring 0 kanal 13 marlas, 1/10 share equal to 0 kanal 1 marlas 3 sarsahi was owned by Bachna Ram (father of the petitioner) and inheritance mutation No.1229 had also been entered and approved in the names of Surender Singh and Devender Kumar sons of Bachna Ram son of Chiranji Lal (petitioners herein). In the absence of factual clarity from the documents placed on record as to which land was acquired and which was not out of joint holding and as to who had received the compensation in respect to the acquired land out of the joint holding, in our

considered view are highly disputed questions of fact which would need adjudication after leading evidence.

We are of the considered opinion that the disputed issues are arising to the extent of possession of the petitioners in the land which had been purchased and the fact that which portion of the land had been acquired or not by the National Highway Authority of India, who had demolished the building which is admittedly abutting the highway. It is settled principle that this Court is not in a position as such to decide the disputed issues which arise since the evidence is not to be led before this Court in writ jurisdiction.

In such circumstances, since demolition had already taken place and damages are being prayed for, we are of the considered opinion that an alternative and efficacious remedy is available to the petitioners by way of leading evidence as to whether the building was duly sanctioned, averment of which is wanting in the present petition, and on which portion the same was existing.

In such circumstances, the present writ petition is dismissed with liberty to the petitioners to approach the Court of competent jurisdiction for the redressal of their grievances.

(G.S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

May 06, 2022
Ajay

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