

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

(I) CWP No. 13314 of 2004
Reserved on : August 22, 2023
Date of decision : September 11, 2023

Pawan Singh and anotherPetitioners

Versus

State of Haryana and othersRespondents

(II) CWP No. 13313 of 2004

Attar Singh and anotherPetitioners

Versus

State of Haryana and othersRespondents

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

Present : Mr. M.L. Sharma, Advocate, for the petitioners

Mr. Ankur Mittal, Additional Advocate General, Haryana with
Mr. Saurabh Mago, Assistant Advocate General, Haryana
for the respondents

KULDEEP TIWARI, J.

1. The petitioners in both petitions seek quashing of the same notifications, on the same grounds, therefore, both the petitions are being heard together for disposal. However, for the sake of brevity, the facts are being taken up from CWP No. 13314 of 2004.

2. The present writ petitions have been filed by the petitioners for quashing of the notification under Section 4 of the Land Acquisition

Act, 1894 (in short, the Act of 1894) dated 17.4.2002, whereby the land acquisition authority sought to acquire 1326.04 acres of land, for the purpose of residential, commercial and institutional for Sector 1(Part) 10-11(Part), 12 and 13 Bahadurgarh, under the Haryana Urban Development Authority, further declaration was made under Section 6 of the Act of 1894 on 10.4.2003 for acquiring about 1239.05 acres of land and notice was issued under Section 9 of the Act of 1894, on the ground of discrimination and notifications (supra) are not in consonance with the provisions of National Capital Region Planning Board Act No. 2 of 1985 (in short, the Act of 1985) and was in contravention of National Capital Regional Plan of 2001.

3. Learned counsel for the petitioners submitted that the petitioners have raised “A” class construction prior to the issuance of notification under Section 4 of the Act of 1894. Some instances were highlighted by the counsel, whereby, similarly situated land has been released by the acquiring authority. However, he asserts that the claim of the petitioners was not taken into account by the competent authority concerned, therefore, they are being subjected to discrimination.

4. Before we delve deeper into the legality of notification(s) (supra), it is imperative to note that the award was announced by the Land Acquisition Collector concerned on 25.6.2004 and in pursuance of pronouncement of the award, the possession was taken vide Rapat No. 484 dated 25.6.2006 and the total amount of compensation amounting to Rs 72,57,04,098/- was tendered and out of that amount, a sum of Rs

53,59,11,899/- had been disbursed to the landowners concerned.

5. As a matter of fact, the instant writ petition(s) were earlier dismissed by this Court vide order dated 7.5.2010, on the ground that the writ petitions were filed after pronouncement of the award and the possession has already been assumed by recording Rapat in the revenue record.

6. The petitioners again knocked the doors of this Court by way of filing review application No. 169 of 2010 in CWP No. 13314 of 2004, for review of the above said order. However, the same was also dismissed by this Court. The relevant extract of the order is read as under:-

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2. By way of these review applications an effort is made to re-argue the case by putting forward the plea that there is hostile discrimination against the applicant-petitioner(s), inasmuch as, their land has been acquired whereas land belonging to other similarly situated persons have been left out of the acquisition. It has also been submitted that the question of delay would not come because the information concerning exclusion of land from acquisition became public only on the announcement of award. The writ petitions having been filed within a week or ten days of the announcement of award would not suffer the accusation of delay.

3. Having heard learned counsel at a considerable length we are of the view that the applicant-petitioner(s) did not raise any such objection when the writ petitions were heard and eventually dismissed on 7.5.2010. Learned counsel for the applicant-petitioner(s) is not in a position to controvert and/or accept the aforesaid fact because at the time of arguing the writ petitions originally, he was not the counsel

of the applicant-petitioner(s). Therefore, it has to be concluded that no argument, which are sought to be raised now, were raised. When we questioned the learned counsel he submitted that the plea has been raised in the petition, which is no answer to the query. Under the garb of seeking review the applicant-petitioners) cannot argue the case afresh.

