

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

228

CWP-1284-2015

Reserved on 22.8.2023

Date of Decision : 19 September, 2023

Shyam Saini 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. Gurcharan Dass, Advocate
for the petitioners.

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

Mr. Amar Vivek Aggarwal, Advocate
for respondent No.3.

KULDEEP TIWARI. J.

1. The petitioners have thrown a challenge to the acquisition notification dated 24.12.2007 (Annexure P-3) as issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as '**the Act of 1894**') which was followed by declaration dated 23.12.2008 (Annexure P-5) issued under Section 6 of the *ibid* Act and also the order dated 10.10.2014 (Annexure P-6) vide which the request of the petitioners to release their lands from acquisition has been declined.

2. Before we divulge into the alleged illegality of the impugned notification(s), it is apt to mention here that award Nos.8-9 qua the petition land(s) was announced way back on 23.6.2010 and the

possession of the acquired land was handed over to the Estate Office, HUDA, vide *rapat rojnamcha* No.636 dated 23.6.2010 of village Kutana and *rapat* No. 637 dated 23.6.2010 of village Rohtak. Therefore, the present writ petition has been filed much belatedly after the pronouncement of the requisite award and the consequent assumption of possession by the acquiring authority. On pronouncement of award and on assumption of possession of the land by the acquisition authority concerned, the land vests with the acquiring authority and the landowners do not have any right, title or interest in the petition land(s). One of the issues, which needs to be considered in the present writ petition is that “whether upon pronouncement of award by the Land Acquisition Collector concerned, the present writ petition is maintainable”?.

SUBMISSIONS BY THE LEARNED COUNSEL FOR THE PETITIONERS

3. Learned counsel for the petitioners has submitted that the petitioners are the owners in possession of the land measuring 7 kanals 12 marlas, as per the *jamabandi* for the year 2000-2001 wherein, in the column of the “nature of land” an entry of “*gair mumkin plot*” is recorded. He has further submitted that the petitioners have constructed two residential rooms and a boundary wall over the petition land(s), which is infact, their ancestral property. Further, he has placed reliance upon a Government policy vide which release of constructed area from acquisition proceedings. Learned counsel for the petitioners has set up a case, on the ground of discrimination. He has also submitted that the similarly situated constructed houses have been released from the acquisition whereas, the same has been declined to the petitioners. To

establish that the petitioners have constructed a house over the acquired land(s), he put emphasis on the record prepared by the Municipal Corporation, Rohtak and also the notice dated 20.2.2014, whereby, arrears of house tax have been demanded qua the petition land(s), by the Municipal Corporation, Rohtak. It is also submitted that no personal notice, whatsoever was served upon the petitioners thereby enabling them to file objections, under Section 5-A of the Act of 1894 whereas, under the Act of 1894, the Land Acquisition Collector was bound to afford an opportunity of hearing to the petitioners, as per standing order No.28 of the Financial Commissioner, which prescribed the procedure for serving notice under Section 4 of the Act of 1894.

SUBMISSIONS BY THE LEARNED COUNSEL FOR THE RESPONDENT-STATE

4. Per contra, the learned State counsel has vociferously argued that all the statutory compliances were made during the acquisition proceedings. Infact, the notification under Section 4 of the Act of 1894 was issued in respect of total land measuring 160 acres i.e. 69.13 acres of village Rohtak and 90.87 acres of village Kutana and the said notification was published in two daily newspapers i.e. one in English newspaper "INDIAN EXPRESS dated 3.1.2008 and the second in Hindi newspaper "RASHTRIYA SAHARA" dated 31.12.2007. It is also averred in the reply that the petitioners were given an opportunity to file objections under Section 5-A of the Act but they failed to avail the opportunity and did not file any objections, therefore, they are dis-entitled to file the present writ petition. It is further averred in the reply that declaration dated 23.12.2008 under Section 6 of the Act of 1894 qua total land

measuring 60.20 acres of village Rohtak and 65.57 acres of village Kutana was duly issued by the appropriate authority concerned, and was in accordance with the provisions of the Act of 1894 and the same was also published in two daily newspapers i.e. Hindi newspaper, namely, “HARI BHUMI” dated 31.12.2008 and the second in English newspaper, namely, “THE HINDU” dated 31.12.2008. It is also averred in the reply that pursuant to the issuance of declaration under Section 6 of the *ibid* Act, award Nos.8-9 in respect of the petition land(s) were announced on 23.6.2010 and thereupon the possession of the acquired land was handed over to the Estate Office, HUDA, Rohtak and Kutana vide *rapat rojnamcha* No.636 dated 23.6.2010 of village Kutana and *rapat* No. 637 dated 23.6.2010 of village Rohtak and, therefore, the acquisition proceedings are legal, constitutional and in accordance with the provisions of the Act of 1894.

