

(1)

CWP No.10912 of 2015

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Pronounced on : 19.01.2022

CWP No.10912 of 2015

Lt. Col. Ashwani Kumar, VSM (Retd.)

...Petitioner

Versus

State of Haryana & others

...Respondents

(2)

CWP No.11011 of 2015

Wing Commander (dr.) Sushil Kumar (Retd.)

...Petitioner

Versus

State of Haryana & others

...Respondents

(3)

CWP No.11196 of 2015

Kanwaljit Bains & others

...Petitioners

Versus

State of Haryana & others

...Respondents

(4)

CWP No.16905 of 2015

Suman Kumar

...Petitioner

Versus

State of Haryana & others

...Respondents

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

Present: Mr. S.S. Salar, Advocate,
for the petitioners.

Mr. Ankur Mittal, Addl. A.G., Haryana
assisted by Ms. Kushaldeep Kaur, Advocate.

AUGUSTINE GEORGE MASI, J.

By this order, I propose to dispose of four writ petitions i.e. CWP Nos.10912, 11011, 11196 and 16905 of 2015 as the facts and issues involved in these writ petitions are the same. Counsel for the parties have consented for disposal of these writ petitions by a common judgment and have referred to the pleadings in CWP No.10912 of 2015, titled as 'Lt Col. Ashwani Kumar Vs. State of Haryana & others'.

2. Petitioner has approached this Court for issuance of a writ in the nature of *certiorari* for quashing of the order dated 28.11.2014 (Annexure P-28) passed by the Secretary-cum-Director General, Urban Estate Department, Haryana, notification dated 26.09.2007 (Annexure P-2) issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as '1894 Act') and notification dated 25.09.2008 (Annexure P-12) issued under Section 6 of the 1894 Act, qua his land to the extent of 10 biswa in the shape of residential plot comprised in Khasra No.126/66 (12-7) along with all consequential proceedings including award dated 24.09.2010, with a direction to the respondents to release his abovesaid plot.

3. It has been pleaded in the writ petition that the petitioner had purchased a plot measuring 10 biswa in the year 1989 vide registered sale-deed dated 21.08.1989 and Mutation in this regard was sanctioned in his favour on 11.09.2019 (Annexure P-1). After the purchase of said plot, petitioner became a member of the Co-operative House Building Society,

namely Hill View Cooperative House Building Society Ltd., which was already in existence, for proper and integrated development. On 26.09.2007, a notification under Section 4 of 1894 Act was issued seeking acquisition of the plot of the petitioner including that of the Co-operative House Building Society for development and utilization of land for residential area of Sector 2, Part 3, 4 and 5, Pinjore. Thereafter, petitioner moved representations dated 20.10.2008, 16.09.2011 and 09.01.2011 (Annexures P-3 to P-5) for release of his plot. Members of the Hill View Cooperative House Building Society also submitted their respective objections under Section 5-A of 1894 Act, dated 23.10.2007 and 27.05.2008 (Annexures P-6 and P-7). After considering the objections filed by the members of the Hill View Cooperative House Building Society, recommendations dated 23.07.2008 (Annexures P-8 & P-9) were made for release of some plots being fully developed and residential area. Thereafter, a Joint Site Inspection Committee (JSIC) was constituted, who visited the area on 19.08.2008 and recommended the land of some influential persons to be released from acquisition but the plot of the petitioner as well as that of some others, who were the owners of their individual plots provided with civil amenities but could not construct their houses thereon, recommended for acquisition. After approval from the Government of Haryana, notification under Section 6 of 1894 Act was issued on 25.09.2008 (Annexure P-12). Relying upon noting and letters dated 06.11.2008, 20.10.2008 and 17.10.2008 (Annexures P-13 to P-15 respectively), it is alleged that land of some influential person was released. It has further been stated that as per the policy dated

26.06.1991 (Annexure P-16) of the State Government, land with construction of A and B grade should be left out from the acquisition, where the construction is prior to issuance of notification under Section 4 of 1894 Act. Certain documents (Annexures P-17 to P-22) have been placed on record where land of some persons has been exempted from acquisition. It is further alleged that an illegal colony is being raised by the developer in connivance with the HUDA (now HSVP) officials. The petitioner has neither received any compensation qua the plot in question nor has any reference been filed by him.