4. The jurisdiction of review can be exercised if there is an error of fact, jurisdictional error or any such error which have caused miscarriage of justice. No such ground is available for exercising review jurisdiction. Even otherwise, the counsel who had argued the original case should have appeared, which is more appropriate course, as has been held by Hon'ble the Supreme Court in the cases of Tamil Nadu Electricity Board v. N. Raiu Reddiar, (1997) 9 SCC 736 and M. Poornachandran v. State of Tamil Nadu, (1996) 6 SCC 755.

5. In view of above, these review applications fail and the same are dismissed."

7. Feeling aggrieved with the aforesaid order, passed by this Court, the petitioners approached the Hon'ble Supreme Court by filing SLP(C) No. 3191-3192 of 2011, which was disposed of vide order dated 17.11.2015, in terms of the order dated 29.4.2011, passed in ***Civil Appeal No. 3779 of 2011, titled as Prahlad Singh & Ors vs Union of India & Ors.***, which arose out of the same acquisition proceedings. It would be relevant to mention here that in ***Prahlad Singh's*** case (supra), the Hon'ble Supreme Court has held that the vesting of land under Section 16 of the Act of 1894, begins with presumption of taking of actual/physical possession and until that is done, legal presumption of vestment enshrined as under Section 16 of the Act of 1894 cannot be raised in favour of the acquiring

authority concerned and since the actual physical possession of land remained with the primary land owner, therefore, the land does not vest with the acquiring authority concerned and finally the matter was remanded back to this Court for disposal according to the merits of the writ petition.

The relevant part is extracted herein below:-

“We have given our serious thought to the entire matter and carefully examined the records. Section 16 lays down that once the Collector has made an award under Section 11, he can take possession of the acquired land. Simultaneously, the section declares that upon taking possession by the Collector, the acquired land shall vest absolutely in the Government free from all encumbrances. In terms of the plain language of this section, vesting of the acquired land in the Government takes place as soon as possession is taken by the Collector after passing an award under Section 11. To put it differently, the vesting of land under Section 16 of the Act presupposes actual taking of possession and till that is done, legal presumption of vesting enshrined in Section 16 cannot be raised in favour of the acquiring authority.

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“The same issue was recently considered in C.A. No. 3604 of 2011 – Banda Development Authority, Banda v. Moti Lal Agarwal decided on 26.4.2011. After making reference to the judgments in Balwant Narayan Bhagde v. M.D. Bhagwat (supra), Balmokand Khatri Educational and Industrial Trust v. State of Punjab (supra), P.K. Kalburqi v. State of Karnataka (supra), NTPC v. Mahesh Dutta (supra), Sita Ram Bhandar Society v. Govt. of NCT, Delhi (supra), Omprakash Verma v. State of Andhra Pradesh (supra) and Nahar Singh v.

State of U.P. (1996) 1 SCC 434, this Court laid down the following principles:

“(i) No hard and fast rule can be laid down as to what act would constitute taking of possession of the acquired land. (ii) If the acquired land is vacant, the act of the concerned State authority to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.

(iii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the concerned authority will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the concerned authority will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.

(iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.

(v) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17 (3A) and substantial portion of the acquired land has been utilised in furtherance of the particular public purpose, then the Court may reasonably presume that possession of the acquired land has been taken.”

If the present case is examined in the light of the facts which have been brought on record and the principles laid down in the judgment in Banda Development Authority's case, it is not possible to sustain the finding and conclusion recorded by the High Court that the acquired land had vested in the State Government because the actual and physical possession of the acquired land always remained with the appellants and no evidence has been produced by the respondents to show that possession was taken by preparing a panchnama in the presence of independent witnesses and their signatures were obtained on the panchnama.

A reading of the Khasra Girdawari and Jamabandis, copies of which have been placed on record, shows that actual and physical possession of the acquired land is still with the appellants. Jamabandis relate to the year 2005-2006. Copies of notice dated 10/11.2.2011 issued by Uttar Haryana Bijli Vitran Nigam Ltd. relates to appellant No.1 – Prahlad Singh and this, prima facie, supports the appellants' assertion that physical possession of the land is still with them. Respondent Nos. 3 to 6 have not placed any document before this Court to show that actual possession of the acquired land was taken on the particular date. Therefore, the High Court was not right in recording a finding that the acquired land will be deemed to have vested in the State Government.

