

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-3409-2019 (O&M)
Date of decision: 18.07.2022

Sanjiv Kumar and others

... Petitioners

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Prateek Rathee, Advocate
for the petitioners.

Mr. Deepak Grewal, DAG, Haryana.

Mr. Lokesh Sinhal, Advocate
for respondent No.2.

Mr. R. Kartikeya, Advocate
for the intervenor.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for setting aside the order dated 17.05.2019 passed by the Additional District Judge, Gurugram, vide which the order dated 18.01.2019 passed by the trial Court, allowing an application under Order 39 Rules 1 & 2 CPC read with Section 151 CPC for grant of ad-interim injunction, was set aside.

Brief facts of the case are that Haryana Govt. issued notification under Section 4 of the Land Acquisition Act, 1984 (for short 'the Act') on 11.02.2010 for acquiring the land for the development and utilization for sector

roads of Sectors 81 to 95 in Gurugram. Road was to be developed by the Haryana Urban Development Authority in Village Sikenderpur Bada, Tehsil and District Gurugram. Prior to filing of the present suit, petitioners filed CWP-21956-2011, challenging the proposed acquisition, which was disposed of vide order dated 04.09.2013, by passing the following order: -

“As the petitioners whose residential houses are acquired do not have any other measure of social shelter for them or their families, we further direct that after allotment of alternative sites along with the physical possession, they shall be granted some reasonable period to be determined by the authorities, for the construction of their houses before vacating the acquired houses.

Since in terms of the above directions, the petitioners cannot be dispossessed unless their claims in terms of the policies dated 26.10.2007/24.01.2011 and 09.11.20211 are considered and determined, it is not necessary for us to fix any time frame for the respondents for compliance of these directions.”

Learned counsel further submits that thereafter, the petitioners appeared before the authorities and by way of passing a speaking order, claim of the petitioners was rejected. A copy of the order dated 25.04.2018 is attached as Annexure R-2/8 with the reply. The operative part of the order reads as under: -

“That the vacant land, not a self occupied residential houses of the petitioners have been acquired but for the development and utilization of land for Sector Road-81 to 95 at Gurugram which is

linear/strip form.

That reference may be made to the clause 6 of Rehabilitation & Re-Settlement policy notified vide notification dated 09.11.2010 which is reproduced as under: -

“6. Category of Land Acquisition Cases:

It has been observed that the Government acquires land for various infrastructure projects, which could be broadly clubbed under the following two categories:

- i) Projects where the urban/industrial/agriculture marketing infrastructure is developed in the form of large clusters by the state agencies i.e. the HUDA, the HSIIDC and the HSAMB, for which comparatively large mass of land is acquired for development of planned infrastructure.*
- ii) Projects where the land is either acquired in smaller pockets (e.g. water works and STPs of the Public Health Engineering Departments or the Power Sub-stations set up by the power utilities) or where the land is acquired in an linear/strip form for construction of roads and canals etc.*

Whereas it has been found feasible to grant certain benefits in respect of the cluster development projects, the same has not been found feasible in the second category cases.”

Meaning thereby, the benefit of allotment of plot cannot be given to the oustees where vacant plots have been acquired for

linear projects.

That out of 81 nos. of petitioners of 22 nos. of CWP's as stated above, only 10 nos. of the petitioners have been held eligible as per R&R Policy-2010. Accordingly, plots to such eligible petitioners have been allotted under Oustee Category as per their eligibility through draw of lots held on 06-09-2016. The details of such eligible petitioners are as under: -

<i>Sr. No.</i>	<i>Name of applicant</i>	<i>Size of allotted plot</i>	<i>Plot No.</i>	<i>Sector</i>
<i>1.</i>	<i>Satish Kumar</i>	<i>4 Marla</i>	<i>847</i>	<i>37-C</i>
<i>2.</i>	<i>Surrender Kumar</i>	<i>4 Marla</i>	<i>837</i>	<i>37-C</i>
<i>3.</i>	<i>Rati Ram</i>	<i>4 Marla</i>	<i>828</i>	<i>37-C</i>
<i>4.</i>	<i>Smt. Indra</i>	<i>4 Marla</i>	<i>1093</i>	<i>37-C</i>
<i>5.</i>	<i>Satbir</i>	<i>6 Marla</i>	<i>761</i>	<i>37-C</i>
<i>6.</i>	<i>Raj Kumar</i>	<i>6 Marla</i>	<i>470</i>	<i>37-C</i>
<i>7.</i>	<i>Rajender</i>	<i>6 Marla</i>	<i>1020</i>	<i>37-C</i>
<i>8.</i>	<i>Rohtash</i>	<i>6 Marla</i>	<i>79</i>	<i>37-C</i>
<i>9.</i>	<i>Vinod Kumar</i>	<i>6 Marla</i>	<i>762</i>	<i>37-C</i>
<i>10.</i>	<i>Smt. Ram Kalan</i>	<i>6 Marla</i>	<i>471</i>	<i>37-C</i>

That the petitioners have not been found eligible for allotment of plot as per R&R Policy, 2010 as their vacant land have been acquired for the development of Sector Road-81 to 95 at Gurugram.

