

CWP No. 8818 of 2021 (O&M) with
CWP No.11569 of 2021(O&M)

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2023:PHHC:046676-DB

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

Date of Decision:28.03.2023

(1) CWP No. 8818 of 2021 (O&M)

Azad

... Petitioner

Versus

Chief General Manager & Others

... Respondents

(2) CWP No.11569 of 2021 (O&M)

Ranbeer and another

... Petitioners

Versus

Chief General Manager & Others

... Respondents

**CORAM:- HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH.
HON'BLE MR. JUSTICE SANJIV BERRY.**

Present:- Mr.K.S. Malik, Advocate for the petitioner.

Mr. Rishi Kaushal, Advocate
for respondent No. 1 & 2.

Mr. Parvindra S. Chauhan, Sr. Addl. A.G., Haryana

SANJIV BERRY, J.

Vide this order two identical writ petitions filed under Article 226/227 of the Constitution of India, bearing No. 8818 of 2021 and 11569 of 2021 are being disposed of having been filed by the respective petitioners seeking issuance of writ of certiorari for quashing of the impugned notice dated 10.03.2021 (Annexure P-11) passed by respondent No.2 under Sub-Section 26

of the Control of National Highways (Land & Traffic) Act, 2002 and further not to acquire or demolish the construction of the petitioner in killa numbers 2405//2/2/1/1 (in CWP No. 8818 of 2021) and 2360//2 Min (in CWP No. 11569 of 2021) situated in in Village Pauli, Tehsil Julana and District Jind.

2. Briefly stated the facts pleaded by the petitioners are that they are owner and in possession of the land in question having been originally allotted by the Gram Panchayat being the landless persons and mutation to this fact was sanctioned as Annexure P-2, whereon the petitioners raised construction of their houses. It is pleaded that vide Gazette Notification dated 22.07.2012 (Annexure P-5) issued under Section 3(A) and Sub-Section(1) by Government of India, the land was acquired for construction of four lane road of National Highway No.71. The land of village Pauli was shown in the Gazette Notification, which was published in newspaper. The land mentioned in the Notification dated 22.07.2012 was acquired. Respondents demarcated the land and marked the site of the *killa* number 2405//2 and 2360//2 and some portion of the houses of the petitioners which was shown in the road and respondents made compensation up to the mark of the respective houses and the petitioners removed their houses upto that mark. Thereafter, the petitioners reconstructed the houses after giving up the portion of acquired plot. The respondents only paid compensation to the material of the houses and no compensation of land has been received by the petitioner. The release deed and mutation was sanctioned in the name of the petitioners after the notification and acquisition.

3. It is averred that Respondent No.2 issued notice dated 25.06.2020 (Annexure P-8) for removal of unauthorized occupation/access to the

petitioners in *Killa* number 2405//2 and 2360//2 in village Pauli, but having no concern with these numbers, the petitioners did not reply to the said notices as their houses were in *Killa* No. 2405//2/2/1/1 and 2360//2/1/3 respectively. Petitioners and other co-habitats moved applications requesting respondents to construct four lane road extended toward the eastern side of the *abadi deh* of the village/road for which sufficient land was available and respondents department will not require to pay compensation as the same belongs to Panchayat, However, without following legal procedure, respondents issued notices on 10.03.2021 to the petitioners calling upon them to remove their unauthorized construction on the highway. Petitioners objected to the notice dated 10.03.2021 but no action had been taken by the competent authority and as such the instant writ petitions have been filed against the illegal and arbitrary act on the part of the respondents.

4. On notice, the categorical stand of the respondents had been that the petitioners have not come to the court with clean hands and no cause of action has arisen. It has been submitted that the project of widening of NH-71, four laning thereof etc. on Rohtak-Jind section was started in the year 2012-2013 after notification under Section 3A of the Act, it was widely published, claims invited and the competent authority announced the award on 1.10.2013 in respect of the Notification dated 04.07.2012 under Section 3A(i) of the National Highway Act, 1956(hereinafter referred to as Act, 1956) and the notification dated 13.03.2013 under Section 3D(i) of the Act, 1956 which was published in Govt. of India Gazette. After the same the land specified in the Schedule vested in central Government including the Khasra numbers in question bearing No.

