

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

(104)

**RA-CW-59-2022 (O&M)
in CWP-9755-2017**

Prem Chand

....Review Applicant/Petitioner

Versus

State of Haryana and others

.... Respondents

(2)

CWP-5240-2022 (O&M)

Prem Chand

....Petitioner

Versus

State of Haryana and others

.... Respondents

Decided on: 01.03.2023

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

Present: Mr. Sanjiv Gupta, Advocate for the petitioner.

Mr. Ankur Mittal, Addl. AG, Haryana with
Mr. Saurabh Mago, AAG, Haryana.

G.S. Sandhawalia, J.

CM-5468-CWP-2022 in RA-CW-59-2022

Application for condonation of delay of 613 days in filing the review application, is allowed, in view of the averments made in the application duly supported by affidavit. Delay of 613 days in filing the review application is condoned.

CM stands disposed of.

RA-CW-59-2022 in CWP-9755-2017 & CWP-5240-2022 (O&M)

The present judgment shall dispose of RA-CW-59-2022 in CWP-9755-2017 and CWP-5240-2022 filed by the same petitioner. The dispute pertains to the notification dated 27.04.2006 (Annexure P-6) and 26.04.2007 (Annexure P-7) issued under Sections 4 & 6 of the Land

Award dated 23.04.2009. A speaking order was also passed on 03.08.2015 (Annexure P-12), which was also subject matter of challenge.

2. Initially CWP-9755-2017 was only filed placing reliance upon Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013 (for short '2013 Act') on the ground that neither compensation had been taken nor possession had been taken by the respondents for the land falling in Khewat No.3834, Khasra Nos.7245 and 9327 (2 bighas 12 biswas). Prayer has also been made for issuance of a writ by restraining the respondents from dispossessing the petitioner from the suit property.

3. The sale deed in question was dated 15.11.1999 (Annexure P-1) of the land measuring 2 Bigha 12 Biswas in dispute. The petitioner had allegedly a Car Workshop was functional on the said piece of land and in the first round of litigation had filed **CWP No.9506 of 2014**, wherein directions had issued on 16.05.2014 by the Coordinate Bench to consider the claim of the petitioner as in terms of the order passed in **CWP No.12119 of 2013 'Shamsher Singh Vs. State of Haryana and others'** decided on 11.09.2013. Resultantly, the speaking order was passed on 03.08.2015 (Annexure P-12), wherein the claim of the petitioner was rejected on the ground that the land was being used as a garage which was a non-conforming use and possession could not be taken due to stay granted in **CWP No.10529 of 2008** on 06.05.2009. It was noticed that the said land was a part of the 15 meter wide green belt and 15 meter wide service road. The land in question fell in the acquisition for Plan and

Development of Industrial Estate in Section 37, Karnal and the relevant part of the order reads as under:-

“3. Position at site and utilization of land as per layout plan:-

Petitioner had constructed a workshop prior to notification u/s 4. The details of which are as under:-

Sr. No.	Status of construction from the side of NH	Area (Sqm.)	Utilization on layout plan
1.	Shed	6.70x50=36.85	15 mtrs wide green belt
2.	Pucca Room	3.90x5.95=23.205	15 mtrs wide green belt and 15 mtrs service road
3.	Shed	5.70x11.80=67.25	15 mtrs wide service road
4.	Shed	5.80x12=69.60	20 mtrs wide green belt
5.	Open space	8.60x12=103.20	20 mtrs wide green belt
6.	Shed	5.40x12=64.80	20 mtrs wide green belt

4. It was noticed that the petitioner has not lifted the compensation amount of Rs.4,14,753/-, though a sum of Rs.5162.56 lakhs had been deposited with the Land Acquisition Collector. The benefits as per the case of **Shamsher Singh (supra)** was to be given where the residential house of the petitioner was in existence at the time of issuance of Section 4 notification and the matter regarding release of the constructed portion alongwith proportionate open space for proper utilization was pending consideration with the concerned authorities. It was also noticed that in the absence of any CLU taken for the proper utilization of land which is commercial and the fact that the same is a part of the green belt and the service road of the Final Development Plan of Karnal 2025 AD, where a workshop is a non-permissible use, the claim of the petitioner for release of land was rejected.

