

CWP-14810-2002

2023:PHHC:126616-DB

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-14810-2002

Date of Decision : 5.9.2023

KAMLA DEVI

.....Petitioner

VERSUS

STATE OF HARYANA AND ORS

.....Respondents

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

Present : Mr. Anil Kumar Saini, Advocate
for the petitioners.

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

KULDEEP TIWARI. J.

1. The petitioner has thrown a challenge to the acquisition notification dated 30.10.1992 (Annexure P-2), issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as '**the Act of 1894**') and declaration dated 28.10.1993 (Annexure P-3) issued under Section 6 of the *ibid* Act, and the award dated 26.10.1995.

FACTUAL MATRIX

2. The petitioner had purchased a plot vide registered sale-deed No.2335 dated 22.2.1991, and immediately after the purchase, the petitioner had constructed a house over the purchased plot. Thereafter, the respondent-State had issued notification dated 30.12.1992, under Section 4 of the *ibid* Act, showing their intention to acquire the petition land and other land(s) for the public purpose, i.e. development and

utilization of the land for setting up a Mini Urban Estate at Narnaul. Thereupon, after considering the objections under Section 5-A of the *ibid* Act, filed by the land owners, the declaration under Section 6 of the *ibid* Act was issued on dated 28.10.1993 for acquiring 173.01 acres of land including the plot of the petitioner. The award under Section 11 of the *ibid* Act was announced on dated 26.10.1995 with reference to the plot of the petitioner and other land(s).

3. Upon notice in the present petition, the respondent-State has filed their response by way of written statement through Sh. Lalban, learned Land Acquisition Collector, Urban Estates, Haryana, Gurgaon.

SUBMISSIONS BY LEARNED COUNSEL FOR THE PARTIES.

4. The learned counsel for the petitioner has submitted that the petitioner has challenged the impugned notification and declaration on the ground that despite the award being passed way back on dated 26.10.1995, the compensation has neither been deposited nor been paid to the petitioner till date, which was required to be deposited with the petitioner or paid on the date of announcement of the award as per the provisions prescribed under Section 31(1) of the *ibid* Act. The learned counsel for the petitioner has further set up a case of discrimination by citing example of two persons, whose land was released from the acquisition proceedings as they had already constructed their houses and submits that the petitioner had also constructed her house on petition land (s) much prior to the issuance of the notification under Section 4 of the *ibid* Act.

5. On the other hand, the learned State counsel has submitted that the award in respect of the petition land has been announced way back on dated 26.10.1995 and the possession of the said land was also handed over to the HUDA (now known as HSVP) and the *rapat rojnamcha* was entered accordingly, and, therefore, the land in question now vests with HSVP free from all encumbrances. It was further submitted by the learned State counsel that the present writ petition has been filed after passing of 7 years of pronouncement of award, therefore, the same is not maintainable and is liable to be dismissed on the ground of delay and laches. While referring to the reply, it was stated by the learned State counsel that at the time of issuance of notification under Section 4 of the Act, the plot was vacant and no construction was raised. He has further submitted that the petitioner has not filed any objection under Section 5-A of the Act, therefore, the present writ petition is not maintainable.

ANALYSIS

6. Earlier at the time of issuance of notice of motion, the learned counsel for the petitioner submitted that the case of the petitioner was similarly placed with that of CWP-11009 of 2002 in which notice of motion was issued and the stay was granted in favour of the petitioner therein. Upon the submissions of the learned counsel for the petitioner, the following order was passed by the co-ordinate Bench of this Court on 13.9.2022:-

“Notice of motion for 4.12.2002.

To be taken up along with CWP No.11009 of

2002.

Stay dispossession meanwhile.

Mr. Sanjay Vashisth, DAG, Haryana, who is present in the Court, on our asking, accepts notice. A copy of petition has been handed-over to him.

List on 4.12.2002.

Reply, if any, be filed at least three days before the adjourned date with an advance copy to the counsel opposite.”

