

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

**RA-CW-136 of 2010 in
Civil Writ Petition No. 10748 of 2008
Date of Reserve: 7.8.2023
Date of decision : September 22, 2023**

Roshan Lal

....Applicant/Petitioner

Versus

State of Punjab and others

....Respondents

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

Present : Mr. Shailendra Jain, Senior Advocate assisted by
Ms. Navneet Kaur, Advocate and
Ms. Janvi Verma, Advocate, for the applicant/petitioner

Ms. Monika Jalota, Sr. Deputy Advocate General, Punjab
for respondents No. 1 and 3

Mr. Sanjeev Sharma, Senior Advocate assisted by
Ms. Kavita Arora, Advocate for respondent No. 2-
Improvement Trust, Faridkot

KULDEEP TIWARI,J.

1. The present review application derives its genesis from an order dated 8.3.2010, passed by the Hon'ble Supreme Court in SLP(C) No. 5654 of 2010, whereby, liberty was granted to the applicant to re-approach this Court for consideration of his already raised plea of discrimination by filing a review application qua the order dated 27.1.2010, passed by this Court, vide which the present writ petition was dismissed on merits. The relevant extract of the order dated 8.3.2010 passed by the Hon'ble Supreme

Court reads as under:-

"After arguing the case for some time, learned senior counsel for petitioner made a request that his client may be permitted to withdraw this petition with liberty to file an application for review of the order under challenge on the ground that the plea of discrimination raised by him has not been considered by the High Court. The request of the learned senior counsel is accepted and Special Leave Petition is dismissed as withdrawn with liberty in terms of the prayer made."

2. Availing the liberty (supra) the applicant/petitioner filed a review application. However, he remained unsuccessful and this Court vide order dated 9.7.2010 dismissed the review application, for its being devoid of merit. The dismissal order (supra) caused grievance to the applicant/petitioner and afforded a ground to lay challenge to the dismissal order (supra) before the Hon'ble Supreme Court. Thereafter, the Hon'ble Supreme Court again interfered with the matter and set aside the order (supra), as passed by this Court, with the following directions:-

"Though we have heard the learned counsel on both sides for some time, we are of the view that the High Court should have addressed the submissions made by the appellant in the review petition, some of which have been noted in the order dated 06.05.2011, as extracted above. Therefore, we set aside the impugned order passed by the High Court in the review petition and request the High Court to address the issues raised in the review petition regarding the availability of alternate land belonging to the Government and other public authorities and pass a speaking order in the

review petition.”

3. The Hon'ble Supreme Court remanded the lis to this Court for reconsideration of the plea of discrimination as well as to re-examine the issue of availability of alternate government land(s) and land(s) belonging to other public authorities, as raised by the petitioner and thereupon, to pass a speaking order.

4. Before we proceed to make the required deliberation upon the issues raised in the remanded review application and thereupon, pen down our resultant opinion for adjudication thereof, it is deemed essential to first trace the factual matrix of the present case.

FACTUAL MATRIX

5. The petitioner had earlier approached this Court by filing CWP No. 10748 of 2008 and challenged the acquisition notice dated 2.9.2005, (Annexure P/1), notice dated 22.9.2005, (Annexure P/2) as well as notification dated 15.6.2006, (Annexure P/5), issued under Sections 36, 38 and 42 of the Punjab Town Improvement Act, 1922 (in short, the Act of 1922), by respondent no. 2-Improvement Trust, Faridkot. The petitioner challenged the acquisition proceedings on the ground of breach of Standing Order No. 28 dated 9.3.1985 issued by the Financial Commissioner and Secretary to Government of Punjab, Revenue Department, wherein, as per the petitioner, it was a bounden duty of the acquiring authority concerned to first evaluate the availability of other government land(s), if any, in the district which can be efficiently put to use for the apposite public purpose and only after non-availability of any public land(s), the acquiring authority

may proceed for acquisition of private land. To substantiate his arguments, he has placed reliance on Clause 12.1(iii) of the Standing Order (supra). He has further submitted that in the vicinity of the acquired land of the petitioner, abundant government/public land(s) is available which can be utilized for the apposite public purpose. Secondly, the petitioner has also challenged the impugned acquisition notification on the ground of discrimination. According to him, the land(s) of the political effluent people has been released from the impugned acquisition notification, however, the petitioner has been given a different treatment and the Improvement Trust has adopted the policy of pick and choose.

