

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

CWP No. 26512 of 2022

Date of decision:- 21.12.2022

Om Parkash Sharma and ors.

...Petitioners

Vs.

State of Haryana and ors.

...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Ms. Ridhi Bansal, Advocate, for the petitioner.

Mr. Ankur Mittal, Addl.A.G, Haryana and
Mr. Saurabh Mago, AAG, Haryana.

Ritu Bahri, J.

Petitioners are seeking setting aside of notification dated 26.12.1977(P-3) issued under Section 4 of the Land Acquisition Act; notification dated 23.12.1980 (P-4) issued under Section 6 of the Land Acquisition Act and award dated 05.11.1981 (P-10), in view of the fact that a statement was made by the then learned Advocate General Haryana before this Court on 07.01.1983 (P-12) in one of the writ petition filed by the other land owners that the State Government has withdrawn the impugned notifications. Further prayer of the petitioners is for quashing the proceedings and the decision dated 16.01.2019 (P-36) taken by the State Government for cancelling the licence granted on the land in question. Petitioners are also seeking issuance of direction to the respondents to grant adequate compensation to the petitioner because since 1981 they have been precluded from utilizing and enjoying their own land and to compensate for the loss

The facts in brief are that the petitioners are co-owners in possession of the land comprised in Khasra No. 1661, 1662 and 1655 min situated in village Gurgaon, Tehsil and District Gurgaon (now Gurugram). The petitioners have inherited the property by way of inheritance, as per jamabandi for the year 1996-1997 (P-2). The State Government issued notification dated 26.12.1977 (P-3) under Section 4 of the Land Acquisition Act for acquiring the land measuring 413.50 acres in village Gurugram for public purpose namely development and utilization of the same as residential and commercial area under HUDA Act, 1977. Therefore, State of Haryana issued declaration under Section 6 of the Land Acquisition Act on 23.12.1980 (P-4) for 6.47 acres, 20.54 acres, 8.25 acres, however, for area measuring 103.44 acres of land which included the land of the petitioners as well, instead of issuing declaration, issued notification under Section 4 of the Act. The above said acquisition was challenged before this Court in a batch of 15 writ petitions with lead case being ***CWP No. 1236-1981 tilted as Pt. Mehar Chand and others vs. State of Haryana and others***. The petitions were allowed on 31.08.1982 (P-9) and impugned notifications under Section 4 and 6 of the Act were quashed.

Learned counsel for the petitioners *inter alia* contends that once the impugned notifications stood withdrawn, which included the land of the petitioners, the respondents have no *locus* to claim that the land is still under acquisition merely because the petitioners did not challenge the acquisition proceedings along with other land owners.

Reference has been made to CWP No. 5336-1981 (P-12) challenging the same notifications wherein the then learned Advocate General

his statement, the writ petition was dismissed as having become infructuous. Similar orders have been passed in CWP No. 5143, 5147, 5265, 5266, 5267, 5584, 5585-1981 (P-13 to P-19). Thereafter, the State filed a review application No. 24/83 in CWP No. 5336-1981 (P-20), which was also dismissed on 01.02.1983 (P-21). When the petitioners came to know in the year 2011 that the notifications have been quashed by this Court, information was sought under RTI Act on 26.12.2011 (P-22) as to whether the aforesaid order was ever challenged before Hon'ble the Supreme Court. In response to the said application, Land Acquisition Officer, vide letter dated 10.01.2012 (P-23) replied that no appeal has been filed before Hon'ble the Supreme Court of India. Thereafter, the petitioners moved an application (P-24) before the Land Acquisition Collector/Officer for permitting them to return the compensation amount to the Land Acquisition Collector along with cheque No. 901802 amounting to Rs.30 lakhs. The Land Acquisition Collector agreed to receive the compensation amount with interest to the tune of Rs.30,00,000/- in the name of HUDA, which stands encashed and entry was recorded in the Rapat Roznamcha bearing No. 1680 dated 05.07.2016 (P-25) to the effect that the land of the petitioners is not acquired in view of statement made by learned Advocate General Haryana in CWP No. 5336-1981.