7. Thereupon, when finally the matter was taken up for hearing, the co-ordinate Bench of this Court while considering the identical case on which the petitioner has placed reliance was dismissed, therefore, the present writ petition was dismissed accordingly vide order dated 17.11.2020. The operative part of the order reads as under:-

*“However, it is further seen that an identical challenge to the very same land acquisition proceedings by way of CWP No. 11009 of 2002 (**Vidhya Devi v. State of Haryana**) on which reliance has been placed in the present writ petition, stood negated by this Court with the said writ petition having been dismissed and with there being no further challenge to the said dismissal. Additionally, today, another petition CWP No. 13847 of 2002 (**Reshmi Devi v. The State of Haryana**), identically challenging the land acquisition proceedings in question, has been dismissed.*

For the all the aforesaid reasons, the present petition is dismissed. The status quo order, if any, hereby stands vacated.”

8. Thereafter, the petitioner has filed the review application for recalling of dismissal order (Supra). This Court while considering that

the petitioner was not given a chance to address the arguments on merits, the dismissal order (Supra) was recalled vide order dated 3.3.2023.

9. We have again considered the matter in its totality and perused the record minutely and we find no merit in the present petition for the reasons recorded hereinafter.

10. Prima facie, the present petition has been filed after 7 years of passing of award. It is not in dispute that the award was passed way back on dated 26.10.1995 and the present writ petition was filed on dated 12.9.2002, the possession of the land was also assumed by the respondent concerned, vide *rapat rojnamcha* Wakyati Halqua Patwar Khana vide *rapat* No.71 dated 3.11.1992 Reliance can be placed on the observations made by the Hon'ble Supreme Court in **State of T.N. and others etc. Vs. L.Krishnan and others etc., 1996 AIR(SC) 497**. The relevant para of the judgment (Supra) reads as under:-

“There is yet another and a very strong factor militating against the writ petitioners. Not only did they fail to file objections in the enquiries held under Section 5A, they also failed to act soon after the declarations under Sections 6 were made. As stated above, the declarations under Sections 6 were made in the year 1978 and the present writ petitions were filed only sometime in the year 1982-83 when the awards were about to be passed. It has been pointed out in Aflatoon, that latches of this nature are fatal. Having held that the public purpose specified in the notification concerned therein is not vague, Mathew, J. made the following observations:

“Assuming for the moment that the public purpose was not sufficiently specified in the notification, did

the appellants make a grievance of it at the appropriate time? If the appellant had really been prejudiced by the non-specification or the public purpose for which the plots in which they were interested were needed, they should have taken steps to have the notification quashed on that ground within a reasonable time. They did not move in the matter even the declaration under Section 6 was published in 1966. They approached the High Court with their writ petitions only in 1970 when the notices under Section 9 were issued to them.

Nor do we think that the petitioners in the writ petitions should be allowed to raise this plea in view of their conduct in not challenging the validity of the notification even after the publication of the declaration under Section 6 in 1966. Of the two writ petitions, one is filed by on behalf of the appellants. There was apparently no reason why the writ petitioners should have waited till 1972 to come to this Court for challenging the validity of the notification issued in 1959 on the ground that the particulars of the public purpose were not specified. A valid notification under Sections 4 is a sine qua non for initiation of proceedings for acquisition of property. To have sat on the fence and allowed the Government to complete the acquisition proceedings on the basis that the notification under Sections 4 and the declaration under Section 6 were valid and then to attack the notification on grounds which were available to them at the time when the notification was

published would be time when the notification was published would be putting a premium on dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioners (see Trilokchand Motichand v. H.B. Munshi, (1969) 2 SCR 824; and Rabindranath Bose v. Union of India, (1970) 2 SCR 697.

From the counter affidavit filed on behalf of the Government, it is clear that the Government have allotted a large portion of the land after the acquisition proceedings were finalised to Cooperative housing societies. To quash the notification at this stage would disturb the rights of third parties who are not before the Court.”

8. It was also revealed from the record that the petitioner did not file any objections under Section 5-A of the *ibid* Act and, therefore, the petitioner cannot be allowed to do the same to the acquisition notifications by way of filing the present writ petition. Reliance in this regard can be placed upon the observations made by the Hon'ble Supreme Court in **Delhi Administration Vs. Gurdip Singh Uban and others, (2000) 7 Supreme Court Cases 296**. The relevant paras of the judgment (Supra) read as under:-

“51. It is true that Section 6 uses the words “particular land” but in our view while referring to its satisfaction in regard to the need to acquire the entire land, the Government need not refer to every piece of particular land. It is sufficient if the authority which conducts the Section 5-A inquiry has considered the objections raised in relation to any particular land. Even where the said authority accepts the objections,

that is not binding on the Government which can take a different view for good reasons. Where the Government agrees with the report under Section 5-A, the declaration under Section 6 need not advert to the reasons or facts concerning each piece of land. Hence, the wide observations made in Balak Ram Gupta's case cannot be accepted.