It has further been mentioned that the petitioner had filed CWP No.1097 of 2014, which was disposed of by this Court on 22.01.2014 (Annexure P-26) in terms of the order dated 29.10.2013 (Annexure P-27) passed in CWP No.23776 of 2013 (Ram Kishan & others Vs. Union of Inida & others), where directions were issued to the respondents to take a decision on the representation of the petitioner within a period of three months. The representation of the petitioner was rejected vide order dated 28.11.2014 (Annexure P-28) observing that the order dated 29.10.2013 (Annexure P-27) is not applicable in the case of the petitioner as it pertains to different acquisition. Certain photographs have also been appended along with the writ petition as Annexure P-29 (colly).

4. Reply to the writ petition was filed by way of an affidavit of the Land Acquisition Collector, Panchkula, dated 28.03.2016, wherein, it has been stated that the petitioner did not file any objection under Section 5-A of the 1894 Act and the objections submitted by the other landowners were

duly heard from 27.05.2008 to 29.05.2008 at PWD Rest House, Kalka. It has further been stated that the acquisition proceedings, which is the subject matter of the present writ petition, was challenged in CWP No.6155 of 2010 (Ravinder Singh Vs. State of Haryana & others), which was dismissed by this Court vide order dated 06.04.2010 (Annexure R-1) holding that the respondents have followed the proper procedure for acquisition of land for public purpose for development and utilization of same for residential area for Sector 2 Part, 3, 4 and 5, Pinjore. Thereafter, challenging the said order, SLP (C) No.21786-21788 of 2010 was preferred by the said petitioners, which was dismissed by the Hon'ble Supreme Court vide order dated 12.12.2012 (Annexure R-2).

It has been further stated that in CWP No.4992 of 2010 (Hill View Cooperative and House Building Society Ltd. Pinjore Vs. State of Haryana & others), which was preferred by the Society challenging the acquisition proceedings, which is impugned herein, this Hon'ble Court noticed that the colony has been established unauthorizedly without having necessary permissions and in violation of the Punjab New Capital (periphery) Control Act, 1952. Ultimately, the said writ petition was dismissed, which was challenged in the Hon'ble Supreme Court by filing SLP No.12923 of 2011 and the same also dismissed vide order dated 11.05.2011 (Annexure R-4).

As regard the writ petition preferred by the petitioner i.e. CWP No.1097 of 2014, the same was disposed of by this Court on 22.01.2014 (Annexure P-26) in terms of the order dated 29.10.2013 (Annexure P-27)

passed in CWP No.23776 of 2013 (Ram Kishan & others Vs. Union of Inida & others), where directions were issued to the respondents to take a decision on the representation of the petitioner within a period of three months. In compliance of the said order passed by this Court, representation of the petitioner was duly considered and rejected vide order dated 28.11.2014 (Annexure P-28) on the ground that the acquisition, which was the subject matter in the CWP No.23776 of 2013, was different from the acquisition vide which the plot of the petitioner has been sought to be acquired. It has been specifically stated that only constructed houses have been exempted from acquisition and the vacant land of the society and land affecting the site of sectors and roads has been acquired. All other allegations made by the petitioner in the writ petition have been denied and prayer has been made for dismissal of the writ petition.

