

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 11409 of 2011 (O&M)

Reserved on 24.8.2023

Date of Decision: 29.8.2023

Raghubir Singh and others

.....Petitioners

Versus

State of Haryana and others

....Respondents

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

Argued by: Mr. M.L.Sharma, Advocate
for the petitioners.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Saurabh Mago, DAG, Haryana for the respondents-State.

Mr. Sidhant Suri, Advocate
for respondent No.2.

Mr. Parveen Chander Goyal, Advocate
for respondent No. 11.

Mr. Amit Jain, Senior Advocate with
Mr. Aryaman Thakur, Advocate
for the applicant-respondent.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Ms. Kushaldeep Kaur Manchanda, Advocate
for the respondent-MC, Manesar.

SURESHWAR THAKUR, J.

1. Through the instant petition, the petitioners seek quashing of the acquisition proceedings, as became initiated under Section 4 read with Section 17(1) of the Land Acquisition Act, 1894 (for short 'the Act of 1894') (Annexure P-8), besides seek the quashing of the declaration issued under Section 6 read with Section 17 of the Act of 1894

(Annexure P-9). Furthermore, the petitioners also seek the setting aside of the award made on 14.6.2010. The further relief, asked for in the instant petition, is that, a mandamus, be issued upon the respondents concerned, to not acquire the cremation ground, and, the temple of the village Sikanderpur Badha comprised in Khasra No. 00(0-15), 91(21-10), 92(4-7), situated in the revenue estate of village Sikanderpur Badha, Tehsil and District Gurgaon, on the ground that the said are in contravention of the policies dated 26.10.2007 (Annexure P-10), and, dated 8.1.2007 (Annexure P-11). It is further prayed in the instant writ petition, that the revised tentative Sectoral Plan (Annexure P-12), be quashed, and, set aside, and, that the compensation, as determined through award (supra), be not disbursed to the Gram Panchayat concerned in lieu of acquisition.

2. At the outset, the compensation, as became determined in respect of the award (supra), has been thus assessed in favour of the Gram Panchayat concerned. Emphasizingly also, it is but imperative to initially record, that the petitioners had challenged the acquisition proceedings in the capacity of theirs being the proprietors, through their instituting the instant writ petition before this Court. However, this Court, through an order made thereons on 5.7.2011, declined the relief, as asked for by the petitioners, while observing that the petitioners are not the owners of the land, and, that the Gram Panchayat concerned, has not come forward to lay challenge to the acquisition proceedings. However, liberty became granted to the petitioners to move the Deputy Commissioner concerned, with a prayer to make an alternative arrangement for cremation ground(s).

3. However, against the decision (supra), the aggrieved preferred SLP (C) No. 28015 of 2011, which was converted into Civil Appeal No. 4175 of 2013. On the said SLP, the Hon'ble Apex Court, on 29.4.2013,

after setting aside the order (supra), as became made by this Court, on the instant writ petition, proceeded to remand the lis to this Court, after observing that the grievance, as raised by the petitioners, relating to the acquisition of cremation ground, hence for construction of sector roads, thus being decided afresh.

4. After the instant case being remanded to this Court, this Court, on 19.8.2013, issued notice to the respondents concerned, and, also issued an interim direction, that no construction shall be raised at the site, and, that the petitioners shall be permitted to use the acquired land as a cremation ground, but till further orders.

5. During the pendency of the instant writ petition, various directions were passed against the respondents concerned, relating to the earmarking(s) of suitable sites for cremation purposes. The said orders are extracted hereinafter.

6. On 16.12.2013, this Court had passed the hereinafter extracted order:-

“Reply filed on behalf of respondents Nos. 2 and 5 today in Court is taken on record, subject to all just exceptions. From the sectoral plan Annexure R-5/2 appended with the affidavit of District Town Planner, Gurgaon, Department of Town & Country Planning, Haryana, prima facie it appears that the cremation ground is sought to be acquired and its site is proposed to be shifted at the behest of the private builders-cum-developers. The manner in which the curve has been given to the road is also suggestive of the fact that public interest has been completely bye-passed. We are not sure that as to how many cremation grounds in the newly developed urban sectors or the proposed sectors have been earmarked. Let an affidavit be filed depicting the existing and proposed cremation grounds in all the urban sectors of the Gurgaon.

