

CWP No. 3340 of 1991

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 3340 of 1991

Reserved on : 6.9.2023

Date of decision : September 22, 2023

Jile Singh (since deceased) through his LRPetitioner

Versus

State of Haryana and othersRespondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present : Mr. Ashish Chopra, Senior Advocate with
Ms. Rupa Pathania, Advocate, for the petitioner

Mr. Ankur Mittal, Addl. Advocate General, Haryana with
Mr. Saurabh Mago, Deputy Advocate General, Haryana

Mr. Kamal Sharma, Advocate and
Mr. Raja Sharma, Advocate, for the respondent-HUDA

KULDEEP TIWARI,J.

1. This is second round of litigation seeking quashing of land acquisition notification and declaration issued respectively under Sections 4 and 6 of the Land Acquisition Act, 1894 (hereinafter to be referred as 'the Act of 1894') on 27.8.1987 and 25.8.1988, Annexure P/1 and Annexure P/2. In earlier round of litigation, the writ petition was disposed of with the consent of the petitioners therein, as parties agreed for appointment of Mr. A.Banerjee, the then Financial Commissioner (Revenue) and Secretary to Government of Haryana, who shall after conducting spot inspection examine as to whether the premises of the petitioner deserves to be

exempted from the acquisition in view of the scheme adopted by the State of Haryana. It was also agreed that the decision, taken by the Appointed Authority concerned, shall be treated as final decision. (*emphasis specifically*). The consenting order dated 28.9.1989 is reproduced as under:-

“Parties counsel are agreed with Mr. A. Banerjee, Financial Commissioner (Revenue) and Secretary to Government, Haryana shall be asked to go to the spot to examine as to whether the premises of the petitioners deserve, in the scheme of things, to be exempted from acquisition and that whatever be his decision with regard to each petitioners, it shall be treated as final.

In terms of the agreement so arrived at, we direct Mr. A. Banerjee, Financial Commissioner (Revenue) and Secretary to Government, Haryana, to go to village Jhasra, which is proximate to the spot, on October 26, 1989 reaching there at 10 o'clock and then roam about in the area to see what kind of building and plots have been exempted and as to whether there is any parity of those exempted plots and buildings with those of the petitioners, deserving exemption. Any of the petitioner, who may choose to be present on the spot on the aforesaid date and time, may be so and made him such suggestions as are relevant for the purpose. It is expected of Mr. Banerjee to pass a short speaking order in respect of each case. On this understanding, we dispose of this writ petition, as also the connected ones.”

2. Thereupon, the Appointed Authority concerned (supra) after conducting the spot inspection, prepared his status report and also passed a speaking order, whereby, the prayer to release the instant petition land(s)

was declined, on the ground that the construction made by the petitioner is totally un-authorized, as the same is in violation of the Punjab Scheduled Roads and Controlled Areas (Restriction of Un-regulated Development) Act, 1963 and the petition land(s) is situated on the National Highway No. 8 and falls within the prohibited area.

3. Though the petitioner, in the earlier round of litigation agreed that whatever order passed by the Appointed Authority concerned would be final, however, despite that he approached this Court by filing the instant writ petition again challenging the same acquisition notification and declaration issued under Sections 4 and 6, respectively, of the Act of 1894, as well as the declining order passed by the Financial Commissioner (Revenue).

Submissions by counsel for the petitioner

4. Learned counsel for the petitioner vociferously argued that it is admitted fact that the petitioner has raised construction over the petition land(s), however, despite his being wrongly and illegally non-suited by the Financial Commissioner (Revenue) for release of his acquired land. The Financial Commissioner (Revenue) has passed a speaking order on surmises and conjectures, in fact the report has not been prepared in accordance with the actual revenue record. Further, he also reiterated his plea of discrimination and submitted that the land(s) of similarly situated persons who have raised un-authorised construction, had also been released from the acquisition proceedings.

Chronology of proceedings of the instant writ petition.

5. It is apt to note that initially this Court granted status quo in favour of the petitioner and the present writ petition was tagged along with other writ petitions. Respondent No. 3-HUDA (now Haryana Shehri Vikas Pradhikaran) filed miscellaneous application CM No. 13177 of 2007, for vacation of stay, as some portion of the acquired land was required for laying down sewer line. The aforesaid CM was disposed of by the learned Single Bench, vide order dated 4.12.2007, with the observation that the acquiring authority concerned has waived their right qua the remaining land except which is required for laying sewer line and the main writ petition was disposed of as well. Having aggrieved with the order (supra), State of Haryana through HUDA preferred LPA No. 1704 of 2011 which was allowed, vide order dated 19.1.2017 and the main petition was restored back to its original number with the directions to decide the same on merits qua the controversy and issue of benefit under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013, (in short, the Act of 2013). The relevant extract of the order is reproduced as under:-

“xxxxxx After hearing learned counsel for the parties, we are of the opinion that the learned Single Judge fell in grave error in concluding that the appellants had foregone their contest in the main writ petitions qua the entire acquisition questioned by the land owners. It was only with a limited prayer that they had approached this Court to permit them to continue with the development works and release some portion of the land from the

impact of the stay order since these works were of paramount importance and of an urgent nature. The entire reading of the applications does not remotely suggest that they intended to settle the writ petitions in these terms.