5. Replication to the written statement of respondents No.1, 2 and 5 has been filed by the petitioner stating therein that the objections filed by the Society for its land and for the land owned by other members were not considered properly. It has been alleged that a fraud was played by respondents No.3 and 4 as Chief Minister, Haryana, on whose behalf the proposal for Section 6 declaration was to be approved, was the Chairman of respondent - HUDA, the beneficiary of the land acquisition. Mainly it has been pleaded in the replication that the entire land of the Hill View Housing Cooperative Society Ltd. was recommended to be released by the Land Acquisition Collector vide recommendations dated 23.07.2008 (Annexure P-32), in which the plot of the petitioner was included as he was the

member of the said society but still the respondents have proceeded to acquire the plot of the petitioner.

6. An additional affidavit has been filed by the Land Acquisition Collector, Urban Estate, Panchkula, stating therein that after the issuance of notification under Section 4 of 1894 Act on 26.09.2007, Hill View Cooperative Housing Building Society Ltd. had filed objections under Section 5-A of 1894 Act seeking exemption of society's land, including the land of the petitioner, from acquisition on 20.10.2007, wherein Society claimed Khasra No.126/66, 125/66, 124/66, 67/125 situated in village Naggal Sodhian and Khasra Nos.128 and 123 situated in village Islamnagar, Tehsil Kalka, District Panchkula, however, petitioner did not file any objection. The Land Acquisition Collector heard the objections under Section 5-A and recommended not to acquire the land as claimed by the Society and sent its report on 08.08.2008 to the Zonal Administrator, HUDA, Panchkula.

Since several recommendations for release were made by the Land Acquisition Collector, Panchkula, to verify the actual position at ground, Zonal Administrator, HUDA had constituted JSIC for site inspection for verification of the site recommended by the Land Acquisition Collector to be exempted from acquisition. The JSIC carried out the inspection on 19.08.2008 at site and made recommendations for acquisition of land including the land belonged to the Hill View Cooperative Housing Building Society Ltd. except the constructed houses which were existed prior to issuance of notification under Section 4.

The recommendations made by the Land Acquisition Collector as well as JSIC as also the report of DTP, STP and CTP were forwarded by Chief Administrator, HUDA to the Director, Urban Estate, on 22.09.2008. Then the Director, Urban Estate, after considering the area recommended by the Land Acquisition Collector, area already acquired by Irrigation Department, area for which internal concurrence was given and the area under the cluster Marked as 'z' which was proposed to be excluded from the acquisition proceedings, proposal was made to issue notification under Section 6 of 1894 Act. The said proposal was sent to Financial Commissioner, Town and Country Planning Department by Director, Urban Estate, on 22.09.2008 for further order and then the same was approved by the Chief Minister, Haryana, on 24.09.2008. Accordingly, declaration under Section 6 of the 1894 Act was issued on 25.09.2008 for acquiring land measuring 673.29 acres.

7. It has been stated that so far as the land in question is concerned, same was acquired being vacant at the time of issuance of notification under Section 4. The land which is the subject matter in the present writ petition was also a part of the land which was the subject matter of writ petition preferred by the Hill View Cooperative Housing Building Society Ltd. i.e. CWP No.4992 of 2010, which was dismissed by this Court vide order dated 03.02.2011 observing that the constructed portions have already been released from the acquisition and the vacant land is being acquired coupled with the fact that the colony developed by the Hill View Cooperative Housing Building Society Ltd. is unauthorized and developed

without taking relevant permission.

The above order of dismissal of the writ petition dated 03.02.2011 was challenged before the Supreme Court by filing SLP (C) No.12923 of 2011, which was also dismissed vide order dated 10.05.20211, therefore, since the acquisition has already been upheld, the petitioner cannot re-agitate the matter again especially when the land in question was the part of the objections filed by the Hill View Cooperative Housing Building Society Ltd. under Section 5-A, which has been negated upto the Hon'ble Supreme Court.

