

CWP-18731-2006

2023:PHHC:109645-DB

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

1.

CWP-18731-2006

Date of Decision : 22.8.2023

Karam Chand and others

.....Petitioners

VERSUS

State of Haryana and others

.....Respondents

2.

CWP-19428-2004

Lajja Ram and others

.....Petitioners

VERSUS

State of Haryana and others

.....Respondents

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

Present : Mr. Ashok Kumar Khubbar, Advocate
for the petitioners in both the cases.

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

KULDEEP TIWARI. J.

1. Since both the instant writ petitions arise out of the same impugned orders, therefore, the same are taken up together for disposal.

2. The petitioners approached this Court seeking quashing of notifications dated 13.9.2000 (Annexure P-10) and order dated 18.11.2003 (Annexure P-11) vide which the representation of the petitioners was rejected in view of the above stated notification and also sought that the respondent-State Government may not put the petition

land(s) being acquired for public purpose through open auction which was scheduled to be held on 17.12.2004 as per notice dated 1.12.2004.

3. Before we could delve into the actual and legal aspect of the present petitions, it is imperative to first give details of the policy dated 13.9.2000 which is under challenge. The respondent-State of Haryana has floated a policy for disposal of surplus acquired land and according to which the following order of priority was required to be maintained:-

- i) Utilization of surplus land for other public purpose by the other departments including the forest department for forestation.
- ii) Selling of such land by public auction.”

4. The petitioner(s) challenged the abovesaid policy, as their representations to release the possession of the land in their favour were dismissed vide impugned order dated 18.11.2003. The petitioners challenged the impugned notification on the ground that the same is contrary to the provisions of Section 13 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to '**the Act of 1948**').

FACTUAL ASPECT

5. The total 44 kanal and 11 marla of land(s) of the petitioners were acquired in the year 1979 and accordingly notification under Section 6 of the Land Acquisition Act, 1894 (hereinafter referred to as '**the Act of 1894**') was issued and the same was followed by award No. 137 dated 12.3.1979 for construction of committee R.D.down stream of Tangri River to link the super passage with the river opposite R.D.right

side of Narwana Canal branch. After utilization of the acquired petition land(s) for the notified acquired purpose, some of the land become surplus and accordingly, it was handed over to the Forest Department, Haryana, for plantation/forestation.

6. However, the petitioners after some time illegally uprooted the plantation and started cultivation upon the acquired land unauthorizedly. In consequence, the Forest Department filed a petition under Section 4 of the Public Premises Act 1972, in the Court of Collector, Ambala but that petition was dismissed in default vide order dated 2.6.1998. The Forest Department got lodged one FIR in Police Station Naggal, Ambala against the present petitioners and some other persons and got the land vacated and then the acquiring Department put the petition land(s) on lease for one year.

7. Thereafter, the State Government decided to sell the land through open auction and the open auction was to be held on 20.7.2001 but the petitioners and erstwhile owner approached this Court by filing CWP No.10104 of 2001 and this Court vide order dated 17.7.2001 stayed the open auction. However, the above petition was disposed of vide order dated 14.5.2002 with a direction to the Deputy Commissioner, Ambala to decide the representation of the petitioners. The relevant portion of the directions issued by this Court reads as under:-

“Be that as it may, we deem fit and appropriate that in the facts pointed out by the learned counsel for the petitioners that the matter should be re-considered by the State Govt. In the light of standing

order No.28 and the instructions R-1, R-2 and R-3 and the judgment of the Supreme Court in **Dr.M.Ismail Faruqui etc. versus Union of India and others AIR, 1995 Supreme Court 605** and **State of Kerala and others versus Bhaskaran Pillai and another AIR 1997, Supreme Court 27-3**. We also give liberty to the petitioners to file fresh representations within three weeks from today and in case they are failed, they should be disposed of by the competent authority within six months thereafter in accordance with law after giving an opportunity of hearing to the petitioners either personally or through counsel. We further direct that the land in question shall not be sold till the representations are decided.”

8. Subsequently, the representation was considered and it was dismissed, vide impugned order dated 18.11.2003, in view of the policy dated 13.9.2000, framed by the State Government.