The speaking order may be communicated to the petitioners by registered post at his correct address.”

It is further submitted that apart from the same, the petitioner have already filed a suit, in which it is prayed that a decree of mandatory injunction be granted for conducting fresh survey and re-determination of the area and

further to re-examine the possibility of re-alignment of the road to save the existing structure on the disputed land. It is also prayed that decree of permanent injunction be granted restraining the respondents-defendants from demolishing the structure existing on the disputed site.

The trial Court, vide order dated 01.10.2016, granted interim injunction against demolition of the shop, in view of show cause notice dated 12.09.2016 issued by HUDA. In the meantime, alleging that HUDA is still interfering in possession of the property, the petitioners filed a contempt petition before this Court, which was disposed of directing the petitioners to approach the trial Court and they moved an application before the trial Court, which passed the order dated 18.01.2019, by making the following observations: -

“8. I have heard the ld. Counsel for both the parties and gone through the contents of the application carefully.

9. Without going into the merits of the case, it can be said that prima facie that shops are existing over khasra no. 23//6/2 in the revenue estate of village Sikanderpur Bada Sec-82 Manesar, Gurgaon. However, the counsel for defendant submitted before the court that the alleged construction is new one and raised without permission of competent authority in violation of statutory provisions. It has been further submitted by the counsel for defendant that the alleged construction has been raised by the plaintiff recently in order to seek benefits of the R & R policy, 2010. However, the defendant is entitled to any relief as per the

above submission is question of merit which cannot be decided at this stage. Further, from the above submissions of the counsel for defendant as well as the photographs of the suit property placed on record, this court is considered view that there is no doubt that at present alleged shops are existed on the suit property. Moreover, at the time of disposal of CPW No.21572/2011 Hon'ble Punjab & Haryana High Court observed in para no. 17 that "list that can be expected is that the authorities in respect of acquisition proceedings carried out after issuance of aforesaid policies grant the rehabilitation package to the land owners simultaneously and ordered accordingly."

In pursuance of directions given by Hon'ble High Court, the defendant admittedly issued the notice to the concerned parties for providing alternative accommodation. In this regard, one of the notice dt. 25.2.2014 was also issued to the plaintiff which has been placed on record. The perusal of letter dt. 25.2.2014 reveals that a letter was issued by the defendant to the plaintiff wherein it has been mentioned that the plaintiff has been found eligible for the allotment of residential plot measuring 200 sq. meter in the R & R policy, 2010 of the Government in pursuance of Writ Petition no. 21956/2011. But later on, no correspondence was made by the defendant that why he is not eligible for the alternative accommodation as per the R & R policy, 2010 despite the issuance of above said letter dated 25.2.2014 by the defendant. Therefore,

all the questions that whether the plaintiff is entitled under R & R Policy 2010 or not and whether the alleged construction is unauthorized and new one are question of merits which can be decided only later on after the appreciation of evidence to be led by the parties to the suit and cannot be decided at this stage.

10. At this stage, this court is satisfied that plaintiff has succeeded to establish prima facie case in his favour. The balance of convenience also favours the plaintiff. As far as the demolition of the existing shops are concerned if the same are demolished at this stage the same will cause irreparable loss to the plaintiff which cannot be compensated with monetary terms.

11. In view of aforementioned factual and legal scenario, the defendants are hereby restrained from carrying out the demolition in view of show cause notice memo no. 1173 dt. 12.9.2016 till disposal of the case. It is clarified that nothing mentioned herein shall have any effects on merits of the case Now to come up on 12.2.2019 for filing replication, if any and framing of issues.”

Aggrieved against the same, respondent No.2-defendant No.4 filed an appeal before the lower appellate Court and the same was allowed vide order dated 17.05.2019. The observations made in the said order read as under: -

“7. After carefully perusing the case file and going through the respective submissions advanced, this court is of the considered view that in the present case, the order dated 04.09.2013 in CWP