List on 27.05.2014.

Interim order made absolute.”

7. A reading of the said order reveals, that an affidavit became enjoined to be filed at the instance of the concerned, thus depicting the existing, and, proposed cremation grounds in all the urban sectors of Gurgaon.

8. Furthermore, on 11.8.2016, the hereinafter order was made by this Court :-

“Arguments heard in part.

The Principal Secretary, Town and Country Planning Department, Haryana, is directed to file an additional affidavit explaining:-

(i) Whether they have land not less than 26 kanals available for the proposed cremation ground shown in green colour in Sector 85 of the lay out plan Annexure R-1?

(ii) If so, are they willing to fully develop that site as a cremation ground before taking over physical possession of the acquired site of the cremation ground?

List on 06.10.2016.”

9. A reading of the order (supra), discloses, that this Court was taking to ensure, that the alternative site for cremation purposes, thus carries a dimension equal to the one, as was of the acquired cremation grounds.

10. Furthermore, subsequently on 6.10.2016, this Court had passed the hereafter directions:-

“The Principal Secretary, Town and Country Planning Department, Haryana, has not chosen to file response to the order dated 11.08.2016 despite sufficient opportunities. Such like callous and carefree attitude by senior functionaries is being observed for the last 7-10 dates as cases have been got adjourned repeatedly to await such like responses. On our asking, it is informed by learned State counsel, on instructions

from the Officer present in Court, that size of the proposed cremation ground is 15K and 19M only. We are surprised to see as to how State authorities are hell bent to extend undue favour to private builders, for which even the cremation ground of the residents of the village is not being spared. It is not in dispute that size of the existing cremation ground is 26K. Population of the area has multiplied in recent years, especially due to fast growing urbanization in the surroundings. Pressure of population is bound to increase further. If that is so, then how a smaller size of cremation ground will cater the need of people as compared to the existing cremation ground measuring 26K? We are thus of the view that the new site cannot be approved unless it is of sufficient size, namely, not less than 26K. We will not allow possession of the existing cremation ground to be taken or to convert it into road etc. unless an alternative site, at least of equivalent size, is provided and fully developed.

Let a copy of this order be sent to Additional Chief Secretary, Town and Country Planning, who will show cause as to why stern action be not taken against all the Officers who have failed to respond to the directions being issued from time to time.

List on 07.11.2016.

Let a photocopy of this order be placed on the files of other connected cases.”

11. A reading of the order (supra), discloses that necessarily therein also, thus this Court expressed a candid view, that the relevant site for cremation purposes, was to be not less than 26 kanals.

12. On 13.12.2016, this Court took to pass the hereinafter extracted order:-

“Mr. Vikas Gupta, Director, Urban Estates Department, Haryana is present in Court. The matter has been discussed at length. He has suggested that with a view to facilitate the residents of village/urban area, there can be two cremation

grounds, modernized and fully developed by the Administration or the Corporation. Such a proposal would further facilitate the construction of 60 meter wide road at the proposed site and at the same time would redress grievance of the petitioners.

Let a formal proposal alongwith decision of the Competent Authority to develop both the cremation grounds as per latest technology be placed on record.

List on 07.03.2017.

Let a photocopy of this order be placed on the files of other connected cases.”

13. A perusal of the above extracted order reveals, that the suggestion made before this Court by Mr. Vikas Gupta, Director, Urban Estates Department, Haryana, relating to construction of two modern cremation grounds on expenses to be incurred by the Administration of the Corporation, was thus accepted. However, on 19.7.2017, this Court after observing, that apart from the acquired cremation ground, also a pond, as existing over khasra No. 91, over an area of 26 kanals 12 marlas, was also sought to be acquired, despite the said pond, and, cremation ground becoming earmarked, thus for the user of the residents of village Sikanderpur. Therefore, a direction was made, upon the State to seek instructions to provide alternative land.