Thereafter, the petitioners entered into collaboration agreement with M/s Stanford Developers and Infrastructure for construction and development of residential and commercial units. Accordingly, the petitioners applied for grant of licence from Directorate Country and Town Planning Department, Haryana for construction of group housing colony and the verification was carried out by the Department of Town and Country Planning

land in question. The LAC, vide its report dated 14.08.2014 (P-26) stated that in view of the statement made by learned Advocate General Haryana in CWP No. 5336-1981, the land in question is not under any acquisition proceedings. Further report was taken from the Deputy Commissioner, Gurugram with respect to verification of the ownership of the land, who vide its report dated 21.06.2016 (P-27) communicated that in view of order dated 07.01.1983, the land in question has been kept out of the acquisition proceedings and in this regard, Rapat Roznamcha entry has also been made. Then, the licence No. 86 dated 16.01.2017 was granted for setting up Residential Group Housing Colony on the land measuring 3.75 acres falling in Section 12-A Gurgaon Manesar Urban Complex. After the grant of licence, the building plans were approved by Chief Town Planner, Haryana vide memo dated 06.03.2018 (P-28). Vide report dated 11.07.2017 (P-29) prepared by District Revenue Officer, the petitioners have been shown as owners of the land in question. The developers and petitioners were also issued a registration certificate from Haryana Real Estate Regulatory Authority, Gurugram (P-30).

But despite all the verification, a notice dated 23.01.2019 (P-31) addressed only to M/s Stanford Developers and Infrastructure was issued for cancellation of license for construction, on the ground that there is lack of clear title of land in its favour. In pursuance to the above notice, M/s Stanford Developers and Infrastructure were afforded an opportunity of hearing but the claim was rejected and licence No. 86 dated 16.01.2017 was cancelled by Director, Town and Country Planning Haryana, Chandigarh on 11.03.2019 (P-32) based upon the report of Director, Urban Estate Department who in its report recorded that the petitioners have accepted the amount of compensation

under:-

“Whereas the matter stands enquired into by Director, Urban Estate Department and after enquiring into the matter, he has concluded as under-

The land falling in the khasra no. 1661, 1662 and 4206/1665/2 along with other khasra Nos. total measuring 25 acres (ap.) which was acquired vide award dated 05.11.1981 and was not re-notified but is in possession of the HSVP (some under encroachment).

Specifically, the RFA No. 837/1989 titled as Gyasi Ram Vs. State of Haryana was dismissed on 15.10.2003 implies that appellants have accepted the award dated 05.11.1981. RFA is filed against the Reference court/ADJ court decision and this also underscores the facts that acquisition from the view point of the landowner was complete. The principle of Estoppel now operates on Gyasi Ram (owner of Khasra No. 1661, 1662, 1665/2) and he cannot seek release on par with others."

Whereas, as per the provisions of Section 3 (2) (a) of the Haryana Development and Regulations of Urban Areas Act, 1975 and the corresponding Rule 8 (a) made thereunder, the title of land establishing clear ownership is pre-requisite for grant of licence, but the report of Urban Estates Department dated 16.01.2019 reveals that the land forming part of [khasra.no.](#) 1661, 1662 and 1665/2 of village Gurugram forming part of licence no. 86 of 2017, has not been released from the acquisition proceedings as the land owners had received compensation for the said acquired land and therefore, the principle of Estoppel now operate on Gyasi ram (owner of khasra no. 1661, 1662, 1665/2). Hence, you lacks the basic pre- requisite of the clear title of land in your favour as required under section 3 (2) (a) of the Act No. 8 of 1975. Hence, the licence No. 86 of 2017 dated 16.1.2017 granted to you is Void ab Initio and is hereby cancelled."

