

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

CWP-5139-2020
Decided on:-02.11.2023

Veenu Calvin Bhatti

....Petitioner.

vs.

State of Haryana and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Sandeep Sharma, Advocate,
for the petitioner.

Mr. Pritam Singh Saini, Advocate and
Mr. Shivendra Swaroop, Deputy Advocate General,
Haryana.

Ms. Qurra Tulian, Advocate,
for respondent No.5-NHAI.

HARKESH MANUJA J. (Oral)

1. By way of present writ petition, prayer has been made for issuance of a writ in the nature of mandamus directing the respondents to grant compensation of the petitioner's land, falling in khasra No.90, village Harsaru, District Gurugram, which has been allegedly utilized by respondent No.5 for the purpose of laying down of National Highway 352W.

2. Notice of motion in this case was issued vide order dated 26.02.2020.

3. In response, separate written statements have been filed on behalf of respondents No.1 to 4 and respondent No.5, respectively. In addition, one affidavit dated 08.08.2023, under the

signatures of Mr. Parveen Chaudhary, Superintending Engineer, PWD (B&R) Department, Haryana has also been filed on behalf of respondents No.1 to 4, in which, the following stand has been taken by them:-

"5. That the land in dispute is situated in Khasra No.90/2, 2 kanal, 19 marla, in the revenue estate of village Harsaru District Gurugram, complete width of road is passing from the land in dispute. It is also pertinent to mention here that as the possession of land is with P.W.D. (B&R) Department since before the year 1966, so no acquisition was done for this stretch. Moreover, it is also pertinent to mention here that the petitioner has already constructed boundary wall of the school long ago which is at extreme edge of Right of way of road (in possession of PWD) which is 24.40 meter. Photograph of the same is annexed as Annexure R-III.

6. That the Ministry of Road Transport and Highway Notified Gurugram Pataudi Road as NH 352W vide Gazette notification dated 05.12.2017. Copy of the Gazette Notification is annexed as Annexure R-IV. The Section-12 in the National Highway Authority of India Act, 1988 defines that all the obligation/liabilities should be owned by NHAI once a road declares as National Highway. Copy of Section-12 of National Highway Authority of India Act, 1988 is annexed as Annexure R-V.

7. That however, a metalled road had been constructed way back before the year 1966 by the Deponent Department and was being maintained by the Deponent Department since 2017 before declaring the road as National Highway. It is claimed as a fact that total Right of way in possession of Deponents had been 24.40 meter and the same is in open and peaceful possession of the

department since then. It is the contention of the deponent that at the time of construction of road, the villagers had offered the land to the Deponent Department free of cost and since then nobody has ever demanded the compensation of the land. Now, since, the rates of land have risen up, people have started such type of litigation.”

4. Learned counsel representing respondents No.1 to 4 is very categorical while submitting that respondents No.1 to 4 are not willing or interested to pay any amount of compensation to the petitioner-landlord against the utilization of land in question.

As regards khasra No.90//10, award was passed on 17.10.2018 as contemplated under Section 3(G) of the National Highway Act, 1956.

5. On 17.10.2023, the following order was passed:-

“Learned counsel for respondent No.5 submits that as per telephonic instructions, the land in question is not required, right now, by NHAI and thus, prays for weeks time to file an affidavit in this regard.

Mr. Pritam Singh Saini, Advocate, also prays for time to get instructions as regards the payment of compensation in favour of the petitioner-landlord for having utilized his land.

On request, adjourned to 02.11.2023.”

6. In pursuance thereof, an affidavit dated 01.11.2023, has been filed in Court today on behalf of respondent No.5. The relevant para Nos.5 and 6 thereof are reproduced hereunder:-

“5. That in view of the above, the aforesaid subject land 90//2 has neither been used nor taken into possession by the answering Respondent till date. That it is further

submitted that the subject land has a metalled road constructed by the PWD way before 1966. It is humbly submitted that NHAI is bypassing this section by constructing green field corridor from Dwarka Expressway junction to Wazirpur Chowk i.e. the green field alignment is being done by bypassing existing Pataudi road from Harsaru to Wazirpur. It is thus submitted that subject land bearing Khasra No.90//2 is not required by NHAI as on date.

6. That thus the present affidavit is being filed to State that the subject land is not required by the NHAI as on date and no relief can be granted to the petitioner herein vis-a-vis land bearing No.90//2 by the answering respondent.”

7. From perusal of the writ petition, written statements, besides additional pleadings which form part of record, it is apparent that the land owned by the petitioner, situated in village Harsaru, Tehsil and District Gurugram stands utilized by respondents No.1 to 4. Although a plea has been taken in the written statements that the aforesaid land was offered by the predecessor-in-interest of the petitioner to respondents No.1 to 4, free of cost way-back in the year 1996, however, not even a single document or revenue entry has been produced on record by the respondents, in order to support any such stand taken in their written statements.

8. When the Constitution of India came into force on 26.01.1950, the right to property was given status of fundamental right and two articles, i.e. Articles 19(1)(f) and 31 ensured that right of any person against his property remains protected. However, vide 44th Amendment Act, 1978 of the Constitution of India, these two

articles were repealed and a new Article, namely, 300-A was inserted having title "Right to Property", so right to property still remains a constitutional right as protected under Article 300-A which read as under:

"CHAPTER IV.—RIGHT TO PROPERTY

300A. No person shall be deprived of his property save by authority of law."