6. Per contra, the counsel for the Improvement Trust has submitted that the Improvement Trust Faridkot had passed a resolution dated 07.07.2005 whereby, a proposal was formulated for a development scheme of the land(s) situated at Chahal Road, Opposite Raje Da Bagh before Green Avenue in land measuring 65 kanal 17 marla falling in Khasra No.2095, 2096, 2097, 2098, 2099. The present site was one of the sites which was selected by the Site Selection Committee constituted by the office of respondent No.2 as the site in question is surrounded by constructed buildings and was termed to be suitable for the apposite purpose. In pursuance to above, an approval order was given by the Government on 10.08.2005, for the said scheme and thereafter a notice under Section 36 of the Act of 1922, was published in two news papers on 02.09.2005 and 09.09.2005. After that a notice under Section 38 of the Act of 1922 was sent to the petitioner on 22.09.2005, seeking information

regarding the ownership and the occupancy of land in dispute. Objections were also invited which were submitted by the petitioner on 26.09.2005. However, after hearing the objections of the petitioner, Chairman, Improvement Trust rejected the same. The approval was given for making the new scheme of 55 kanals 10 Marlas on 29.11.2005. Eventually, on 15.06.2006 a notification under Section 41 and 42 of the Act of 1922 was issued by the respondent-Improvement Trust sanctioning the development scheme. Further, a notice under Section 9(3) of the Land Acquisition Act, 1894 (in short, the Act of 1894) was also issued to the petitioner on 18.05.2008 and in pursuance of that notice the award was passed on 13.06.2008 by the Land Acquisition Collector. The amount of Rs. 1,67,18,409 was also deposited with Land Acquisition Collector concerned on 13.06.2008.

7. This Court considered the case of the petitioner with regard to the availability of alternate land and also considered the issue of violation of the Standing Order No. 28 dated 9.3.1985, and after considering these pleas, the writ petition was dismissed vide order dated 27.1.2010. The relevant part reads as under:-

“It has further been pointed out with regard to the other land as under:

“(i)That the land measuring 19 kanals 7 marlas is a very small pocket of land and no residential colony can be constructed in that area and neither is there any appropriate road to the said land which has litigation pending in the Court of Sh. A.K.Singla, Addl. District Judge.

(ii)That the land mentioned in this para is in

possession of the Research Centre of the Punjab Agricultural University, Ludhiana and is being used for the research work for the farmers of Punjab by the University and even otherwise, has no proper approach road and the said land cannot be diverted for the purpose of a development scheme.

(iii) &(iv) That the site mentioned in these paras are in the ownership of the Punjab Urban Development Authority which itself is a development agency and as per the site plan itself, the said site is not suitable for developing the same for residential -cum- commercial purposes.”

We have heard the learned counsel for the parties at some length and find that the writ petition lacks merits and is thus liable to be dismissed. Firstly, violation of Standing Order 28 dated 13.3.2006 (P.6) itself may not constitute a valid reason for quashing the acquisition proceedings. In any case, the respondents have categorically denied availability of any land for the purposes of development/ extension scheme. There is a specific denial by the respondents that government land measuring 135 kanals 8 marlas is available but is occupied by a garden and a tube-well is being installed for supply of water to the city of Faridkot. The land opposite the land of the petitioner belongs to a private trust known as Maharawal Khewa Ji Trust, as per jamabandi for the year 2004-05. With regard to the other land also explanation has been furnished. One piece of land i.e. 19 kanals 6 marlas is found to be very small where no residential colony could be constructed nor there is any appropriate road to access the aforesaid land. Moreover some litigation is pending in the Court of Shri A K Singla, Addl. District Judge. Another piece of land belonging to the government is in possession of Research Centre of

