

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

205

**CWP-11451-2017
Date of Decision: 27.07.2023**

ROSHANI DEVI

... Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Neeraj Kumar, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

The prayer in the present petition is for seeking issuance of directions to the respondents to remove illegal construction/encroachment from the plot of the petitioner.

Briefly summarized, the fact of the present case are that the petitioner, who claims to be owner in possession of prime land on National Highway 71A measuring 1875 Sq. Yards (3 kanals 2 marlas) in the Revenue Estate of Village Makroli, alleged that the Public Health Engineering Department, Division No.3, Rohtak had illegally encroached part of his high value land and constructed a Water Storage Plant. The petitioner approached the officials of the respondents-Department on numerous occasions and requested them to remove the said encroachment from his land, however, the respondents-Department did not pay any heed to the said requests. An application for demarcation of the land was also submitted by the petitioner to the Tehsildar concerned on 20.10.2014. Upon carrying out of such demarcation, it was found

that the Public Health Engineering Department, Rohtak had illegally encroached upon 650 sq. yards of the land as follows:

- a) *approx. 588 sq. yards by covering with hard concrete boundary – extending upto 55 feet front into petitioner land alongwith NH 71A (on East side).*
- b) *approx. 62 sq. yards by covering with tanks (hoddies) & pipelines.*

Pursuant to the receipt of the aforesaid demarcation report, the petitioner wrote a letter to the respondent officials to the effect that the Water Storage Plant was supposed to be constructed only on Khasra No7098, in the revenue estate of Rohtak, whereas the land of the petitioner adjacent to the abovesaid revenue estate has been encroached upon by the Public Health Engineering Department, Division No.3, Rohtak, which is an abuse of the powers vested in them. Since the grievance remained unredressed, the present petition was filed.

The written statement dated 23.02.2018 had been filed by the respondents through the Executive Engineer, Public Health Engineering Department, Division No.3, Rohtak, wherein they raised certain objections with respect to the maintainability of the present petition and averred that since the disposal work for storm water sewage at the land in question had been executed without any objection at the time when such construction was being raised, there is no occasion for the petitioner to challenge the same now at such belated stage. It is further averred that the Government has spent huge public money to the tune of Rs.4.95 crores approximately for construction of the above storage plant and as such, the removal of any such construction and the basic amenities is likely to

cause much loss to public exchequer and also grave public discomfort and inconvenience.

As there was some discrepancy with respect to the demarcation and the exact area being encroached, vide order dated 03.09.2019, it was ordered as under:

“Mr.Ranjit Singh Malik, XEN, Public Health Department Divn.No.3, Rohtak is present in Court. Mr.Mohunta has produced the site plan which is taken on record as Mark “A”. Mr.Mohunta submits that the petitioner has made a claim on Pocket B on the north of the acquired land bounded by three red lines and red dots. Ownership is disputed by the State and the Engineer says that the petitioner’s land falls outside the acquired land.

In order to put an end to the controversy, demarcation of the land has become necessary. Accordingly, The District Revenue Officer, Rohtak assisted by the Tehsildar and Patwari of the halqa will demarcate the land in the presence of the petitioner. Time and date will be fixed and notified to the petitioner in advance by the District Revenue Officer. They will use the latest technology which is Total Station Survey Machine. The process be completed within one week and result of demarcation be placed before this Court on the next date of hearing.”

The matter was taken up again on 17.02.2020 when it was ordered as under:

“Copy of the demarcation report, filed in Court today with a copy thereof to learned counsel for the petitioner, is taken on record subject to just exceptions.

As per the said report dated 19.09.2019, the Public Health Department is in illegal possession of 585 sq. yards of land of the petitioner by raising boundary wall and disposal well.

Learned counsel for the State prays for some time to seek instructions in respect to the removal of the said encroachment or the alternate course to be adopted for compensating the petitioner.”