8. The star argument which has been advanced by the learned counsel for the petitioner is that the while making declaration of acquisition of land under Section 6 of 1894 Act, report submitted by the Land Acquisition Collector was required to be considered whereas in the present case, report of the Joint Site Inspection Committee was considered and notification under Section 6 was issued. Counsel has contended that this is in violation of the law laid down by the Hon'ble Supreme Court in **Vinod Kumar Vs. State of Haryana & others** (2014 (1) RCR (Civil) 909). He, therefore, prayed that the impugned notifications and award be quashed and the the plot of the petitioner be released.

9. On the other hand, learned counsel for the respondents, referring to the additional affidavit filed by the Land Acquisition Collector, Urban Estate, Panchkula, and contended that the recommendations made by the Land Acquisition Collector as well as spot inspection report of the Joint Site Inspection Committee as also the report of DTP, STP and CTP were

forwarded by Chief Administrator, HUDA to the Director, Urban Estate, on 22.09.2008 and considering the said reports, proposal was made for issuance of notification under Section 6 of the 1894 Act. The complete record was put up before the Competent Authority as referred to above and therefore, there is no merit in the contention raised by the petitioner's counsel.

10. We have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the pleadings and the records of the case.

11. The admitted facts, as are apparent from the records, are that the petitioner had purchased the land in question and after the purchase, he had joined the Hill View Cooperative House Building Society Ltd and become its member. It is after that, notification dated 26.09.2007 (Annexure P-2) was issued under Section 4 of the 1894 Act. No objection under Section 5-A of the 1894 Act has been filed by the petitioner, however, the Hill View Cooperative House Building Society Ltd. did file its objections which were duly considered and thereafter, recommendations were made by the Land Acquisition Collector followed by the constitution of the JSIC for site inspection by the Zonal Administrator, HUDA, which also made its recommendations. The recommendations made by the Land Acquisition Collector as well as JSIC apart from the reports of DTP, STP and CTP were recommended to the higher authorities, which were ultimately sent to the Financial Commissioner, Town and Country Planning Department by the Director, Urban Estate, on 22.09.2008, which were duly approved by the

Chief Minister of Haryana on 24.09.2008, leading to the issuance of notification under Section 6 of the 1894 Act, on 25.09.2008 (Annexure P-12). A Cluster marked as 'Z', which was proposed to be excluded from the acquisition proceedings, was not included in the notification under Section 6 of the 1894 Act and rest of the land measuring 673.29 acres was notified. After the passing of the award, the Hill View Cooperative House Building Society Ltd. challenged the said acquisition proceedings by filing CWP No.4992 of 2010, which was dismissed by this Court vide order dated 03.02.2011, which attained finality after the dismissal of SLP No.12923 of 2011 preferred by the said Society vide order dated 11.05.2011 (Annexure R-4).

12. It would not be out of way to mention here that the land, which is the subject matter of these writ petitions, was included in the land which was in question in CWP No.4992 of 2010 filed by the Hill View Cooperative House Building Society Ltd., of which the petitioner was also a member. Since the acquisition qua the land, which is the subject matter of the present writ petition, has attained finality upto the Hon'ble Supreme Court, it would not be open to the petitioner to re-agitate the matter especially when he has not filed any objection under Section 5-A of the 1894 Act. All the pleas, which have been taken in these writ petitions, had been taken into consideration by the Court while deciding the writ petition, which was preferred by the Hill View Cooperative House Building Society Ltd., of which the petitioner was a member and therefore, the said pleas would not be available to him in the present writ petition(s).