2405//2 Min and 2360//2 Min, Village Pauli, Tehsil Julana, District Jind.

5. It was submitted that the contention of the petitioners that their lands in Khasra Nos. 2405//2/2/1/1 and 2360//2/1/3 and 2360//2/1 were not acquired, is factually wrong and incorrect as the entire Khasra Number 2405//2 min and 2360//2 min had been acquired vide notification under Section 3A followed by award dated 01.10.2013. Reference was also made to the site plan Annexure R-1 in this regard. It was further submitted that survey conducted by PWD department regarding the acquired structures the houses of petitioners were marked as structure No. 145 qua CWP No. 8818 of 2021 and Nos. 141 and 142 qua CWP No. 11569 of 2021 regarding which the supplementary award dated 02.02.2015 was passed. It is further contended that once the land had been acquired in accordance with law, the petitioners were left with no right in the property as they have unauthorizedly occupied the property belonging to the Government as such the prayer was made for dismissal of the writ petitions.

6. We have heard the respective submissions of learned counsels for the parties and also have gone through the record with their assistance.

7. It has been submitted by learned counsel for the petitioners that the petitioners had been in the peaceful possession of the property in question comprising in Khasra No. 2405//2/1/1 and Khasra No. 2360//2/1/3 and 2360//2/1 which were allotted to them being landless persons by the Gram Panchayat. He submitted that the respondents wanted to demolish the houses of the petitioners in forcible illegal manner on the pretext that the said land had been acquired by the respondents. He submitted that infact the respondents had acquired the land comprising in Khasra No. 2405//2 Min and 2360//2 Min and

not the land comprising in Khasra No. 2405//2/1/1 as well as Khasra Nos. 2360//2/1/3 and 2360//2/1. He submitted that the respondents had issued notice dated 10.03.2021 illegally and contrary to the provisions of the Act and being unconstitutional, the petitioners are entitled to the issuance of writ as prayed for.

8. The learned counsels representing the respondents have assailed these arguments on the ground that the petitioners have no *locus standi* or cause of action to file the present petitions as the respondents have acted in accordance with law. They submitted that infact the land in question was acquired along with other land vide Notification dated 04.07.2012 under Section 3A and Notification dated 13.03.2013 under Section 3D(i) of the National Highway Authority Act, 1956 and the competent authority had passed award in this regard dated 01.10.2013. thereafter, the land vested in the government on the basis of Gazette Notification. It is vehemently contended that the petitioners claim is *prima facie* wrong in alleging that their piece of land comprised in Khasra Nos. 2405//2/1/1 as well as Khasra No. 2360//2/1/3 and 2360//2/1 had not been acquired whereas the factual position is that this chunk of land formed part of Khasra No. 2405//2 and 2360//2, which already stood acquired in accordance with law and duly notified in the official Gazette vide Notification dated 13.03.2013 as well. The learned counsels representing the respondents as such prayed for dismissal of the petitions.

9. Considering the arguments it transpires that in order to widen the National Highway No.71 on the stretch of Rohtak-Jind section, the Notification under Section 3A of the Act, 1956 was duly published and the claims/objections were duly received from the land owners whose land was to be acquired for the

purpose of widening/four laning of the highway. The competent authority had passed the award dated 01.10.2013 in respect to the Notification under Section 3A(i) of the Act, 1956 and the notification under Section 3D(i) of the Act was also published in the official Gazette. Once this process is completed, the acquired land vested in Government.