5. Initially, the writ petition was dismissed on 16.07.2018 while noticing that the Awards had been passed on 23.04.2009 and 23.06.2009 within the period of 5 years from the date of acquisition and, therefore, provisions of Section 24 (2) of the 2013 Act could not be invoked. The said order reads as under:-

“Reply filed on behalf of respondent No.2 today in Court has been taken on record. Copy thereof has been given to counsel appearing on behalf of the petitioner.

Prayer made in the present writ petition is that acquisition of land has lapsed in view of provisions of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, the Act) as the notifications under Sections 4 and 6 of the Land Acquisition Act were issued on 27.04.2006 and 26.04.2007, respectively and two awards were announced by the Land Acquisition Collector (for short, the Collector) for the land in question i.e. on 23.04.2009 and 23.06.2009.

As period of five years has not lapsed from the date the award was announced by the Collector, provisions of Section 24(2) of the Act cannot be invoked.

The writ petition is dismissed.”

6. Thereafter, CWP-5240-2022 came to be filed placing reliance upon the judgment passed in **Civil Appeal No.5440 of 2000 ‘Hari Ram Vs. State of Haryana and others’** claiming the relief under Policy dated 07.12.2007 for Rehabilitation & Resettlement of Landowners. Resultantly, the review application was also filed in the first writ petition i.e. **RA-CW-59-2022 in CWP-9755-2017**.

7. The stand of the State regarding the said claim is that petitioner had never applied for R & R Plot in the specified format to the HSIIDC from the year 2010 to 2022 and, therefore, he is not entitled for

the said claim. It has further been averred that that the petitioner should have vacated the land in question and notice dated 12.02.2019 had also been issued to him asking to vacate the said land.

8. The review application was based on the fact that notice for demolition had been issued and the matter was not debated on merits and was only debated on limited aspect with respect to applicability of Section 24 (2) of the 2013 Act.

9. Firstly, we are of the considered opinion that the issue of release of land under Section 24 (2) has been settled beyond any ambit of doubt in view of the judgment of the Constitution Bench passed in **Indore Development Authority vs. Manoharlal and others, AIR 2020 SC 1496**, and, therefore, no such claim can be raised on that account. The authorities have duly considered the case of the petitioner in pursuance of the earlier order and found that his case is not covered by the judgment passed in **Shamsher Singh (supra)**, in pursuance of which his earlier case has been disposed off. It was noticed that the land was being used for commercial purposes for a garage and there are no residential premises involved, which was available in the case of **Shamsher Singh (supra)** and, therefore, the benefit of release of land had been granted in his case. The speaking order has been duly passed, which would go on to show that the land is falling within the Master Plan Development of Karnal and the same is part of service road and green belt area. It has also been brought to our notice that the challenge to the notifications in question and the Award dated 23.04.2009 was upheld by the Coordinate Bench in **CWP**

No.105229 of 2008 ‘Joginder Singh and others Vs. State of Haryana and others’ decided on 07.11.2016.

10. In such circumstances, we feel that no justification has been made to interfere in the order passed by the authorities as the land was being used for non-conforming purposes as noticed in the order. Accordingly, we do not find any ground to review the earlier order dated 16.07.2018 passed in CWP-9755-2017.

11. However, the only relief which can be granted to the petitioner is that he had interim order in his favour i.e. status-quo regarding constructed area from 08.05.2017 in the first writ petition i.e. CWP-9755-2017, due to which he continued to occupy the land in the hope that he might be successful in the litigation and did not apply under the Rehabilitation Policy of the HSIIDC. In such circumstances, we are of the considered opinion that the stand of the State not to consider his case under the said policy would not be justified on the ground that he had not applied within the fixed time frame.

12. Resultantly, liberty is given to the petitioner to apply for the said relief for allotment of plot under the Rehabilitation Policy of the HSIIDC, which would be considered by the respondent-HSIIDC. In case, the said application is filed expeditiously within a period of 2 months from the receipt of the certified copy of this order, the said Corporation shall then proceed to decide the entitlement within a period of 3 months, thereafter. The challenge as such to the land acquisition, thus, on merits is repelled, keeping in view the fact that the plan development is hampered, in case 2 Bigha 12 Biswas of land is left out.

13. Resultantly, in view of the above observations RA-CW-59-2022 in CWP-9755-2017 stands dismissed and CWP-5240-2022 stands disposed of.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

01.03.2023
Naveen

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