52. In Abhey Ram' as well as in the judgment in the civil appeals, it has been clearly stated that those claimants who have not filed objections to the Section 4 notification cannot be permitted to contend before the Court that Section 5-A inquiry is vitiated so far as they are concerned. Nor can they be permitted to seek quashing of Section 6 declaration on that ground. We shall elaborate this aspect further.

53. Now objections under Section 5-A, if filed, can relate to the contention that (i) the purpose for which land is being acquired is not a public purpose, (ii) that even if the purpose is a public purpose, the land of the objector is not necessary, in the sense that the public purpose could be served by other land already proposed or some other land to which the objector may refer, or (iii) that in any event, even if this land is necessary for the public purpose, the special fact-situation in which the objector is placed, it is a fit case for omitting his land from the acquisition. Objection (ii) is personal to the land and Objection (iii) is personal to the objector.

54. Now in the (ii) and (iii) types of objections, there is a personal element which has to be pleaded in Section 5-A inquiry and if objections have not been filed, the notification must be conclusive proof that the said person had "waived" all objections which were personal

and which he could have raised. However, so far as Objection (i) is concerned, even in case objections are not filed, the affected party can challenge in Court that the purpose was not a public purpose”.

11. Finally, the learned counsel for the petitioner has raised the plea of discrimination while referring to the case of some individuals as mentioned in para No.7 of the writ petition.

12. The learned State counsel has categorically submitted that the land of those persons have been released from acquisition proceedings who have constructed their houses prior to the issuance of notification under Section 4 of the Act and who have submitted their objections under Section 5-A of the Act. In the present case, it is the specific stand of the respondent-State that at the time of issuance of notification under Section 4 of the Act, the plot in dispute was lying vacant and even the petitioner did not file any objections under Section 5-A of the Act to claim that she had constructed a house prior to the issuance of notification under Section 4 of the Act. The submissions made by the learned State counsel have not been rebutted by the learned counsel for the petitioner by leading any cogent evidence. Therefore, the plea of discrimination does not find merit worthy to consider. It is well settled law, that the person who has raised an unauthorized construction is barred from challenging the acquisition proceedings. Even if we consider the arguments of discrimination, it is not in dispute that the petitioner has constructed the house after issuance of notification under Section 4 of the Act. Therefore, the same is illegal and unauthorized.

This Court in *New Vidya Niketan Educational Society v. State of Haryana and others, Civil Writ Petition No. 7711 of 2009* has observed as under:-

“A litigant, who has no respect for the law, this Court feels, is not entitled to get any equity by invoking the provisions of Article 226/227 of the Constitution of India. Under similar circumstances, in a case titled as Cambridge International Public School v. State of Haryana and another, CWP No. 2958 of 2011, decided on March 23, 2011, wherein the construction was raised without getting any prior permission and a prayer was made for release of the land from acquisition, a Division Bench of this Court observed as under:

"Otherwise also, we feel that on account of violation of the provisions of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963, no relief can be granted to the petitioner. As per the provisions of that Act, to construct building/ change of land use, permission is necessary from the competent authority. In the present case, it was not done. It has become a fashion to violate the provisions of law and then to make an attempt to get relief in one way or the other. Attitude of 'sab chalta hai' cannot be tolerated, this has to be stopped one day, to make the people to be respectful to the law and its provisions. A violator of law, who has no respect in the established system of rule of law, cannot be granted any relief when exercising jurisdiction under Articles 226/227 of the Constitution of India. Adherence to the duties as enshrined in Article 51-A of the Constitution of India is must. One can claim his rights under Chapter III of the Constitution of India only if respect

is shown to the duties as contained in the above said provision."

13. In view of the above discussion, we do not find any merit in the instant writ petition and, therefore, the same is, hereby, dismissed.
14. All the pending applications, if any, stand disposed of.

(SURESHWAR THAKUR) (KULDEEP TIWARI)
JUDGE JUDGE

5.9.2023
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Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No