Punjab Agricultural University, Ludhiana. It is also stated that the aforesaid land is under the ownership of Punjab Urban Development Authority which itself is a development authority. Therefore, we do not find any violation of the mandatory provisions of the Trust Act or any other law. We specifically asked the learned counsel for the Trust as to whether the amount of compensation has been deposited to which categorical reply was that over Rs. 1,67,00,000/- was deposited as per the requirement of the award. As a sequel to the above discussion, this petition fails and the same is dismissed.”

8. After dismissal order (supra), the petitioner has now again raked up the issue of availability of alternate land(s) with the government by filing the present review application and he has also included new parcels of alternate government land(s). On notice of the review application, respondent-Improvement Trust filed its detailed response by a way of affidavit. At first instance, we shall consider the plea of availability of alternate land(s) and the plea of violation of Standing Order No. 28 dated 9.3.1985, which according to the petitioner, has not been complied with. As already recorded above, the suitability of land was examined by Site Selection Committee concerned which was constituted by the Improvement Trust (Annexure R/2). The aforesaid committee found the site in question suitable being surrounded by the constructed buildings. The Site Selection committee out of 10 selected sites, only finalized 3 sites for development of the present scheme as the same has an approachable road which is more than 30 feet wide and has a potential for development of residential and commercial area. The respondents reply to the non

suitability of the other parcel of government acquired land for the apposite public purpose and pointed out that the limitations in all those land(s) which are as under:-

(i) So far as the vacant land measuring 135 kanals 8 marlas, situated within the limits of Faridkot City, is concerned, it was submitted that the land belongs to Horticulture department and in the said land, there is orchard/garden, and a tube well has been installed for the purpose of supplying water to the extending city of Faridkot. For that they have placed on record the report of Patwari/Tehsildar as Annexure R/1. According to them, this land is being utilized by the Horticulture department for cultivation and for the purpose of creating orchard/garden. Further it is mentioned that this piece of land cannot be used for the apposite purpose as the same is not situated on the main road.

(ii) With regard to the land measuring 125 kanals 5 marlas situated within the Faridkot City is concerned, this land belongs to the Punjab Urban Development Authority (PUDA) and the same was acquired by PUDA for the purpose of development of another scheme. Therefore, the same cannot be acquired by the Improvement Trust-respondent no. 2 for the apposite purpose.

(iii) Third example which is cited by the applicant is the land

measuring 98 kanals 2 marlas. As per the report of the Director, Regional Research Centre, Punjab Agriculture Centre, Faridkot, this piece of land belongs to Asia's famous Agricultural University i.e. Punjab Agriculture University, Ludhiana and on this land they are conducting research work as per the directions of the Government of India and this land is reserved for the benefit of the farmers and therefore, cannot be utilized for the purpose for which the petition land(s) has been acquired, as the public purpose for which the above land is being utilized is more important than the interest of the petitioner.

(iv) The land measuring 31 kanals 16 marlas belongs to PUDA and the same cannot be utilized by the Improvement Trust as the PUDA has acquired that land for the development of their own schemes.

(v) The next example as cited by the petitioner was the land measuring 19 kanals 6 marlas. However, as per the reply, this is a small chunk of land and is of no use for construction of residential colony. Further-more, this land is under litigation, which is pending in the Court of learned Additional District Judge, Faridkot.

(vi) Lastly, the petitioner has cited another example of land measuring 45 kanals, which is situated in front of the land of the petitioner, which according to him, can be utilized for

the apposite purpose. According to the respondent-Improvement Trust, it is not the government land. Rather it is a private land which belongs to private Trust known as “Maharawal Khewa Ji Trust”. The said land, in fact, is in the shape of orchard and popularly known as “Raje Da Baag” and this does not belong to government. Otherwise also this land is of no useful purpose for the apposite scheme.