10. The perusal of Gazette Notification dated 13.03.2013 clearly shows that Khasra Nos. 2405//2 Min and , Khasra No. 2360//2 Min stood acquired and vested absolutely in the Central Government, free from all encumbrances. Still finding encroachment being there, the respondent Nos. 2 issued notice dated 25.06.2020 for removal of the encroachment/unauthorized occupation in Khasra No. 2405//2 and 2360//2 which the petitioners had agitated and claimed that the petitioners have got no concern with the aforesaid Khasra numbers as they are in occupation of Khasra Nos. 2405//2/1/1, 2360//2/1/3 and 2360//2/1, which have never been acquired. Another notice dated 10.03.2021 was again issued asking the petitioners to remove the encroachments. The issuance of aforesaid notices have been assailed by the petitioners claiming the same to be illegal and unconstitutional.

11. However, perusing the record we find no merits in this contention of the petitioners because it is on record that for the purpose of widening of National Highway no. 71 on the stretch from Rohtak to Jind section, the respondents had acquired the land of various land owners by issuance of Notification under Section 3A(i) of the Act, 1956, followed by calling the objections/claims from the land owners and issuance of Notification under Section 3D(i) of the Act, 1956. It is also on record that the award to this fact

was passed by the Competent Authority on 01.10.2013. Further at the time of survey at the spot by PWD authorities regarding the acquired structures, the properties occupied by the petitioners were marked as structures Nos. 145, 141 and 142 and after evaluation of the structure existing on the acquired land, a Supplementary Award dated 02.02.2015 was also announced. Once the entire process has been completed in accordance with the provisions of the Act, 1956 coupled with the Gazette Notification vesting the land in the Central Government for the purpose of widening of National Highway, the petitioners are left with no right to claim occupation of the acquired land. The contentions of the petitioners that the acquisition of Khasra Nos. 2405//2 Min and 2360//2 Min does not have any concern with the land under occupation of the petitioners comprising in Khasra Nos. 2405//2/1/1, 2360//2/1/3 and 2360//2/1 appears to be manifestly wrong and incorrect because the Khasra Nos. 2405//2/1/1 in fact forms part of Khasra Nos. 2405//2 Min and similarly Khasra Nos. 2360//2/1/3 and 2360//2/1 forms part of Khasra Nos. 2360//2 Min and it is evident from the perusal of official Gazette that Khasra Nos. 2405//2 Min and 2360//2 Min had already been duly acquired by the respondents and the same vested in the Central Government. Therefore, the claim of the petitioners is based purely on misconception, having no merits therein.

12. So far as the contentions of the petitioners to the fact that the compensation has only been paid qua the material of the building/ house and no compensation of the land has been received by the petitioner, is concerned, the remedy thereof is specifically provided under Section 3H of the Act, 1956 and if so advised, the petitioners can seek the appropriate remedy as is available

under the provisions of the Act, 1956.

13. As a consequent to the above discussion, we are of the view that once the respondents having acquired the land in accordance with the provisions of the National Highway Authority Act, 1956 and Gazette Notification having been issued vesting the acquired land in the Central Government, the petitioners have got no legal right to occupy a chunk of acquired land unauthorizedly and in this manner causing obstruction in the development work for the public benefit in the form of widening of National Highway No.71. Since the respondents have acted in accordance with the provisions of the Act and therefore, there is no illegality or infirmity in the respondents issuing notices to the petitioners for removal of encroachment from the land already vesting in the Central Government, under Section 26(2) of Control of National Highway (Land & Traffic) Act, 2002. And as stated above, the petitioners can avail appropriate remedy under Section 3H of the Act, 1956 for redressal of their grievance, if any, qua payment of compensation.

14. Resultantly, in the light of the above discussions, we find no merits in the writ petitions and the same are hereby dismissed.

15. All the pending miscellaneous application(s), if any, stands disposed of in view of the above said judgment.

(AUGUSTINE GEORGE MASIH)
JUDGE

(SANJIV BERRY)
JUDGE

28.03.2023
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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |