

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

**CWP-2027-2023
Decided on :02.02.2023**

Sunil Kumar & othersPetitioner(s)

Versus

State of Haryana & othersRespondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present:- Mr.Abhimanyu Singh, Advocate for the petitioners.

Mr.Ankur Mittal, Addl.A.G., Haryana
and Mr.Saurabh Mago, AAG, Haryana, for respondents No.1 & 2.

Mr.Ankur Mittal, Advocate
and Ms.Kushaldeep K.Manchanda, Advocate
for respondent No.3-HSVP.

G.S. Sandhawalia, J.

Challenge in the present writ petition, filed under Article 226/227 of the Constitution of India is to the notification dated 04.06.1986 (Annexure P-2) issued under Section 4 of the Land Acquisition Act, 1894 (for short, the 'Act') and the notification dated 15.04.1987 (Annexure P-3) issued under Section 6 of the Act, for the residential and commercial area by the erstwhile HUDA for Villages Bhiwani Lohar, Hadbast No.22 and Palwas, Hadbast No.12, Tehsil & District Bhiwani.

The petitioners claim that they are co-sharers in the land, petitioner No.1 claim to be owner of 10 marlas as per the sale deed dated 21.02.1986. The petitioners No.2 & 3 claim to be owners of 16 ½ marlas vide sale deed dated 08.03.2013 which is post the notifications. Petitioner No.4 who has purchased 3 marlas of land vide sale deed dated 05.08.1985 claims that he is residing in the aforesaid property which is spread over

more than 6 acres of land and have built their houses and residing with sanctioned water connections etc. Further averment has been made that there was another notification which had been quashed in CWP-840-1985 titled *Bhanwar Singh & others Vs. State of Haryana & others* on 17.05.1985 and therefore, they had raised constructions.

Admittedly, as per their own case, Section 6 notification talks about 352.33 acres of land to be acquired and reference has been made to CWP-3419-1987 titled *Banwari Lal & others Vs. State of Haryana & others* wherein directions were issued on 11.03.2011 (Annexure P-4). It was noticed in the said case that the State had released the land from acquisition where there was construction except the area falling under the sector roads and the grievance of the petitioners stood satisfied. Regarding Khasra No.17 also, liberty was given that if construction is in existence, the matter be taken up with the authorities. The petitioners now claim that Khasra No.81/21 is the area left by the authorities where land has neither been released nor any acquisition proceedings are being initiated. Resultantly, claim has been made for quashing the said notifications and for issuance of directions to respondent No.3 not to carry out demarcation.

We had an opportunity to deal with the same acquisition in CWP-18551-2021 titled *Jitender Singh & others Vs. State of Haryana & others*, decided on 31.01.2023 in which it came on record that even an award dated 10.11.1987 had been passed. The said award has not even been placed on record and challenged by the present writ petitioners. It is thus clear that the land has vested with the State since for the last 35 years. The said award itself talks about the constructions which were raised upon various khasra numbers and the type of constructions. A perusal of the

decision dated 08.04.2011 passed in CWP-3418-1987 titled *Capt. Bhanwar Singh & others V s. State of Haryana & others* would go on to show that the then Co-ordinate Bench had noticed that very small construction was in existence at the time of Section 4 notification and the respondents, in a sympathetic manner, released 3.07 acres of land which would save the construction raised the houses. It was further noticed that respondents were going to use the land in a planned manner as per the scheme prepared and if the land is released, it would affect the sector dividing roads. The relevant part of the said order reads as under:

“Contention of counsel for the petitioners, that acquisition be quashed because the petitioners also intend to use the land for residential purpose, is liable to be rejected. The respondents are going to use the land in a planned manner as per the Scheme prepared. If entire land owned by the petitioners is released that is going to affect the sector dividing roads and also plots carved out by the respondents. To support their contention, reliance of the petitioners upon a Division Bench judgment of this Court in Eros City Developers Private Ltd. V. State of Haryana and others, 2008(2) RCR (Civil) 291, is of no help to them. That was a case in which, to the petitioners therein, before start of acquisition proceedings, change of land use certificate to develop a colony had already been granted and a huge amount was deposited towards external development charges. Position is not the same in this case. Photographs Annexure P7(colly.), put on record, will indicate that the petitioners have constructed house as per their own choice, without getting any change of land use certificate and also without getting any building plan sanctioned from the competent authority.