In pursuance to the said order, the developers being aggrieved moved an appeal before the Principal Secretary to Government Haryana, Town & Country Planning Department, Haryana, Chandigarh, which is pending for adjudication. But in the meantime, a news item was published in Hindustan Times newspaper on 03.07.2019 wherein it was reported that HSVP would take forcible possession of the impugned land (comprising in khasra Nos. 1661, 1662 and 1665 min) on 04.07.2019 (P-33). Another application was moved before the Principal Secretary to Government Haryana,

Town & Country Planning Department, Haryana, Chandigarh and a stay was granted on 03.07.2019 till 11.07.2019 (P-34). One of the co-owner filed a petition i.e ***CWP NO. 18811-2019 titled as Hari Kishan vs. State of Haryana and others*** challenging order dated 11.03.2019 and this Court on 12.07.2019 (P-35) ordered status quo shall be maintained as it exists today.

On notice of the petition, a written statement was filed by Land Acquisition Collector, Urban Estate, Gurugram on behalf of respondent Nos. 1, 2 and 4 admitting the facts that the land in question along with other land was notified by State of Haryana through Urban Estate Department, vide notification dated 26.12.1977 for public purpose namely development and utilization of land as residential and commercial area in Village Gurgaon. After hearing objections, notification under Section 6 was issued in four parts on 23.12.1980. Thereafter, the award dated 05.11.1981 was announced acquiring the above land. The possession of the land was taken and was handed over to the beneficiary department. The petitioners received the entire compensation on 05.11.1981. Thereafter, they filed reference under Section 18 of the 1894 Act praying for enhancement of compensation amount and also availed their remedy of filing appeal against the order of ADJ deciding the reference petition. It was also admitted that this acquisition proceedings came to be challenged before this Court in CWP No. 1236-1981 and connected matters. The same were allowed on 31.08.1982 (P-9) and the acquisition proceedings were quashed. The review application filed by the State against the order dated 31.08.1982 also stands dismissed on 01.02.1983 (P-21). No appeal has been filed by the State till date against order dated 31.08.1982.

Thereafter, various writ petitions were filed by land owners out of the above acquisition and all were allowed in terms of statement made by learned

Advocate General Haryana in CWP No. 5336-1981. It was also admitted that the petitioners have deposited the compensation amount but it was stated that neither there was any basis of the calculation of the above amount nor the permission of the competent authority was taken while receiving back the amount of compensation. It has also been admitted that rapat Roznamcha entry dated 05.07.2016 was also recorded to the effect that the land is not under any acquisition proceedings. The report dated 14.08.2014 of LAC was also admitted wherein it was reported that the land is free from acquisition and clear title report was submitted to the Department of Town and Country Planning for grant of licence on the said land. It has been stated that the report dated 14.08.2014 has wrongly been prepared by the LAC. An inquiry was conducted by the Director Urban Estate and on 16.01.2019, it was recommended to cancel the licence. Deputy Commissioner Gurugram was directed to conduct enquiry for fixing the responsibility for serious lapse of LAO office for change of reports.

Learned counsel for the petitioners states that it is not in disputed that the impugned notifications already stood quashed by this Court and further the learned Advocate General Haryana also made a statement on 07.01.1983 in CWP No. 5336-1981 that the impugned notification had been withdrawn. Based upon this statement, several similar writ petitions were dismissed as rendered infructuous.

Learned counsel for the petitioners further states that till date no appeal has been filed by the State against order/judgment dated 31.08.1982 (P-9) whereby acquisition proceedings were quashed. The State only filed review application, which also stands dismissed on 01.02.1983 and thus order

Learned counsel for the petitioners submits that the Land Acquisition Collector has himself given the report to the effect that the land in question cannot be said to be under acquisition proceedings and is free from any acquisition as such. Even the Rapat Roznamcha entry was made (P-25) which shows that the land in question is free from acquisition proceedings.