No. 21572 of 2011 titled as Rohtash versus State whereby certain directions have been given by Hon'ble Punjab and Haryana High Court is the bone of contention between the parties. It has been emphasised by Ld. Counsel for the appellants that the said order has been complied with, and the policies, as has been referred in the said order by Hon'ble Punjab and Haryana High Court, the same has been considered and thereafter speaking orders have been passed and plaintiff has not been found entitled by virtue of the same. On the other hand, it has been stressed upon by the Ld. Counsel for the plaintiffs -respondents that the case of the plaintiffs has wrongly not been considered and wrongly their claim has been rejected and there has been non compliance of the order dated 04.09.2013 of the Hon'ble Punjab and Haryana High Court. By virtue of the order dated 04.09.2013 it was mandated upon the defendants to consider the claim of the petitioners and to grant them the benefits under the policy dated 26.10.2007/24.01.2011 and 09.11.2011 as the case may be. Plaintiff has filed a COCP No. 2085 of 2017, whereby by order dated 04.09.2017 the same has been dismissed and it has been observed that no contempt is made out and at the same time it has been considered that plaintiffs have availed the remedy of filing of the suit and also it has been admitted that he has not been dispossessed. Thereafter, in CM No. 15242-CWP-2017 IN CWP 21956-2011 vide order dated 23.02.2018 directions have been

given to the defendants to consider the claim of the petitioners in the light of directions contained in order dated 04.09.2013. Prima facie it is brought on the record that a speaking order dated 08.11.2018, has been passed pursuant to the said direction and the claim of the plaintiffs has been considered and he has not been found eligible and also the speaking order dated 25.04.2018 bearing member No. 2479 has been passed by Estate Officer in compliance of the said order of the Hon'ble Punjab and Haryana High Court, thereby showing that the claim of the plaintiffs has been considered. In another COCP No. 703 of 2018, decided on 28.11. 2018 a direction has been given to the respondents to continue to maintain the status quo and the contempt petition has been disposed of and also a direction has been given that if the respondents are aggrieved, they are at liberty to file application before the civil court for vacation of the Stay order. Thus, the present appeal is covered within the ambit of this order whereby the order granting stay by the Ld. Lower court dated 18.1.2019 has been challenged by way of filing of the present appeal.

8. Prima facie it is clear that the claim of plaintiffs has been considered by the defendants and speaking orders have been passed, while rejecting the claim of the plaintiffs. No illegality or infirmity has been pointed out at this stage by the Ld. Counsel for the plaintiffs by virtue of which the said speaking orders cannot be relied upon, or that the claim of the plaintiffs has been wrongly

rejected or that there has been violation of principles of natural justice while rejecting their claim. The contentions put forth by Ld. counsel for the plaintiffs in the present appeal are the same as has been considered by Hon'ble Punjab and Haryana High Court, vide order dated 04.09.2013, and therefore the said order is binding upon the plaintiffs, along with the defendants and no separate order is required to be passed regarding the contention that the acquisition was not for public purpose and is for benefiting the builders as the said contention has been considered vide order dated 04.09.2013 by Hon'ble Punjab and Haryana High Court. Also, directions have been issued by Hon'ble Punjab and Haryana High Court regarding the manner in which survey has to be conducted and that policies dated 26.10.2007/24.01.2011 and 09.11.2011 has to be considered before dispossessing the petitioners from their respective properties, and that they cannot be dispossessed unless their claims have been considered and therefore no observation is required in the present appeal to the said contention, as has been put forth by the Ld. Counsel for the plaintiffs as the matter already stands adjudicated.

9. It cannot be said that plaintiffs have a prima facie case in their favour as speaking orders have been passed pursuant to the orders of Hon'ble Punjab and Haryana High Court and the claim of the plaintiffs have been considered and therefore balance of convenience also does not lie in favour of the plaintiffs. Plaintiffs

have merely filed suit for permanent and mandatory injunction and have not challenged the speaking orders which have been passed pursuant to their claim having been rejected and therefore prima facie case and balance of convenience does not lie in their favour. In the circumstances when the rights of a private individual are to be pitted against the right of the public at large, it is the welfare and interest of the public at large which has to be considered. Hon'ble Punjab and Haryana High Court in Power Grid Corporation of India versus Rajbir Singh 2009 (5) RCR (Civil) 742 has also observed that no interference should be made generally in the projects of national importance regarding creating of infrastructure and though the plaintiffs will suffer irreparable loss but the same would be against the larger public interest, and therefore no injunction was granted in the said case restraining the development work which was being carried. Thus, in the present case as well it is the larger public interest which has to be considered and therefore, the impugned order dated 18.1.2019 passed by the learned lower court is set aside and the appeal filed by defendant no.4-appellant is allowed.

10. Nothing observed hereinabove shall be construed as an expression on the merits of the case at the time of final decision of the suit.

11. Memo of costs be prepared. Trial court record alongwith copy of this judgment be sent to the concerned court

and Appeal file be consigned to the records. Parties are directed to appear before the learned trial court on the date already fixed i.e. 27.5.2019.”

Learned counsel for the petitioners has argued that in fact, while passing the impugned order, the lower appellate Court has not appreciated the judgment dated 04.09.2013 passed by the Division Bench of this Court.