14. On 18.8.2017, Mr. J. Ganesan, Chief Administrator, HUDA recorded his presence before this Court, and, placed before this Court the plan for the areas in Districts Sonapat and Gurugram where roads are to be constructed on the areas earmarked for cremation grounds, and, for pond, thus reserved for the village abadi. The said plan was perused by this Court. However, the case was adjourned to 5.9.2017 for a direction to the State to apprise the Court about the alternative site for cremation ground, and, for pond, equivalent to the areas thereof, as sought to be acquired, and, which

are presently used for that purpose.

15. On 23.5.2018, the Chief Administrator, HSVP as well as the District Town Planner, Headquarter from the Department of General Town and Country Planning, Haryana, have filed their respective affidavits, in pursuance to the order made by this Court on 22.1.2018.

16. A perusal of the affidavit dated 20.9.2017, filed by Sh. J. Ganesan, Chief Administrator, HUDA, Panchkula reveals, that to accommodate the area of cremation ground, a decision had been taken to earmark the equivalent land measuring 4 kanals 7 marlas land in Sector-85 Gurugram out of total available land of 14 kanals, 18 marlas, and, that the second site as proposed in Sector-82, Gurugram in Khasra No. 91, for the cremation ground, shall remain unchanged. Moreover, it has also been spelt in the affidavit (supra), that the acquired area of the pond was 21 kanal and 10 marlas, and, to accommodate the said area, it has been decided that the remaining 10 kanals 11 marlas land in Sector-85, Gurugram, out of the total land, shall be utilized for the pond. Furthermore, for the remaining land of 11 kanals approximately, a site has been proposed in Sector 52-A, Gurugram, falling in khasra No. 1903 of the revenue estate of village Wazirabad. However, the exact location of the proposed pond, has been stated to become subsequently finalized, in such a manner, that the planning of remaining HUDA land, is not adversely affected. Copy of the approval letter has been appended as Annexure R-2. It has also been spelt in the affidavit (supra), that there are 17 cremation grounds earmarked in Urban Estate, Gurugram, out of which 10 cremation grounds are stated to be functional.

17. The above made echoings in the affidavit of the Chief Administrator, HUDA, Panchkula reveals, that thereby the above made

interim directions passed by this Court, do become complied with. In sequel, the remand of the lis by the Hon'ble Apex Court to this Court, thus specifically covering the grievance of the petitioners relating to adjudicating afresh the issue about acquisition, being made of cremation ground, does thereby become completely mitigated. As such, the order of remand becomes complied with at the instance of the respondents concerned.

18. In addition, reiteratedly when the scope of the remand of the lis by the Hon'ble Apex Court to this Court was confined to this Court addressing to the grievances raised by the petitioners, as regards the acquisition of cremation ground, thus for the construction of sectoral roads. Therefore, when the above grievances have been addressed by this Court, and, also when mitigation(s) to the above grievances, hence has ensued from the respondents concerned. Therefore, in the light of the further fact, that the relevant disputed acquired land(s), as revealed in para 2 at page 125 of the paper book, and, in 4 at page 126 of the paper book, thus are subserving as an important link connecting all the sectors between Sector 81 to 95 to National Highway No. 8. Consequently, both in view of the mitigation(s) of the grievances (supra) of the petitioners, and, in view of the acquired writ lands, rather being imperatively necessary, thus for facilitating the requisite public purpose. Therefore, this Court deems it fit, and, appropriate to not make any further obstacles or to create any hurdles in the furthering of acquisition(s) of the disputed lands, as thereby the requisite public purposes would become scuttled.

19. Predominantly also, when the compensation in respect of the award (supra), has been determined in favour of the Gram Panchayat concerned. In sequel, when in pursuance to the interim orders (supra), the mitigation to the grievances raised by the petitioners, has ensued from the

respondents concerned, Therefore, and, reiteratedly this Court deems it fit, and, appropriate to not allow the instant writ petition.

Final Order

20. In summa, this Court does not find any merit in the instant petition, and, is constrained to dismiss it. Accordingly, the instant petition is dismissed. The impugned annexures are maintained and affirmed.

21. However, the affidavit sworn by the Chief Administrator, HUDA, Panchkula, be ensured to be forthwith complied with by the concerned. If there is no forthwith compliance to the affidavit (supra), thereupon it is open to the petitioners to access this Court with a contempt petition against the delinquent officer concerned.

22. The pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

August 29th, 2023
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No