13. An argument which has been raised by the learned counsel for the petitioner is that the report of the Land Acquisition Collector had not been considered by the Competent Authority i.e. the Chief Minister as the same was not put before him and the report of the JSIC was the one which was considered leading to the issuance of notification under Section 6 of the 1894 Act. This aspect has been responded to in paras 3 and 4 in the additional affidavit filed by the Land Acquisition Collector, Urban Estate, Panchkula, which read as follows:-

“3. That it is respectfully submitted that the Land Acquisition Collector, Panchkula heard and considered the objections under Section 5-A of the Act and recommended to not to acquire the land as was claimed by the Society and sent its report prepared under Section 5-A on 08.08.2008 to the Zonal Administrator, HUDA, Panchkula. Since several recommendations for release were made by the LAC, Panchkula, in order to verify the actual ground position, the Zonal Administrator, HUDA, constituted JSIC for site inspection for verification of the sites recommended by the LAO Panchkula to be exempted from the said acquisition. JSIC carried out the inspection of the site on 19.08.2008 and made recommendations for acquisition of land including the one belonging to the Hill View Society except the constructed houses existing before Section 4. Thereafter, the recommendations made by the LAC as well as JSIC and also the report of DTP, STP and CTP was forwarded by Chief Administrator HUDA to the Director Urban Estate on 22.09.2008.

4. That it is respectfully submitted that the Director,

Urban Estate, after considering the area recommended by the Land Acquisition Officer, area already acquired by Irrigation Department, area for which internal concurrence was given and the area under the cluster marked 'Z' which was proposed to be excluded from the acquisition proceedings, proposal was made to issue notification under Section 6 of the Act of 1894. The said proposal was then sent to the Financial Commissioner, Town and Country Planning Department by Director, Urban Estate on 22.09.2008 for further orders and the same was then approved by the Chief Minister, Haryana on 24.09.2008. Accordingly, declaration under Section 6 of the Act of 1894 was issued on 25.09.2008 for acquiring land measuring 673.29 acres.”

In view of the above, it cannot be said that the report of the Land Acquisition Collector was not placed before the Competent Authority for consideration and in any case, this plea cannot be allowed to be raised at this stage when the said plea could have been taken by the Hill View Cooperative House Building Society Ltd. when the earlier writ petition had been preferred by it.

14. It would not be out of way to mention here that there is a specific assertion by the respondents that the land in question was lying vacant when notification under Section 4 of the 1894 Act was issued. The land which is the subject matter of the present writ petitions was sought to be exempted from acquisition by the Hill View Cooperative House Building Society Ltd., which when acquired, was challenged by the Hill View Cooperative House Building Society Ltd. by filing CWP No.4992 of 2010,

where, while dismissing the same vide order dated 03.02.2011, the Court took note of the fact that the constructed portions have already been released from acquisition and it is the vacant land which was being acquired coupled with the fact that the colony being developed by the Hill View Cooperative House Building Society Ltd. was unauthorized as the same has been developed without taking relevant permissions as required under the statute.

15. Further, these writ petitions have been filed in the year 2015, whereas acquisition proceedings were finalized in the year 2010, when the impugned award was passed on 24.09.2010, however, the petitioner had earlier approached this Court in the year 2014 but the said writ petition was disposed of directing the respondents to consider the representation of the petitioners and the aspect of delay was not considered by this Court. It may be added here that the earlier writ petition was preferred by the petitioner only when he came to know that some landowners have approached this Court by filing CWP No.23776 of 2013, where respondents have been directed to consider their representation. The petitioner has never challenged the notifications under Sections 4 and 6 of the 1894 Act and award dated 24.09.2010 prior to filing of CWP No.23776 of 2013. It appears to be the delaying tactics on the part of the petitioner to continue in illegal possession when the land stands vested in the Government free from all incumbrances and therefore, the writ petition is liable to be dismissed on the ground of delay and laches in the light of the law laid down by the Hon'ble Supreme Court in the judgment of Aflatoon & others Vs. Lt.

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Governor of Delhi & others 1975 (4) SCC 285 and Northern Indian Glass Industries Vs. Jaswant Singh & others 2003 (1) SCC 335.

16. In view of the above, we do not find any merit in these writ petitions and therefore, dismiss the same.

(AUGUSTINE GEORGE MASIH)
JUDGE

19.01.2022
Harish

(ASHOK KUMAR VERMA)
JUDGE

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