

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-6883-2022

Reserved on: 07.12.2023

Pronounced on: 16.12.2023

MEENA KAINTH

.....Petitioner

Versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA AND ORS.

....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. G.S.Bal, Sr. Advocate with
Mr. Laxman Choudhary, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab.

Mr. R.S.Madaan, Advocate and
Mr. Mahender Joshi, Advocate
for the respondent – NHAI.

Mr. Varun Sharma, Advocate for
Mr. Raman Sharma, Advocate
for respondent No. 5.

SURESHWAR THAKUR, J.

1. Through the filing of the instant writ petition under Articles 226/227 of the Constitution of India, the petitioner herein prays for the hereinafter extracted reliefs.

“Quashing Gazetted Notification dated 19.07.2010-Annexure P-13 and consequent Award dated 26.07 2013-Annexure P-13/1 passed by the Competent Authority-cum-Sub Divisional Magistrate, Phillaur to the extent it has acquired the area comprised in Khasra No 21/14 and 21/17/1 of Village Dosanjh Khurd in Khewat/Khatoni

No.60/64, Hadbast No 218, out of area of Retail Outlet Dealership of petitioner, having been acquired in utter violation of the provisions of the National Highways Act, 1956, Or

In alternative to restrain respondents from taking over possession of area / building of the Retail Outlet of petitioner and to take possession of equivalent area of alternative site in the near vicinity as shown in Site Plan Annexure P-14: Or

issue any other appropriate writ, order or direction as deemed fit and proper in the facts and circumstances of the case

It is further prayed that during pendency of above noted petition, dispossession of petitioner from out of her site of Retail Outlet Dealership be stayed.”

Averments in the writ petition.

2. It is averred in the writ petition, that a running petrol pump was allotted to the petitioner, under the policy of the Govt. of India for upliftment of weaker sections of the society, thus by the Bharat Petroleum Corporation Ltd. (hereinafter for short called as 'the BPCL') through its letter dated 07.04.2017 (Annexure P-1). In the said allotment letter, it was mentioned, that for enabling the petitioner to operate the dealership, at the above said location, 'the BPCL' will develop the retail outlet and will provide the same to the petitioner with certain facilities.

3. It is apt to mention here, that for establishing the aforesaid retail outlet, the plot concerned was taken on lease by 'the BPCL' vide registered lease deed dated 22.08.2000 (Annexure P-2), from the lessors thereof, Sh.Santokh Singh and Gurdev Singh.

4. That the said dealership was running peacefully, till the

officials of the National Highways Authority of India (hereinafter for short called as 'the NHAI') closed the entry and exit points to the said retail outlet.

5. The petitioner approached the offices of respondents No. 3 and 4 and came to know that 500 square meters out of the area of her retail outlet, has been acquired, through the impugned notification made by the NHAI, besides, the adjoining lands have also been acquired, for the purpose of widening and maintenance of the National Highway No. 1.

Contentions of the learned counsel for the petitioner.

6. The learned counsel for the petitioner submits, that though notice of acquisition of the land was served upon lessors/owners Sh.Santokh Singh and Gurdev Singh, who executed lease deed, in favour of respondent No. 5-BPCL, however, no notice was served either upon the BPCL-respondent No. 5 or upon the person who was running the retail outlet at the relevant point of time.

7. The respondent No. 5-BPCL was also a necessary party to the acquisition proceedings and was entitled to a share in compensation rather in lieu of the acquisition of the disputed lands besides compensation for loss of business was also liable to be paid. Therefore, the acquisition notification was not binding upon her.

8. Further, he submits that other similarly situated retail outlets-petrol pumps existing on this very National Highway, have been provided inlets and outlets near to their retail outlets. Thus, if the ingress and egress is granted to the retail outlet of the petitioner, it would not cause any loss or danger to anyone.

petitioner.

9. The primary reason for rejecting the submissions of the learned counsel for the petitioner becomes sparked from the factum that the petitioner being not the owner of the acquired land, has no *locus standi*, to file the present writ petition. Moreover, she is also not a lessee over the petition lands, thereby too, has no *locus standi* to maintain the instant writ petition.

10. Further, a perusal of para No. 3 of the reply filed by respondent No. 2 – NHAI, reveals that the land losers concerned filed no objections against the launching of the acquisition proceedings rather they received the determined compensation in lieu of acquisition(s) of their lands. Consequently, thereby there is no *locus standi* inhering in the present petitioner to make any lawful challenge to the launching of the acquisition proceedings at the instance of the NHAI.

11. Moreover, since the instant allotment, was made to the petitioner on 07.04.2017, by respondent No. 5-BPCL, whereas, the acquisition notification under Section 3-D of the 'NHAI Act', was issued on 19.07.2010, followed by an award dated 26.07.2013, thus, after making of the notification (supra), respondent No. 5 - BPCL, had no authority whatsoever through making of the notification (Annexure P-1) rather on 07.04.2017, thus allot a retail outlet to the petitioner encompassing therein the acquired lands. The reason being that on launching of the acquisition proceedings, the vendor became divested of any right, title or interest over the acquired lands, whereas, complete investment of right, title and interest over the acquired lands, rather became thus then conferred, upon, the acquiring authority. Thereby too

the lessee (respondent No. 5-BPCL) had no right, title and interest to issue Annexure P-1.