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In the result, the appeal is allowed. The impugned order is set aside and the matter is remitted to the High Court for disposal of the writ petition on merits. The parties are left to bear their own costs.

8. The perusal of the above observation made by the Hon'ble Supreme Court reveals that a question as to whether the land can be said to have vest in the State under Section 16 of the Act, if only the Rapat is

drawn and actual physical possession remains with the landowner and it was held that since no actual possession was taken by the Land Acquisition Authority concerned, therefore, the land cannot be said to have vested under the State by dint of Section 16 of the Act of 1894. Under the strength of the above finding in ***Prahlad Singh's*** case (supra), counsel for the petitioners vociferously argued that since the similar raised question has now been answered in their matter, therefore, the acquisition in view of ***Prahlad Singh's*** case (supra) has lapsed.

9. We have perused the matter in detail. However, we are unable to accept the submission made by the learned counsel for the petitioners. Though the Hon'ble Supreme Court has remanded back the matter to decide the lis in view of ***Prahlad Singh's*** case (supra), however, thereafter the Hon'ble Supreme Court in Five Judges Bench matter in ***“Indore Development Authority v. Manoharlal and others etc.”***, ***AIR 2020 SC 1496***, has, in fact, overruled the ratio laid down by the Hon'ble Supreme Court in ***Prahlad Singh's*** case (supra), wherein, the recording of Rapat Roznamacha is held to be sufficient to vest the ownership of land in the State by the dint of Section 16 of the Act, 1894 instead of actual physical possession. The relevant finding is extracted herein below:-

“244. Section 16 of the Act of 1894 provided that possession of land may be taken by the State Government after passing of an award and thereupon land vest free from all encumbrances in the State Government. Similar are the provisions made in the case of urgency in Section 17(1). The word “possession” has been used in the Act of 1894, whereas in Section 24(2) of Act of 2013, the expression “physical

possession” is used. It is submitted that drawing of panchnama for taking over the possession is not enough when the actual physical possession remained with the landowner and Section 24(2) requires actual physical possession to be taken, not the possession in any other form. When the State has acquired the land and award has been passed, land vests in the State Government free from all encumbrances. The act of vesting of the land in the State is with possession, any person retaining the possession, thereafter, has to be treated as trespasser and has no right to possess the land which vests in the State free from all encumbrances.

245. The question which arises whether there is any difference between taking possession under the Act of 1894 and the expression “physical possession” used in Section 24 (2). As a matter of fact, what was contemplated under the Act of 1894, by taking the possession meant only physical possession of the land. Taking over the possession under the Act of 2013 always amounted to taking over physical possession of the land. When the State Government acquires land and draws up a memorandum of taking possession, that amounts to taking the physical possession of the land. On the large chunk of property or otherwise which is acquired, the Government is not supposed to put some other person or the police force in possession to retain it and start cultivating it till the land is used by it for the purpose for which it has been acquired. The Government is not supposed to start residing or to physically occupy it once possession has been taken by drawing the inquest proceedings for obtaining possession thereof. Thereafter, if any further retaining of land or any re-entry is made on the land or someone starts cultivation on the open land or starts residing in the outhouse, etc., is deemed to be the trespasser on land which in possession of the State. The possession of trespasser

always inures for the benefit of the real owner that is the State Government in the case.

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256. Thus, it is apparent that vesting is with possession and the statute has provided under Sections 16 and 17 of the Act of 1894 that once possession is taken, absolute vesting occurred. It is an indefeasible right and vesting is with possession thereafter. The vesting specified under section 16, takes place after various steps, such as, notification under section 4, declaration under section 6, notice under section 9, award under section 11 and then possession. The statutory provision of vesting of property absolutely free from all encumbrances has to be accorded full effect. Not only the possession vests in the State but all other encumbrances are also removed forthwith. The title of the landholder ceases and the state becomes the absolute owner and in possession of the property. Thereafter there is no control of the landowner over the property. He cannot have any animus to take the property and to control it. Even if he has retained the possession or otherwise trespassed upon it after possession has been taken by the State, he is a trespasser and such possession of trespasser enures for his benefit and on behalf of the owner.”