9. On the contrary, following are the admitted position of facts in the present case:

- a. land belonging to petitioner stands utilized by PWD B&R Department and there is a constructed road by PWD B&R on 2 Kanal 19 Marla land out of 8 kanal land bearing Khasra No. 90//2 , and 2 Kanal 4 Marla from Khasra No. 90//10 in Revenue Estate Garhi Harsaru (Annexure R-4/1).
- b. no records of acquisition related to Khasra No. 90//2 & 10 Revenue Estate , Garhi Harsaru (Annexure R-4/1) was found.
- c. In accordance with order passed by Division Bench of this Court in CWP-17801-2016, titled as **"Balbir Singh and others versus State of Haryana and others"**, dated 23.7.2013, vide notification dated 28.11.2016, adjacent land falling in Khasra number 89//29 in village Harsaru (Annexure P-4) was acquired as per the provisions of 2013 Act but even in that notification, land of the petitioner was not included.

10. Accordingly, land owned by the petitioner stands utilized without there being any notification issued under the Land Acquisition

Act, 1894 (for short, "1894 Act") or under the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short "2013 Act") for acquiring the said land, the same goes violative of Article 300-A of the Constitution of India, depriving the petitioner of his property without any authority of law.

11. While, any acquisition of property has to be as per the "authority of law", the right to receive compensation even if not apparent, has to be inferred from Article 300-A of the Constitution of India. The aforesaid view can also be derived from a decision passed by the Hon'ble Supreme Court in "**Vidya Devi vs. The State of Himachal Pradesh and others, (2020) 2 SCC 569**" and the relevant para Nos. 10.3 to 10.5 thereof are reproduced hereunder:-

"10.3. In this case, the Appellant could not have been forcibly dispossessed of her property without any legal sanction, and without following due process of law, and depriving her payment of just compensation, being a fundamental right on the date of forcible dispossession in 1967.

10.4. The contention of the State that the Appellant or her predecessors had "orally" consented to the acquisition is completely baseless. We find complete lack of authority and legal sanction in compulsorily divesting the Appellant of her property by the State.

*10.5. In a democratic polity governed by the rule of law, the State could not have deprived a citizen of their property without the sanction of law. Reliance is placed on the judgment of this Court in **Tukaram Kana Joshi & Ors. v. M.I.D.C. & Ors. (2013) 1 SCC 353** wherein it was held that*

the State must comply with the procedure for acquisition, requisition, or any other permissible statutory mode. The State being a welfare State governed by the rule of law cannot arrogate to itself a status beyond what is provided by the Constitution.

This Court in [State of Haryana v. Mukesh Kumar](#) held that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multifaceted dimension.”

12. Arguments raised by learned Counsel for respondent Nos. 1 to 4 regarding delay as well as voluntary submission by the petitioner does not hold any substance in view of **Vidya Devi's** case (supra). In "**Sukh Dutt Ratra & Another v. State of Himachal Pradesh & Ors**", reported as 2022(7) SCC 508, it was held by the Hon'ble Apex Court that in the absence of any written consent from the land-owners regarding utilization of their land, without acquiring it and payment of compensation, is unknown in law. Relevant paras from this judgement are reproduced below:

“21. Having considered the pleadings filed, this court finds that the contentions raised by the State, do not inspire confidence and deserve to be rejected. The State has merely averred to the appellants' alleged verbal consent or the lack of objection, but has not placed any material on record to substantiate this plea. Further, the State was unable to produce any evidence indicating that the land of the appellants had been taken over or acquired in the manner known to law, or that they had ever paid any compensation. It is pertinent to note that this was the State's position, and subsequent findings of the High Court in 2007 as well, in the other writ proceedings.

22. *This court is also not moved by the State's contention that since the property is not adjoining to that of the appellants, it disentitles them from claiming benefit on the ground of parity. Despite it not being adjoining (which is admitted in the rejoinder affidavit filed by the appellants), it is clear that the subject land was acquired for the same reason - construction of the Narag Fagla Road, in 1972-73, and much like the claimants before the reference court, these appellants too were illegally dispossessed without following due process of law, thus resulting in violation of Article 31 and warranting the High Court's intervention under Article 226 jurisdiction. In the absence of written consent to voluntarily give up their land, the appellants were entitled to compensation in terms of law. The need for written consent in matters of land acquisition proceedings, has been noted in fact, by the full court decision of the High Court in Shankar Dass (supra) itself, which is relied upon in the impugned judgment."*

13. In similar circumstances, a coordinate Bench of this Court in Civil Writ Petition No. 9017 of 2019, titled as **"Shrikant Dahiya and Others vs State of Haryana and Others"**, directed the respondents to pay interim compensation as per the Collector's rate and initiate the proceeding to acquire the land in accordance with 2013 Act.

14. In view of the aforesaid discussion as well as the proposition of law laid down in **Vidya Devi's** case (supra), the present petition is allowed with further directions as issued in **Shankar Dahiya's case** (supra), which are specified below:-

- a) Respondent No 3, as an interim measure, is directed to pay an interim compensation to the petitioner at the current collector's rate for the land utilized i.e. 2 Kanal 19 Marla (in khasra no 90//2) and 2 Kanal 4 Marla (in khasra no 90//10) within a

period of one month from the date of receipt of certified copy of this judgment.

- b) Respondent No. 3 or the State of Haryana is directed to initiate the acquisition proceedings in accordance with the 2013 Act within a period of one month from the date of receipt of certified copy of this judgment and complete the same within a period of one year thereafter. The amount so determined by the competent authority under 2013 Act shall be paid to the petitioners in accordance with the provisions thereof.
- c) The petitioners shall have the liberty to apply for assessment/determination of the market value/compensation in accordance with the provisions of 2013 Act.

15. Pending miscellaneous application(s), if any, shall also stand disposed of.

02.11.2023
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(HARKESH MANUJA)
JUDGE

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