Consequently, we accept the present appeals and modify the order of the learned Single Judge to say that it would be applicable to the land that stand utilized for public purposes but in so far as challenge to the remaining land is concerned the parties would be free to agitate the same on merits. Therefore, we restore the writ petitions bearing nos. 3340, 3342, 3344 of 1991 and 10628 and 10068 of 1998 to their original numbers and direct their listing as per roster so that they can be decided on merits qua the controversy and the benefits under Section 24(2) of the Act.

Since the affidavit of the Administrator was to be filed only in one connected LPA bearing no. 2256 of 2011, the costs imposed vide this Court's order dated 18.10.2016 in all the LPAs shall stand waived and will stand in said LPA only."

6. When the matter was fixed for the final hearing, the petitioner moved an application for placing on record some documents to submit that the petition land(s) has already been released from the acquisition in view of order dated 4.12.2007, passed by this Court and the reference for the same has been made in the letter dated 3.5.2011, issued by respondent No. 2, wherein, it was recorded that the land(s) except one has been released, which is required for laying down the sewer line. He has also placed reliance upon mutation No. 6162 in favour of the petitioner.

7. Let us first deal with this application (supra), before making adjudication on the main writ petition. The learned State counsel after perusing the original record available, apprised this Court, that in fact the order which has been mentioned in the letter No. L.A.O.(G)-2011/3063 dated 3.5.2011, of Land Acquisition Officer, has been set aside in LPA No. 1704 of 2011 and the writ petition has been restored back to its original number. So far as the reliance placed upon the mutation is concerned, the same is highly misplaced as this mutation was entered on account of inheritance and not at all pertains to exchange of rights from the acquiring authority in favour of the petitioner.

8. We have examined the plea of the petitioner. However, we are unable to accept the same as the letter which was written by the learned Land Acquisition Collector concerned, was based on the order dated 4.12.2007 (supra) passed by the learned Single Bench of this Court. However, the same was set aside by the learned LPA Bench vide order dated 19.1.2017, therefore, the petitioner was very well aware of the order passed by the LPA Bench. In these circumstances, the reliance placed by the petitioner on such order, which has already been reversed by the LPA Bench of this Court, is a misplaced reliance and thus, is not accepted.

ANALYSIS

9. Coming back to the merits of the writ petition, the learned State counsel has brought to the notice of this Court, the dismissal order dated 4.1.2011 passed by the Hon'ble Supreme Court in SLP(C) 19384 of 2010 and submitted that some of the land owners in the same impugned

acquisition notification also filed writ petitions before this Court and the same were disposed of by common order dated 28.9.1989, whereby Mr. A.Banerjee, the then Financial Commissioner was appointed as an Authority to examine the applicability of the scheme for release of the land(s). The verdict (supra) was challenged before the Hon'ble Supreme Court and the same was dismissed vide order dated 4.1.2011 (supra).

10. We have minutely examined the entire record. This Court has also dismissed one of the writ petition bearing ***CWP No. 3342 of 1991, titled Sh. Hukam Chand (deceased) through his LRs and others vs State of Haryana and others, on 5.9.2023***, wherein same the notification, declaration and the order of Financial Commissioner (Revenue) was challenged, with the following observations:-

“7. It is apt to mention here that some of the writ petitioners, being aggrieved from the notifications (supra), hence filed CWP No. 3404 of 1989 and other connected writ petitions, before this Court, but through an order passed thereons by this Court on 29.06.2010, the CWPs (supra) became dismissed. The aggrieved therefrom preferred SLPs, before the Hon'ble Apex Court, wherein, there occurs a reference to the earlier order made by this Court on 28.09.1989, order whereof, has already been extracted above, wherein, the counsels for the litigants concerned, evinced their ad idem to the appointment of Mr.A.Banerjee, Financial Commissioner (Revenue) and Secretary to Govt. Haryana, for the makings of spot inspection of the sites concerned, and to report whether there is any parity inter-se those exempted plots and buildings, thus with the petitioners hence for thereby the petitioners being also assigned the benefit of exemptions. Visibly therein, the relevant construction(s) rather became pronounced to be not amenable for becoming released from

acquisition.