Learned counsel for the petitioners states that merely on the ground that the petitioners at one point of time deposited the compensation amount and filed reference petition, the licence cannot be cancelled, as the petitioners came to know about quashing of acquisition proceeding in the year 2011 and the petitioners immediately moved an application (P-24) before the Land Acquisition Collector/Officer for permitting them to return the compensation amount to the Land Acquisition Collector along with cheque No. 901802 amounting to Rs.30 lakhs, who agreed to receive the compensation amount with interest, which stands encashed and entry was recorded in the Rapat Roznamcha bearing No. 1680 dated 05.07.2016 (P-25).

Learned counsel further submits that there is illegality and mischief on the part of the respondent-authorities who despite having made a categorical statement before this Court that the impugned notifications have been withdrawn, continued to treat the land in question as acquired land. Further it is the department who received back the compensation amount from the petitioners and granted licence to develop the colony after verifying the fact that the land is free from any acquisition proceedings.

On the other hand, learned State counsel is not disputed the above facts but has argued that once the petitioners have accepted the compensation way back in the year 1982 and now after a gap of 30 years, they

Learned State counsel has further argued that petitioners were not even a party in the petition i.e ***CWP No. 1236-1981*** when the notifications were quashed

After hearing learned counsel for the parties at length, this Court is of the view that the present petition deserves to be allowed, as it is not in dispute between the parties that impugned notification already stood quashed by this Court on 31.08.1982 (P-9). Further after coming to know about the order, the petitioners have returned the compensation amount, which was duly received back by the HUDA, vide cheque No. 901802 amounting to Rs.30 lakhs. Entry was also recorded in the Rapat Roznamcha bearing No. 1680 dated 05.07.2016 (P-25), which shows that the land is free from acquisition. Learned State counsel has not disputed the reports (P-26 and P-27). Further it is also not disputed that a statement was made by the then learned Advocate General Haryana before this Court on 07.01.1983 (P-12) in one of the writ petitions (CWP-5336-1981) filed by the other land owners that the State Government has withdrawn the impugned notifications. On this statement, various writ petitions filed subsequently were withdrawn, as the impugned notifications were withdrawn. Till date, no appeal has been filed by the State against order dated 31.08.1982 quashing the acquisition proceedings. The issue with regard to acquisition proceedings has thus attained finality. ***In the reports (P-26 and P-27), it has been stated that in the Jamabandi for the year 1971-1972 and for the year 1996-97 neither there is reference recorded with respect to Section 4/6/Award in Column No. 12 nor there is entry with respect to any litigation in the revenue record. As per Rapat Roznamcha Vakyati No 863 dated 05.11.1981, the possession of the aforesaid Khasra***

Hon'ble High Court, vide order dated 07.01.1983 and in view of dismissal of review appeal No. 24/1983 vide order dated 01.02.1983, the aforesaid Khasra Nos. have been kept outside the acquisition area. In this regard, Rapat Roznamcha Vakyati No. 1680 dated 25.05.2016 stands recorded.

After doing the verification, licence No. 86 dated 16.01.2017 was granted for setting up Residential Group Housing Colony on the land measuring 3.75 acres falling in Section 12-A Gurgaon Manesar Urban Complex. Vide report dated 11.07.2017 (P-29) prepared by District Revenue Officer, the petitioners have been shown as owners of the land in question.

Merely on the ground that the petitioners at one point of time have accepted the compensation amount, the licence should not have been cancelled. The compensation amount has also been received back by the department.

In view of the above fact, the writ petition is allowed and decision dated 16.01.2019 (P-36) taken by the State for cancelling the licence, is set aside. The petitioners will be at liberty to take alternative remedy seeking compensation/damages, in accordance with law, if so advised.

(RITU BAHRI)
JUDGE

21.12.2022
G Arora

(MANISHA BATRA)
JUDGE

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