

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

213-A

CWP-15361-2008
Reserved on 13.09.2023
Date of Decision : 29.9.2023

RAM SHARAN AND ORS

.....Petitioners

VERSUS

STATE OF HARYANA AND ORS

.....Respondents

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

Present : Mr. Tushar Gera, Advocate for
Mr. Jagdeep Singh Rana, Advocate
for the petitioners.

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

Mr. Bhuvam Khurana, Advocate for
Mr. Deepak Balyan, Advocate
for respondent No.3-HUDA.

KULDEEP TIWARI. J.

1. The petitioners have thrown challenge to the acquisition notification dated 21.3.2006 and declaration dated 20.3.2007 respectively issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (hereinafter referred to as '**the Act of 1894**') on the ground that the petitioners have constructed their residential houses over the petition land (s) well prior to the issuance of the notification under Section 4 of the Act. The acquiring authority have resorted to release the land of those persons, who have constructed their residential houses. However, all the petitioners have been treated discriminately. It was further averred in the petition that the land was intended to be acquired for the purpose of

development of Sector 23P, Bhiwani. The petitioners have already constructed 'A' class residential houses, therefore, the same does not affect the apposite development planning. It was also averred in the petition that despite the objections were filed by the petitioners under Section 5-A of the Act of 1894, their claim of releasing of the land was not found appropriate by the acquiring authority, rather they were treated discriminately.

2. Upon notice, written statement was filed by Mr. Rajesh Khoth, HCS, Land Acquisition Collector, Urban Estates Department, Haryana, Hisar on behalf of respondents No.1, 2 and 4 and as per the written statement, the detail of the ownership of the petitioners have been mentioned in a tabulated form which is reproduced hereinafter:-

Petitioner No.	Name	Ownership
1	Ram Sharan	Land measuring 0-7 marlas comprised in khasra/killi No.75//9/2
2	Om Parkash	Land measuring 0-8 marlas comprised in khasra/killi No.75//19/2
3	Ramesh Kumar	Land measuring 0-6 marlas comprised in khasra/killi No.75//21
4	Baldeva	Land measuring 0-3½ marlas comprised in khasra/killi No.75//9/2/2, 18/1, 12/1, 13/1min.
5	Kalawati	Not the recorded owner. Om Sarup s/o Mange Ram was owner of the land measuring 0-12 marlas comprised in khasra/killi No.75//9/2/2, 18/1, 12/1, 13/1min.
6	Srikrishana	Land measuring 0-6 marlas comprised in khasra/killi No.75//19/2min, 22, 19/1, 19/3min, 21 min.
7	Ram Kishan	Land measuring 0-3½ marlas comprised in khasra/killi No.75//19/1, 20/3min, 21min
8	Naresh	Land measuring 0-1½ marlas comprised in khasra/killi No.75//19/1, 20/3min, 21min.

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|----|---------|--|
| 9 | Sultan | Land measuring 0-7 marlas comprised in khasra/killa No.75//21 |
| 10 | Santosh | Land measuring 0-6 marlas comprised in khasra/killa No.75//19/1, 20/3min, 21min. |

3. As per the reply filed by the respondent-State, only some of the petitioners had filed objections under Section 5-A of the Act of 1894 and after considering the objections, the following recommendations were made by the Land Acquisition Collector, Hisar:-

Petitioner No.	Name	Whether objection filed or not	Recommendation of Land Acquisition Collector
1	Ram Sharan	Yes	Recommended to release area measuring 0-7 marlas comprised in khasra/killa No.75//9/2
2	Om Parkash	Yes	Recommended to release area measuring 0-8 marlas comprised in khasra/killa No.75//19/2
3	Ramesh Kumar	Yes	Recommended to release area measuring 0-6 marlas comprised in khasra/killa No.75//21
4	Baldeva	Yes	Not recommended to release as the construction was of 'C' category.
5	Kalawati	No	Not the recorded owner at the time of Section 4.
6	Srikrishana	Yes	Not recommended to release as the construction was raised after Section 4
7	Ram Kishan	Yes	Not recommended to release as the construction was raised after Section 4
8	Naresh	No	
9	Sultan	Yes	Recommended to release area measuring 0-7 marlas comprised in khasra/killa No.75//21
10	Santosh	No	

4. In view of the recommendations made by the Land Acquisition Collector, Hisar, the land of petitioners No. 1, 2, 3 and 9 was

recommended to be released by the Land Acquisition Collector concerned, and after the recommendations, the State Government took a final decision and as per the order of the State Government, 103.33 acres (Palwas) and 1.36 acres (Bhiwani Lohar) of land was left out from the acquisition. Thereafter award No.3 was announced on 18.8.2008 for the land measuring 35.39 acres (Palwas) for the development of Sector 23P, Bhiwani and the possession of the land, except the land under the order of stay, was taken and handed over to the Estate Officer, HUDA (now HSVP) on the same day when the award was passed vide *rapat* No. 825 (Palwas) dated 18.8.2008 and mutation No. 15524 dated 31.7.2014 had also been sanctioned in favour of the beneficiary i.e. HUDA (now HSVP).

5. We have heard the learned counsel for the parties and perused the record with their able assistance.

6. The facts as submitted by the learned State counsel in the reply reveals that the persons, who had constructed their houses prior to the issuance of notification under Section 4 of the Act, and who were also able to show their requisite documents with regard to the construction of their houses and ownership, their land was released by the competent authority. Therefore, the submissions of the petitioners that they were treated discriminately, is without any foundations. There is nothing on record to establish that the petitioners had constructed their houses prior to the issuance of notification under Section 4 of the Act of 1894. It is well settled law, that the person who has raised an unauthorized construction is barred from challenging the acquisition proceedings. 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."

7. Further-more, the present petition has been filed after the pronouncement of award and there is nothing on record to show that the petitioners have even challenged the award, therefore, the present petition is not maintainable. In this regard, reliance can be placed upon the judgment passed by this Court in **Civil Writ Petition No. 19107 of 2023 decided on 31.8.2023 titled as “BALKRISHAN AND ANOTHER VERSUS STATE OF HARYANA AND OTHERS”**.

8. When the petition was filed, the award stood pronounced and the possession of the land for all intents and purposes was taken by the acquiring authority and thereafter now it vests with the authority concerned. The instant writ petition is also not maintainable in view of the law laid down by the Constitution Bench of the Hon'ble Supreme Court in **SLP(C) No.9036-9038 of 2016 titled as “Indore Development Authority Vs. Manohar Lal and others”, AIR 2020 SC 1496**. The relevant paragraphs of the judgment (Supra) are reproduced here-in-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."

9. It has been further specified in the reply of respondent-State that the planning of Sector 23P, Bhiwani has been finalized and in case the land in dispute is released, it will affect the Ashiyana Scheme and the planning of the entire sector. Considering the above facts, we find that there is no element of discrimination and the entire acquisition proceedings have been carried out lawfully.

10. Therefore, in sequel, we do not find any merit in the instant writ petition and the same is, hereby, dismissed.

11. Since the main case has been dismissed as withdrawn, all the miscellaneous applications shall stand disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

29.9.2023

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