8. Since the above SLP became dismissed by the Hon'ble Apex Court, thereby also the above extracted orders, as became rendered by this Court in CWP No. 3189/1989 and in CWP-3404-1989, and, other connected writ petitions, thus acquire conclusivity. Furthermore, also the ad idem appointment of Mr. A. Banerjee, Financial Commissioner (Revenue) and Secretary to Govt. Haryana, to visit the relevant sites and to make recommendation(s) qua amenability or otherwise of the acquired lands from becoming released or not, do thereby also acquire binding and conclusive effect.

9. Pre-eminently when the apposite recommendation(s) as made by the Financial Commissioner concerned, became thus approved even by the Hon'ble Apex Court. Therefore, the recommendation(s) favourable to the estate holders as well as unfavourable to the estate holders are to be concluded to become affirmed by the Hon'ble Apex Court. The further apt corollary thereof, is that, the petitioners cannot make any challenge to the recommendation(s) adversarial to them as made by the said Financial Commissioner thus in his report.

10. Moreover, though the above made verdict(s) of dismissal, as made, on the previous writ petition(s), thus acquire conclusive and binding effect and thereby completely estop, the petitioners from recasting, thus similar thereto causes of action, and, almost similar thereto(s) relief(s), rather in the instant petition before this Court.

11. Nonetheless, the petitioners claim(s), that since other similarly situated lands became released from acquisition, thus on principle of parity, thereupon, the petitioners are also entitled to seek a valid claim for the releases of the writ property(ies).

12. Even the above raised ground is merit-less, given the above relief as claimed in the earlier writ petition(s), thus

becoming rejected on the plank, that, the apposite adversarial recommendation(s) as became made by the Financial Commissioner concerned, thus becoming validated by the Hon'ble Apex Court, thereby re-ventilation of the said relief in the instant petition, by the petitioners, who however earlier did not access the Hon'ble Apex Court, is also barred thus on the plank of vindication, rather becoming rendered by the Hon'ble Apex Court qua the apposite adversarial recommendation(s), as, made qua the estate holders by the Financial Commissioner concerned. Therefore, given the validation of the adversarial recommendation(s), as, made by the Financial Commissioner hence made against the writ petitioners rather in his report, thereby also the said adversarial recommendation(s) deserve becoming countenanced by this Court.

13. Consequently, this Court is bound to reverse the adversarial recommendation(s) made by the Financial Commissioner concerned in his report. Therefore, the writ petitioners cannot argue that they are entitled to raise a claim for theirs becoming exempted from acquisition.

14. The learned counsel for the petitioners submits, that subsequent to the issuance of notification(s) (supra), the petitioners instituted objections under Section 5A of the 'Act of 1894'. In the said objections the petitioners contended that on the acquired lands they had made A Class constructions (factory and a residential house) besides also contended that there is samadh of his father on the acquired lands. Consequently, it is contended that the order made by the respondent concerned, rejecting the said objections, whereafter, they had issued a declaration under Section 6 of the 'Act of 1894' (Annexure P-3), thus is tainted. Moreover, it is also contended that the respondents have proceeded to adopt the practices of invidious discrimination, inasmuch as, the respondents releasing the acquired lands vis-a-vis other estate holders, whereas, the respondents yet proceeding to

subject the petition lands to acquisition, through making the impugned notification(s).

15. However, for the reasons to be assigned hereinafter, the above made ground is rudderless and is rejected. The primary reasons for rejecting the above ground is founded, upon, the respondents in their reply-affidavit, as well as in their arguments, firmly contending that the writ land(s), was acquired for furthering the requisite public purpose, but only on account of rendition of interim orders against the petitioners becoming dis-possessed from the said lands, that the execution of the public work, thus, became forestalled. Since predominance is to be assigned to the public purpose than to individual interests of the estate holders concerned. Therefore, in doing so, this Court refrains to allow the petitioners claim for the acquired lands becoming released from acquisition.

16. Furthermore, the said claim could have been well founded only in terms of Section 48 of the 'Act of 1894' provisions whereof are extracted hereinafter.

“48. Completion of acquisition not compulsory, but compensation to be awarded when not completed. -

(1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings there under, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) xxxxx

17. However, since the stage for releases of the acquired

lands becoming caused in terms of the statutory provisions (supra), thus could be done only before the assumption of possession thereof and/or before the pronouncement of award, and, not subsequent thereto(s). Therefore, when the order, if any, thus dismissing the objections rather was required to be assailed promptly, thus on its becoming made, whereas, it remaining omitted to be challenged, thereby the petitioners are estopped on account of apposite waivers and abandonments, to make a challenge to the dismissal orders, if any, as became made on their objections, as, cast under Section 5A of the 'Act of 1894'.