ANALYSIS

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

6. After perusal of the record and the submissions made by the learned counsel for both the parties, we do not find any merit in the present petition, therefore, the same is liable to be dismissed for the reasons recorded hereinafter:-

7. Prima facie, the present petition has been filed after the pronouncement of the award. Admittedly, the award was pronounced on 23.6.2010 and the possession of the acquired land(s) was handed over to the Estate Office, HUDA, Rohtak vide *rapat rojnamcha* No.636 dated

23.6.2010 of village Kutana and *rapat* No. 637 dated 23.5.2010 of village Rohtak. Upon pronouncement of award, an entry in the *rapat rojnamcha* qua assumption of possession was recorded and, therefore, the petition land for all intents and purposes vests with the acquiring authority in view of Section 16 of the Act of 1894. Therefore, once the award has been passed by the Land Acquisition Collector concerned, the present writ petition is not maintainable. The petitioners have no right to assail the acquisition proceedings in view of the law settled by the Hon'ble Supreme Court in **Starwire (India) Ltd. Vs. State of Haryana and others, (1996) 11 SCC 698** and **Sevika Properties (P) Ltd. and another Vs. State of Rajasthan and others, 2008(4) SCC 695**. This Court has also specifically held in the case of **Jatinder Singh Vs. State of Haryana and others, 2009(18) RCR (Civil) 233**, that once the award has been passed by the Land Acquisition Collector then the writ petition is not maintainable.

8. The next contention of the learned counsel for the petitioners that they have not been served with any personal notice in view of the standing order No.28 of the Financial Commissioner concerned, which prescribed the procedure for the service of notice under Section 4 of the Act of 1894. On examination of the record, this Court finds that all the statutory requirements as carried in the Act of 1894, publication of notification and declaration respectively under Sections 4 and 6 of the Act of 1894 have been complied with, as the same were duly published in two daily newspapers both in English and in the regional language besides were also published in the official gazette. Section 4 of the Act

of 1894 prescribed the publication of notification and the power of the Land Acquisition Authority, imposing the following two pre-conditions to make an acquisition notice legally enforceable: firstly it shall be published in the official gazette, and, secondly it shall be published in two daily newspapers circulating in that locality, of which at least one shall be in the regional language.

9. The very object of the publication of notifications in the official gazette is an intimation to the general public and as such if we accept the argument of learned counsel for the petitioners that the petitioners were unaware of any notifications, especially when the making of gazette notification (Supra) then the entire purpose of gazette notification would be defeated. Infact, the issuance of gazette notification creates a legal presumption qua the knowledge of the land being acquired, not only for the petitioners but also for the general public. Therefore, the claim of the petitioners that they were not given an adequate opportunity to submit their objections under Section 5-A of the Act as no personal notice was served upon them is highly a misplaced argument. It is not in dispute that the petitioners have not filed any objection under Section 5-A of the Act of 1894. Therefore, the petitioners cannot be allowed to raise objections to the notifications by filing the present writ petition. Reliance can be placed upon the judgment of the Hon'ble Supreme Court passed in the case titled as **“Delhi Administration Vs. Gurdip Singh Uban”, All India Land Law Reporter 2001(1) (SC)** wherein the Hon'ble Supreme Court ruled that objections to notification(s) cannot be permitted to be raised by way of

writ petition as the said person(s) are deemed to have waived the right to raise personal objections. Further also, in Civil Appeal No.2320/2007 “**Talson Real Estate Vs. State of Maharashtra**” the Hon'ble Supreme Court has held as under:-

“19. The appellant-company, being the owner of the land, has not filed objection under [Section 5A](#), in principle, must be accepted that it had no objection to [Section 4](#) notification operating in respect of its property. Those claimants-owners of the lands who have not filed objection under [Section 5A](#) could not be allowed to contend that [Section 5A](#) inquiry was bad and that consequently [Section 6](#) declaration must be struck down and that then the [Section 4](#) notification would lapse.”

10. Even otherwise also, the respondents have specifically stated in their reply that at the time of issuance of notification under Section 4 of the Act of 1894, the petition land(s) was a vacant plot and the petitioners have subsequently constructed two rooms and a boundary wall in the entire area of 7 kanals 12 marlas. The petition land was earlier declared as a controlled area under Section 4(1)(a) of the Punjab Scheduled Roads & Controlled Areas Restrictions of Unregulated Development Act, 1963 and if any construction has been raised by the petitioners in violation of the above provisions, no relief can be granted in favour of the petitioners as they violated the mandatory provisions especially when the petitioners have failed to prove on record that the construction was raised prior to the issuance of notification under Section 4 of the *ibid* Act. The reply filed by the respondents further reveals that *khasra No.56//6* was released by the Government because of the dense

population in area and in which the petitioners' house was included and according to the official survey report in killa No.56//15 there is only one room with boundary wall and killa No.56//24/2 which was totally vacant at the time of issuance of notification under Section 4 of the *ibid* Act. Therefore, the claim of the petitioners that they have been treated discriminately does not stand substantiated, as the land of those persons was released after issuance of notification, who had constructed house(s) or any other commercial establishments, before the issuance of notification. Therefore, the claim of discrimination as alleged by the petitioners, is also not sustainable.

11. In view of the above discussion, the present petition is, hereby, dismissed being bereft of any merit and the impugned notifications are, therefore, upheld being validly issued under the *ibid* Act.

12. All the pending applications, if any, stand disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

19.09.2023

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