10. In view of the above specific finding by the Constitution Bench of the Hon'ble Supreme Court, the land does vest with the State Government upon recording the Rapat Roznamacha by the revenue authority concerned and as we already stated above that not only the Rapat was recorded, but the compensation amount has also been tendered with the competent authority concerned and most of the amount has also been disbursed to the landowners concerned.

11. The next submission made by counsel for the petitioners is that

the petitioners have made “A” class construction over the acquired land and the Government has policy to release the same. He also highlighted two instances with regard to the land which has been released on the ground of running industries and “A” class construction.

12. We have gone through the record. The petitioners have filed objections under Section 5A of the Act of 1894. The same is read as under:-

“Notification has been issued vide publication of notice in daily newspaper "Hari Bhoomi" on 21.4.2002 in which my plot bearing Khasra No.34/26 having 505 Sq- yards area, registered before Sub Registrar. Bahadurgarh, which is popularly known as Balour colony. This colony is equipped with all basic amenities. This area is thickly populated and surrounded by many houses/abadi. and I am living there for the last 50 years and I am residing in this area, in which I have constructed a boundary wall for cattles, So you are requested to exempt my house/land from the acquisition and oblige.”

13. The reading of the objections filed by the petitioners itself made it clear that there was only a boundary wall constructed for cattle shed on the petition land. However, the land was released in those matters where construction was made prior to the issuance of notification under Section 4 of the Act of 1894. Once it has been admitted by the petitioners in their objections filed under Section 5-A of the Act of 1894 that no construction over the land in question was in existence at the time of issuance of notification under Section 4 of the Act of 1894 except the boundary wall, they cannot plead discrimination specifically in the

circumstances, where the land(s) of those people were released where the construction was in existence prior to the issuance of notification under Section 4 of the Act of 1894.

14. Finally the learned counsel for the petitioners has raised the issue that there is violation of the provisions of Act of 1985. Although, this issue was not pressed during the arguments, whereas the learned counsel for the State has mentioned that the issue has no more *res integra* as the same has been considered in detail in the case of **Karambir Rathi and others vs State of Haryana and others, 2013(51) RCR (Civil) 247**, by the Coordinate Bench of this Court, while relying upon ***Bhagat Singh v. State of U.P. and others, AIR 1999 SCC 436*** and ***Aflatoon v. Lt. Governor of Delhi (1975) 4 SCC 285 : (AIR 1974 SC 2077)***, wherein it was held that nothing precludes the Government from acquiring the land for planned development under the provisions of Act of 1894 and the said action usually precedes the development. The relevant part is reproduced as under:-

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*We are of the opinion that the observations made by the Hon’ble Apex Court in **Bhagat Singh v. State of U.P. and others, AIR 1999 SCC 436** would be applicable. In the said case, the contention raised was that the acquisition was bad on the ground that the use of the land for market yard was not one of the permissible uses of the land as per the master plan and permission would have to be taken to have the master plan suitably amended as the land was for the use of the light industry and which was later changed as green belt. The said submission was repelled by the Hon’ble Apex Court*

*by placing reliance upon the observations made in **Aflatoon v. Lt. Governor of Delhi, (1975) 4 SCC 285**. Accordingly, it was held that nothing precludes the Government from acquiring the land for planned development under the Act and the said action usually precedes development. The beneficiary could always move the competent authority and obtain the sanction for suitable modification of the master plan. The relevant observations read as under :-*

*“20. An analogous issue arose in the case **Aflatoon v. Lt. Governor of Delhi (1975) 4 SCC 285 : (AIR 1974 SC 2077)**. In that case, a notification was issued under S. 4(1) of the Act for acquisition of a vast extent of land for the planned development of Delhi. The said acquisition was questioned. One of the contentions was that for such a purpose, development, action had to be taken only under the Delhi Development Act, 1957 and that too by the Chief Commissioner of Delhi under that Act and not by the Central Government under the Land Acquisition Act. It was there argued that inasmuch as there was no Master Plan nor Zonal Plan in existence on the date of notification, the acquisition was bad. This Court rejected objection raised by the owners and observed, after referring to Ss. 12 and 15 of the Delhi Development Act, 1957, as follows (para 23) :*