In compliance to the aforesaid, an affidavit of R.K. Sharma, Executive Engineer, Public Health Engineering Department, Division No.3, Rohtak has been filed wherein he admitted that a total area measuring 565 Sq. Yards. (actual or as per report is 585 Sq. Yards) is in illegal possession of the respondent-Department and that no compensation has ever been given to the petitioner with regard to the abovesaid land. It was further submitted that since the rain water disposal system was constructed in the year 2010 with a public exchequer spending of Rs.5 crores approximately, it will be very inappropriate to demolish the construction at the end of the Department and that there is no additional land available with the department for the construction of the rainy water disposal system which caters to about 40,000/- persons. It is also averred in the abovesaid affidavit that the Department is ready to pay compensation to the petitioner Smt. Roshani Devi as per the rate of the land which has been assessed by the Land Acquisition Collector while passing the Award alongwith interest. The relevant extract of the said affidavit is reproduced hereinafter below:

"1 – 3 XXXX XXXX XXXX

4. That on the request of the Department of Public Health Engineering Division.3 Rohtak to acquire the land measuring 2 Bigha 10 Biswa comprising in khasra No.7098, mauja Rohtak for construction of rainy water disposal for Rohtak Gohana Road, the State Government has issued the Notification under Section 4 on 29.06.2006 R-III and under Section-6 on 13.12 2006 R-IV under Land Acquisition Act and the possession of the said land after completion of acquisition proceedings was delivered to Sub Divisional Engineer, Public Health Engineering. Sub Division No.9. Rohtak by the Land Acquisition Collector, Rohtak on 16.03.2007 R-V.

5. That after taking the possession of the aforesaid land comprising in khasra No-7098, rainy water disposal was

constructed after getting the said land demarcated by the Revenue Department. The possession and demarcation report is Annexure R-VI.

6. That Smt. Roshani Devi now has filed the present petition with regard to the land under her ownership measuring 565 square yards possessed by the Public Health Engineering Department, Rohtak. It is correct that no compensation has ever been given to the petitioner with regard to the said land measuring 565 square yards. As per the order passed by this Hon'ble Court dated 03.09.2019 R-VII the demarcation of the above-said land comprising in khasra No. 7098 Mauja Rohtak and Khasra No. 46 and 47 comprising in Mauja Makroli was found in 19.09.2019 R-VIII to be possessed by Public Health Engineering Department, Rohtak

7. That the Public Health Engineering Department, Rohtak is not in a position to deliver back the possession to petitioner Smt. Roshani Devi as a huge considerable amount has already been spent on the rainy water disposal since the year 2010 and approximately a sum of Rs.5 crore including the cost of laying down the pipeline has been spent. The said rainy water disposal has been constructed for the welfare and betterment of the general public at large. It will be very difficult to restore the earlier position at the end of the Department and further there is no land available to the Department for the said work of construction of the Rainy Water disposal. This disposal disposes off the sewage of a population of about 40,000 persons.

8. That the Department is ready to pay the compensation to the petitioner Smt. Roshani Devi as per the rate of the land which has been assessed by the Land Acquisition Collector while passing the Award along-with interest.

9. XXXX XXXX XXXX”

Counsel for the petitioner, on the other hand, has contended that illegal occupation and possession of the land belonging to the petitioner is undisputed. Even though the respondent-Department claims that they are willing

to award compensation at the award rate announced on 16.03.2007 alongwith interest, however, the said offer is neither valid nor sustainable in the eyes of law. The respondents cannot relate the present day acquisition to an acquisition rate announced way back in year 2007 on because they have illegally encroached the land since then. He, however, submits that the petitioner would have no objection if the respondents pay compensation after determining the same as per The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Act, 2013.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

The undisputed facts which emerge from the perusal of the present petition are that 585 Sq. Yards of land belonging to the petitioner has been in continuous illegal possession of the respondent-Department. No compensation for the abovesaid land had been given to the petitioner. It is also evident that the respondent-Department is ready and willing to pay compensation for acquisition of the aforesaid land. However, the offer made by the department is that they are willing to compensate the petitioner as per the rate announced by the Land Acquisition Collector vide award qua the land on 16.03.2007. However, the aforesaid offer cannot be accepted in law to the extent of payment of compensation.

Acquisition of land at the relevant time was governed by The Land Acquisition Act, 1894. The initial notification for intent to acquire land was to be published under Section 4 of the Act of 1894. A land owner may have filed objections under Section 5A thereof, whereupon declaration to acquire was notified under Section 6 to be followed by the Award.