18. The further consequence thereof, is also, that since the discretion to be exercised within the ambit of Section 48 (supra) as occurs in the 'Act of 1894', is to be exercised prior to the assumption of possession or prior to the making of the award of the acquired lands, whereas, the award in the instant case becoming pronounced on 16.03.1989, nor when a prompt petition became filed before this Court, challenging the order, if any, rejecting the objections as raised under Section 5A of the 'Act of 1894'. Consequently, the claim for releasing the writ lands from acquisition, especially when the same becomes acquired for sub-serving the requisite public purpose, is both misfounded and a mis-espoused relief, and, is liable to be rejected.

19. Now, assumingly there was prompt raising of challenge (s) by the petitioners in the dismissal order made on their objections, yet when apart from this Court ordering for staying the dis-possession of the petitioners from the disputed lands, thus not making any order restraining the respondents from making an award. Resultantly the effect of the non passing of the order (Supra), is that, the dismissal order, if any, as became made on the relevant objection(s), merges into the award as made qua the acquired lands, thereby the challenge to the order, if any, rejecting the objections filed under Section 5A of the 'Act of 1894', thus becomes

infructuous.

20. Consequently, the above ground of discrimination but raised on parity being denied to the writ petitioners qua similarly situated lands of estate holders concerned, is thus, a completely rudderless argument and is rejected.”

10. The facts and legal issues raised in the instant writ petition are absolutely same, therefore, in view of the judgment passed in ***Sh. Hukam Chand (deceased) through his LRs's*** case (*supra*), the present writ petition is also liable to be dismissed.

11. Though the petitioner has also raised the plea of discrimination, however, not a single instance has been cited to establish that he was treated differently from the similarly situated persons. The finding of the Financial Commissioner (Revenue), though was assailed in the present writ petition, but without substantiating the same with any material available on record. As per the report of the Financial Commissioner (Revenue), the petitioner has raised the construction within the prohibited zone along with the National Highway No. 8, therefore, the same cannot be released from the acquisition. It is a well settled law, that the person who has raised an unauthorized construction is barred from challenging the acquisition proceedings. This Court in ***New Vidya Niketan Educational Society v. State of Haryana and others, Civil Writ Petition No. 7711 of 2009*** has observed as under:-

“A litigant, who has no respect for the law, this Court feels, is not entitled to get any equity by invoking the provisions of Article 226/227 of the Constitution of India. Under similar circumstances, in a case titled as

Cambridge International Public School v. State of Haryana and another, CWP No. 2958 of 2011, decided on March 23, 2011, wherein the construction was raised without getting any prior permission and a prayer was made for release of the land from acquisition, a Division Bench of this Court observed as under:

"Otherwise also, we feel that on account of violation of the provisions of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963, no relief can be granted to the petitioner. As per the provisions of that Act, to construct building/ change of land use, permission is necessary from the competent authority. In the present case, it was not done. It has become a fashion to violate the provisions of law and then to make an attempt to get relief in one way or the other. Attitude of 'sab chalta hai' cannot be tolerated, this has to be stopped one day, to make the people to be respectful to the law and its provisions. A violator of law, who has no respect in the established system of rule of law, cannot be granted any relief when exercising jurisdiction under Articles 226/227 of the Constitution of India. Adherence to the duties as enshrined in Article 51-A of the Constitution of India is must. One can claim his rights under Chapter III of the Constitution of India only if respect is shown to the duties as contained in the above said provision."

12. The next plea raised is regarding lapsing of acquisition

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proceedings in view of Section 24(2) of the Act of 2013. We have examined this plea also. The record depicts that the award qua impugned notification has been passed way back on 16.3.1989 and also made available by tendering the same with the competent authority. The actual physical possession was assumed by recording *Rapat Roznamacha* in the revenue record, therefore, both the contingencies as prescribed by the Hon'ble Supreme Court in *Indore Development Authority Vs. Manohar Lal and others AIR 2020 SC 1496*, has been completed, thus, there is no lapsing in view of Section 24(2) of the Act of 2013. The petitioner has failed to refute the above factual aspects regarding passing of award and tendering of the same with the competent authority concerned and assumption of possession by recording *Rapat Roznamacha* in the revenue record. Therefore, in sequel, we do not find any merit in the instant writ petition and the same is, accordingly, dismissed.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

September 22, 2023

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<i>Whether speaking/reasoned ?</i>	<i>Yes/No</i>
<i>Whether Reportable ?</i>	<i>Yes/No</i>