*“The planned development of Delhi had been decided upon by the Government before 1959, viz., even before the Delhi Development Act came into force. It is true that there could be no planned development of Delhi except in accordance with the provisions of the Delhi Development Act after that Act came into force but there is no inhibition in acquiring land for planned development of Delhi under the Act before the Master Plan was ready. (See the decision in **Patna Improvement Trust v. Smt. Lakshmi Devi (1963 Suppl (2) SCR 812) : (AIR 1963 SC 1077)**. In other words,*

the fact that actual development is permissible in an area other than a development, area with the approval of sanction of the local authority did not preclude the Central Government from acquiring the land for planned development under the Act. Section 12 is concerned only with the planned development. It has nothing to do with acquisition of property; acquisition generally precedes development.”

This Court observed (para 23) :

“For planned development in an area other than a development area it is only necessary to obtain the sanction or approval of the local authority as provided in S. 12 (3). The Central Government could acquire any property under the Act and develop it after obtaining the approval of the local authority.”

21. The above decision of this Court was followed by the Allahabad High Court in Kendriya Karamchhari Exam Mitra Sahkari Avas Samithi Ltd. V. State of U.P. 1988 UPLBEC 645 : (1988 ALL LJ 1224). It was held in that case that the government could acquire any property under the Act and later develop the same after obtaining the necessary approval of the concerned local authority under the Development Act. It was stated (at page 651 of UPLBEC) : (at p. 1230 of All L J) :

“Amendment of Master Plan is permissible with the approval of the State Government under S. 13 of the U.P. Urban Planning and Development Act, 1973 and in the present case the Master Plan showing the area in question as green belt was modified with the approval of the State Government which approval no doubt was accorded subsequent to the issue of notification under Ss.4 and 6. However, as observed by their Lordships of the Supreme Court the mere fact that till the date of the issue of the notification under S. 4 the necessary approval of the Government had

not been obtained cannot preclude the Government from acquiring the land for planned development under the Land Acquisition Act. Acquisition generally precedes development and consequently the land in question could be acquired in anticipation of the approval of the State Government for the change of the land use of the Master Plan prepared by the Development Authority.”

22. As pointed out in the above judgments, there is no need that the land proposed to be acquired by the Government for a particular public purpose should be for the same purpose or use mentioned in the master plan or Zonal Plan for the said area. Nor will the acquisition be invalid merely because the land proposed to be acquired is for a purpose other than the one permitted by the Master Plan or Zonal Plan applicable to that locality. Acquisition will be valid if it is for a public purpose even if it is not for the type of user permitted by the Master Plan or Zonal Plan in force at the time the acquisition is made. It will be for the beneficiary of the acquisition to move the competent authority under the Development Act and obtain the sanction of the said authority for suitable modification of the Master Plan so as to permit the use of the land for the public purpose for which the land is acquired. In fact, it may be difficult for the beneficiary of the acquisition to move the competent authority under the Development Act seeking permission to change of land use even before the land is acquired or before possession is given to the beneficiary. On the principle stated in Aflatoon’s case (AIR 1974 SC 2077), it is clear that acquisition for a public purpose and obtaining permission from competent authority under the concerned Development Act for change of land use are different from one another and the former is not dependent

upon the latter.

23. For the aforesaid reasons this contention of the appellants is rejected.”

15. In view of the above settled principle as laid down by the Hon'ble Apex Court and Coordinate Bench of this Court, we do not find any merits in the instant writ petitions to interfere with the impugned notification(s) merely on the ground that the same are not in consonance with the provisions of National Capital Region Planning Board Act No. 2 of 1985 and in contravention of National Capital Regional Plan of 2001 and accordingly, the instant writ petition(s) are dismissed.

16. Pending civil miscellaneous application, if any, also stands disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

September 11, 2023
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<i>Whether speaking/reasoned ?</i>	<i>Yes/No</i>
<i>Whether Reportable ?</i>	<i>Yes/No</i>