The aforesaid order was passed on 04.09.2013 and thereafter, the respondent authorities issued show cause notice to the petitioners to vacate the premises, which was challenged by way of filing the present suit.

Learned counsel has submitted that it is case of the petitioners that they have already challenged that order dated 25.04.2018 by way of filing CWP-9669-2019, in which notice of motion was issued and now, the same is pending for 06.09.2022.

Learned counsel further submits that in fact, without providing alternative site, when the speaking order was passed, claim of only few of the similarly situated persons was considered, whereas the petitioners were held ineligible for allotment of alternative site, therefore, the respondent authorities are now going to demolish the shops without providing any alternative site or reconsidering the re-alignment of the road. It is also submitted that the trial Court, while allowing the application, has rightly held that at this stage, only a prima facie case is to be seen and it will be a matter of evidence whether the construction raised by the petitioners is a new construction or old construction, which was in existence prior to issuance of notification under Section 4 of the Act.

In reply, learned counsel for respondent No.2 has referred to the order dated 14.11.2019 passed in the present petition and the same reads as under: -

“The moot points to be considered are, firstly, “whether the disputed structures sought to be protected by the petitioners were actually in existence before issuance of the Notification under Section 4 of the Land Acquisition Act, 1984 (for short 'LA Act'), as claimed by them”; and secondly, “whether the petitioners have a right to protect such structures in the light of the submission that the compliance of the directions of the Division Bench in CWP No.21572 of 2011 and its connected cases including CWP No.21956 of 2011 filed by the petitioners, is claimed to have been effected vide order dated 25th April, 2018 (Annexure R2/8)”.

Let the original record of CWP No.21956 of 2011 be called for to enable this Court to verify whether the petitioners in the said petition had mentioned about the disputed structures being in existence since prior to the Notification under Section 4 of the LA Act...”

Learned counsel submits that a perusal of the summoned record of CWP-21956-2011 filed by the petitioners, in which jamabandi for the year 2005-2006 was attached as Annexure P-1, khasra girdawari upto the year 2009 (Annexure P-2) as well as aks-shajra (Annexure P-2A) clearly reflects that the petitioners had no construction over the land in dispute, which was not shown to be chahi land under cultivation and in the column of cultivation, crop is shown by the self-cultivators. In the absence of any evidence in the revenue record to show that any house is in existence qua which the relief was primarily granted by the Division Bench as per the order dated 04.09.2013, the lower appellate Court has rightly observed that neither there is any house in existence

at the spot nor it is prima facie proved by the petitioners that disputed structure was raised prior to issuance of notification under Section 4 of the Act.

Learned counsel has further referred to speaking order dated 24.04.2018 (Annexure R-2/8), to submit that after giving appropriate opportunity of hearing to all the concerned parties, HUDA granted relief to the persons, who were found eligible and it is not case of either of the parties that while passing the speaking order, entire claim was rejected; rather the persons, who were found eligible, were granted the relief of providing the alternative site. He also placed on record a photograph showing the existing structure i.e. temporary kiosks, having tin shed and the existing road, which is temporarily curved and is not in straight alignment, as it is shown in photograph. Photograph is taken on record as Mark 'A'.

It is argued that once the petitioners challenged the speaking order by way of filing writ petition before this Court, the present suit otherwise is not maintainable with regard to grant of partial relief of injunction.

After hearing learned counsel for the parties, I find no merit in the present petition.

A perusal of the impugned order shows that direction dated 04.09.2013 passed in CWP-21596-2011 are with regard to residential houses only, as in the operative part of the order, necessary directions were issued that possession be taken only after giving possession of alternative site for houses and while referring to documents of the petitioners in the operative part, relief was only with regard to residential house was granted.

Even otherwise, perusal of the speaking order shows that after

affording due opportunity of hearing to all the concerned persons, who were able to show the existing house at the spot, were granted the relief by HUDA. Revenue record attached with earlier CWP-21956-2011 filed by the petitioners also shows that as per jamabandi for the year 2005-2006 and khasra girdawari upto the year 2009, there was no structure in existence, which prima facie shows that case of the respondents that the construction has been raised hurriedly to stall the proceedings of land acquisition.

With the aforesaid observations, finding no merits, present petition is dismissed.

At this stage, learned counsel for the petitioners has requested that demolition be stayed for 15 days to vacate the premises.

Relief is granted subject to the condition that within a period of three days from today, the petitioners will furnish surety bond before the trial Court that they will hand over the vacant possession of the disputed property on or before 31.07.2022.

In case the surety is not furnished within a period of 03 days from today, there will no order of granting time till 31.07.2022.

[ARVIND SINGH SANGWAN]
JUDGE

18.07.2022
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No