9. The petitioners having aggrieved with the above order, have filed the instant writ petitions, seeking quashing of both the order dated 18.11.2003 and the policy dated 13.9.2000, respectively.

10. The State Government upon notice has filed a detailed reply and the factual aspect has been revealed that the land which was ordered to be sold through an open auction on 17.12.2004 could not be sold because no bidder came forward to take part in the auction proceedings and consequently the above auction was postponed. The acquiring Department, once again, filed a petition under Section 4 of the Public Premises Act, 1972 Act which was decided in favour of the Department and the ejectment order in respect of the petition land(s) was passed on

28.1.2008. The petitioners thereafter preferred a statutory appeal against the order of Collector, Ambala. However, the said statutory appeal was also dismissed vide order dated 6.8.2008 passed by the Commissioner, Ambala Division, Ambala. The above concurrent eviction orders were executed through Tehsildar, Ambala and the land in question was finally got vacated from the petitioners and the other land owners and now this land has been used for construction of pilot channel in order to protect District Ambala from floods and is under the possession of Irrigation Department since 2010.

ANALYSIS

11. From the facts mentioned above, it is transpired that during the pendency of the instant writ petitions, the possession of the acquired land has been assumed from the petitioners through proper legal procedure and the land which was earlier declared surplus has now been put to use for the construction of pilot channel in order to protect District Ambala from floods and is under the Irrigation Department since 2010. Therefore, the very cause of action does not survive as now the State Government is not putting the land(s) for auctions. The plea of the petitioners that instead of putting the surplus land to an open auction, the same be returned to them and other land owners, no more survives. as the acquiring Department is using this acquired land(s) for its apt public purpose.

12. Nonetheless, we have also examined the legal submission made by the learned counsel for the petitioners. The sole submission of

the petitioners that they have a preferential right over the acquired land being the original land owner(s) in case it is declared surplus in view of Section 13 of the Act of 1948. The reliance placed by the petitioners upon the Act of 1948 is highly misplaced. The land was acquired under the Act of 1948 and in case the State Government wanted to withdraw from the notification then the said withdrawal can be governed only by the provisions of the Act of 1894. Section 48 of the *ibid* Act prescribes the power of the State Government to withdraw from any acquisition.

13. The relevant portion of Section 48 of the Land Acquisition Act, 1894 Act read as under:-

“Completion of acquisition not compulsory, but compensation to be awarded when not completed.
(1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.”

14. As per Section 48 of the *ibid* Act, the Government can only withdraw from the acquisition proceedings only in case possession of

acquired land has not been taken. Here is the case where the possession has been taken immediately after the pronouncement of the award. However, the petitioners have illegally and in a wrongful manner uprooted the plantations done by the acquiring authority and re-entered into the acquired land. Thereafter the respondent-acquiring authority has to resort action under the Public Premises Act and finally got the land vacated from the petitioners and the other land owners and for that purpose, an FIR was also registered against the petitioners and other land owners for illegally trespassing into the Government land. Therefore, once the possession of the land(s) has been assumed after the pronouncement of the award, even the Government do not have any right to withdraw from the acquisition proceedings.

15. Nonetheless the State of Haryana has also framed a policy on 13.9.2000 partially modifying the earlier notification for disposal of land declared to be surplus by the various Departments. As per the policy reproduced above, if the acquired land is declared to be surplus by any Department, it first shall be utilized for any other purpose of the other Department including the Forest Department for afforestation or secondly it can be sold by way of public auction. Now as stated above, the State Government has decided to utilize this land for other public purpose i.e. for construction of pilot channel in order to protect District Ambala from floods and is under the possession of the Irrigation Department since 2010, therefore, no cause of action survives even thereafter. It is no more res-integra that the land which is acquired and

the compensation has already been paid, the land owners have no right whatsoever in that acquired land and the acquiring authority is free to utilize the land for any of the public purpose and the same cannot be laid challenge by the petitioners and the land owners concerned. It is apt to note here that the petitioners have also filed RFA Nos.665 and 666 of 1982 and 1218 of 1984 for enhancement of the compensation of the petition land(s), therefore, now the petitioners cannot be allowed to take contradictory claim before different Courts of law.

16. In sequel, both the writ petitions are, hereby, dismissed.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

22.8.2023
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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No