12. Since, thereby the allotment Annexure is vitiated, reiteratedly, thereupon, there is no valid *locus standi* in the present petitioner to make any lawful challenge to the launching of the acquisition proceeding(s), which has now terminated through making of any award on 26.07.2013, besides when the determined compensation amount has been received by the land losers concerned.

13. Further, as per Section 3-D (4) of the 'NHAI Act', provisions whereof are extracted hereinafter, there is a statutory bar against any challenge being made to a acquisition notification as made under Section 3-D (1) of the said Act.

[3D. Declaration of acquisition.--(1) Where no objection under sub-section(1) of section 3C has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objection under sub-section(2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired for the purpose or purposes mentioned in sub-section(1) of section 3A.

(2) On the publication of the declaration under sub-section(1), the land shall vest absolutely in the Central Government free from all encumbrances.

(3) Where in respect of any land, a notification has been published under sub-section(1) of section 3A for its acquisition but no declaration under sub-section(1) has been published within a period of one year from the date of publication of that notification, the said notification

shall cease to have any effect:

Provided that in computing the said period of one year, the period or periods during which any action or proceedings to be taken in pursuance of the notification issued under sub-section(1) of section 3A is stayed by an order of a court shall be excluded

(4) A declaration made by the Central Government under sub-section(1) shall not be called in question in any court or by any other authority.]

14. Thereby the instant writ challenge becomes unhinged.

15. Furthermore, a reading of para No. 9, of the reply, on affidavit, reveals, that the substance of acquisition notification under Section 3-A of the 'NHAI Act', was published in two daily newspapers widely circulating in the locality, inasmuch as, the same became published in 'The Hindustan Times (Chandigarh Edition) dated 09.03.2010 and Dainik Jagaran (Punjab Edition) dated 10.03.2010.

16. Since, pursuant to the publication of the notification (supra) under Section 3-A, thus, no objections under Section 3-C were received from the landlosers concerned, and/or from the lessee concerned, and, whereafter the declaration under Section 3-D of the said Act was issued. Conspicuously, thereby now there is an estoppel working against the land losers concerned, or even against the lessee concerned, besides also the said estoppel works even against the present petitioner.

17. Consequently, since the lease as made to the lessee concerned, was thus made in the year 2000, and the notification for acquisition was published in the year 2010. Resultantly thereby rather the lessee had an interest of compensation, but when no lawful motion, for the determined compensation amount, being also released, to the

lessee rather became ventilated before the statutory authority concerned. Therefore, in the wake of the above, besides when despite a wide circulation, being made to the publication of the acquisition notification (supra), thereby when the lessee also had acquired knowledge of the said publication, yet it not making any prompt protest, to the launching of the acquisition proceedings. Consequently, when at the relevant stage, a lawful protest may be rather was amenable to be possibly raised by the lessee concerned, yet when it remained un-raised. Therefore, though the lessee had both an interest in the compensation amount besides may have a *locus standi* to challenge the launching of the acquisition proceedings, but when no lawful challenge has been made either by the land losers concerned or by the lessee.

18. In aftermath, reiteratedly the present petitioner who became allotted the retail outlet, post the conclusion of the acquisition proceedings, but naturally, has no lawful *locus standi*, to make any lawful challenge to the same.

19. Moreover, when the acquisition notification (supra) became widely published in the newspapers (supra). Therefore, there was no occasion for the counsel for the petitioner arguing, that no individual notice of the acquisition notification (supra), became served either upon the person running the retail outlet, at that relevant point of time or upon respondent No. 5 – BPCL (lessee), as the same for the above reason, was never required to, at the relevant date, thus being personally served, upon, the present petitioner, as at the stage (Supra), no allotment through Annexure P-1, was made in favour of petitioner by respondent No. 5 – BPCL nor in the wake of wide publication being

be served upon the BPCL.

20. Furthermore, the respondent No. 2-NHAI in its reply on affidavit, firmly contends that the writ land(s), were acquired for furthering the requisite public purpose, and that the petition lands, are an integral component of the layout plans relating to the completion of the relevant public purpose. Consequently, 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 petitioner's claim for the acquired lands becoming released from acquisition.

21. However, to do substantial justice to the present petitioner so as to enable her to make an able user of the petrol pump, respondent No. 2 - NHAI is directed to ensure, if feasible, that inlet and outlet points to the petrol pump, thus be, in the manner deemed fit, rather be made available to the customers availing the services at the petrol pump of the petitioner.

FINAL ORDER OF THIS COURT.

22. In aftermath, this Court finds no merit in the writ petition, and, with the above observations, the same is dismissed.

23. The impugned notification and consequent thereto award is maintained and affirmed.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

16.12.2023

kavneet singh

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