Further contention of counsel for the petitioners that the publication of Section 4 notification was not proper is also liable to be rejected. Reply filed at the instance of Land Acquisition Collector clearly shows that the notification was published as per requirement of Section 4 of the Act. Opportunity of hearing to file objections and hearing was given to the land owners under Section 5-A of the Act and only thereafter declaration under Section 6 of

the Act was issued. Land measuring about 3.07 acres was released from acquisition on account of existence of houses therein, we are satisfied with the stand taken and there is no ground to say that notification was not properly published.

Further contention of counsel for the petitioners that a vast tract of land is lying vacant, on account of which acquisition of their land was not justified, is also liable to be rejected. In reply filed by the respondents in paragraph Nos.6 (vii), it is specifically mentioned that the land which was acquired in the year 1972-75, after taking its possession, was handed over to the Urban Estate Department for development. Otherwise also, if some portion of the land earlier acquired is lying vacant, it does not mean that for further development, the State cannot acquire land of a land owner.

It is an admitted fact that the land involved in CWP No.3457 of 1987 was lying vacant when notification under Section 4 of the Act was issued. In reply filed, it is stated that if released, it will affect the road alignment and also Scheme to establish many other public utility services. In that writ petition, most of the petitioners have also withdrawn their writ petition.

In view of facts mentioned above, these writ petitions are disposed of. Petitioner No.1 in CWP No.3418 of 1987 will get benefit of the order now passed in their favour on 30.12.2010, releasing 3274 square yard of his land. So far as petitioner No.6 in this writ petition and petitioner Nos.13, 14, 29 to 32, 35 and 41 in CWP No.3457 of 1987 are concerned, in view of a fact that release of their land will affect road alignment and establishment of other public utility services, as such, no relief can be granted to them.”

It was also noticed in Jitender Singh (supra) that a detailed order was passed by the competent authority on 14.09.2018 noting that possession of the land had been taken after the announcement of the award and more than 90% of the landowners had received compensation for the acquired land. The maximum area of the sector had been developed and land in question had been planned and was part of the developed sector.

Accordingly, it was noticed that on an earlier occasion, land had been

released of those persons where construction had been raised. In the present case, as noticed, the petitioners had never challenged the acquisition and therefore, now at this point of time, cannot claim that the notifications be quashed which are for the purpose of planned development by the erstwhile HUDA. Nothing has been even averred or alleged that any objection(s) were filed under Section 5-A of the Act to bring to the notice of the authorities that there was any construction on the said portion of the land. At this point of time, to say that there is a construction and electricity and water connections present for which even documents have also not been placed on record, does not further the cause of action of the petitioners in any manner. The cause of action had arisen when the Section 4 notification was issued but the challenge had never been raised.

As noticed, petitioners No.2 & 3 had also purchased the land after the notification had been issued and therefore, now cannot raise any argument that the authorities had not acted in accordance with law. The landowners who had raised construction had approached the Court at the first instance in the year 1987 and were successful in getting orders of release in some cases and in other cases where there was no construction raised, the writ petition was dismissed as noticed above. Similar was the case in Jitender Singh (supra) which we have referred to on 31.01.2023 which had also been dismissed by noticing and looking at the photographs that there was no construction at the spot and the released land was where the construction had been raised.

In such circumstances, the present writ petition is barred by delay and also the principles of acquiescence as the petitioners had accepted the same. Now when physical possession is sought to be taken

which is in the form of an unauthorized occupation by the landowners and the land vested with the State under Section 16 of the Act, the present petition itself would not be maintainable. The petitioners have no title to assert their claim and they are now estopped from questioning the legality of the acquisition and have not challenged the award was passed which was subject matter of challenge earlier by other landowners unsuccessfully. It is also pertinent to notice that there are no averments made as to the fact whether the petitioners have picked up the compensation which has been duly deposited by the State and therefore, the writ petition conceals more than it reveals.

Accordingly, keeping in view of the above discussion, we do not find any ground to call upon the State to file its reply in the present case. Resultantly, the present writ petition is dismissed in limine.

(G.S. SANDHAWALIA)
JUDGE

02.02.2023
Sailesh

(HARPREET KAUR JEEWAN)
JUDGE

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