The above Act of 1894 was repealed by The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Act, 2013 which came in force w.e.f. 01.01.2014. A detailed procedure for acquisition of land and for rehabilitation and settlement of the displaced landowner is provided in the above Act of 2013.

It is not in dispute that no acquisition or notification qua the encroached land was ever published. It would indeed be vexing the landowner twice in case the encroachment by the respondents is accepted to relate it back to acquisition of the adjacent land and compensation at the erstwhile rate is directed to the paid. The same would infact be legitimizing the said act of encroachment and give it a validation under law by a deemed acquisition. No such deeming fiction qua acquisition is prescribed under the Statute. Hence, the offer to pay acquisition compensation at the rate of 2007 alongwith interest is dismissed.

The acquisition for all practical and legal purposes commences with effect from the date when the proceedings for such acquisition are initiated. More benevolent provisions of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Act, 2013 having been notified by the Parliament of India, there is no reason as to why the benefits of the welfare statutory provisions be denied to the petitioner.

Accordingly, the present petition is disposed of with the following directions:

- (i) That the counsel for the petitioner, on instructions from Subey Singh Rana- husband of the petitioner has no objection to the aforesaid land being acquired by the respondent-Department subject to payment of fair compensation as per the provisions of The Right to

Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

- (ii) The respondent-Department shall take a conscious decision whether it needs the above land of the petitioner or not, within a period of 30 days from the receipt of certified copy of this order.
- (iii) If the department takes a decision to retain the above land, it shall submit a proposal to the Competent Authority, Public Health Engineering Department within a period of four weeks thereafter whereupon, the necessary administrative/financial approvals/sanctions shall be obtained by the Engineer in Chief, Public Health Engineering Department, Division No.3, Rohtak within a period of 10 weeks thereafter.
- (iv) The assessment of compensation in terms of provisions of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Act, 2013 shall be done by the Land Acquisition Collector within a period of 08 weeks thereafter and the assessed compensation shall, thereafter, be disbursed to the petitioner within a period of 04 weeks alongwith all statutory benefits as are admissible to her in her account.
- (v) Since the respondents have undisputedly taken possession of the land of the petitioner and had been enjoying the same for the entire duration, the Collector, Rohtak, shall determine the crop loss sustained by the petitioner for the period from the year when the possession of the land was taken till the payment of the compensation to the petitioner, in terms of the directions contained above within a period of six weeks of the receipt of copy of this

order. The loss assessed by the Collector shall be disbursed to the petitioner alongwith interest at rate of 9% per annum from the date when compensation for each year fell due.

- (vi) The detailed calculation sheet of the entire compensation assessed alongwith interest for each corresponding year shall be furnished to the petitioner so as to rule out any possibility of miscalculation on the part of the respondent-Department and subjecting him to unnecessary litigation forthwith.
- (vii) The entire amount of the compensation, as calculated, assessed and approved by the respondent-Department, shall be deposited directly in the account of the petitioner bearing No.7011148981 being maintained in Kotak Mahindra Bank, Rohtak, IFSC Code KKBK0000151 either through RTGS or through any other admissible mode.
- (viii) The deposit of the above payment shall be without prejudice to the rights of the parties to challenge the same as per law.
- (ix) In the event of the department taking a decision not to retain the land, the possession of the same shall be handed over to the petitioner, free from all construction and fixtures, within four weeks of the decision timelines prescribed above in direction No.(ii).
- (x) Retention of land would nonetheless require the respondents to pay for the loss suffered by the petitioner from the date of taking over possession till its restoration.
- (xi) If the payment is not made in terms of the directions given above, the respondents shall be liable to pay interest @ 12% per annum on the amount due after expiry of the above period.

Further a costs of Rs.25,000/- is imposed on the respondent-Department for such laxity and carelessness. The aforesaid costs be deposited to the Poor Patients Welfare Fund, PGIMER, Chandigarh within a period of one month from today.

The petition in hand is disposed in terms as aforesaid.

27.07.2023.
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No