9. In view of the above specific stand of the respondent-Improvement Trust, we find that there is no violation of the Standing Order (supra) and the alternate land(s) which was cited by the applicant. As per the respondent-Improvement Trust, the same cannot be used for the apposite public purpose for which the petition land(s) was acquired. Further-more, this Court has already held in an earlier order dated 27.1.2010 that the violation of Standing Orders (supra) may not be a valid reason for quashing the acquisition proceedings. The respondent-Improvement Trust has also denied the availability of other suitable land(s) for the purpose of development/extension scheme.

10. The above facts duly manifest that the suitability of the land has been duly considered and found that the petition land(s) is most appropriate to achieve the ultimate end i.e. public purpose. The decision with regard to suitability of a land is purely an executive action and policy decision which is generally prepared after considering various intricacies and different suitable yardsticks, therefore, cannot be interfered by the

Court. These are purely under the domain of expertise of the acquiring authority concerned and therefore, is a pure administrative action and the judicial review of such action is permissible only on the ground of illegality, irrationality and procedural impropriety. This view is supported by a judgment of this Court rendered in ***Arun Kumar and another vs State of Haryana and others, CWP No. 25045 of 2016, decided on 3.2.2022.***

The relevant para is reproduced as under:-

“36 The decision as regards the manner in which the acquired land is to be utilized is purely an executive action and a policy decision which is often executed by way of development plans prepared by the competent authority. The change in the plans and manner of utilization of land forms part of planning and expertise of the State government in executing the development works on the acquired land and is purely an administrative action. It is settled law that judicial review of such action is permissible only on the grounds of illegality, irrationality and procedural impropriety. As far as the preparation of the development plans is concerned, the Court cannot substitute its opinion and dictate the terms regarding the manner in which the land acquired for public purpose shall be utilized. Nor can a land owner dispute the acquisition proceedings on the ground of utilization of land in one manner or other so long such utilization fulfills the touch stone of "public purpose".

11. Further, the basic thrust to evaluate the legality of the acquisition action of the government lies in its object i.e. public purpose. So as long as the public purpose subsists, the exercise of the power of eminent domain

cannot be questioned. In ***Scindia Employees Union vs State of Maharashtra & Ors., (1996) 10 SCC 150***, the Hon'ble Supreme Court has observed as under:-

"The very object of compulsory acquisition is in exercise of the power of eminent domain by the State against the wishes or willingness of the owner or person interested in the land. Therefore, so long as the public purpose subsists the exercise of the power of eminent domain cannot be questioned. Publication of declaration under Section 6 is conclusive evidence of public purpose. In view of the finding that it is a question of expansion of dockyard for defence purpose, it is a public purpose".

12. Similar view was substantiated in ***Sharda Devi vs State of Bihar & Anr., (2003) 3 SCC 128***, by the Hon'ble Supreme Court.

13. The expression of public purpose is defined in clause (f) of Section 3 of the Act of 1894. The definition is only illustrative in nature and this does not restrict its ambit and scope. Rightly so, because the public purpose changes with the changing requirements of the society. Respondent No. 2 has exercised its power of eminent domain in acquisition of the land within its defined parameters of law. No procedural illegality, whatsoever has been pointed out by the counsel for the applicant, therefore, we do not find any reason to interfere in the selection of petitioner's land(s) for the acquisition of apposite public purpose.

14. Finally, the applicant has raised the plea of discrimination. According to him, the acquisition notification in question was issued in respect of Khasra Nos. 2095, 2096, 2097, 2098 and 2099 and first three

khasra number belongs to the petitioner and the rest belongs to some other people. As per the reply by the respondents, Khasra Nos. 2098 and 2099 were initially included in the land acquisition. However, later on it was found that khasra nos. 2098 and 2099 are not fit to be acquired because in between these khasra numbers and the other land of the petitioner, there is public passage which leads to another locality (*Abadi Deh*) and the said public passage is the only route to the said locality and to the main road, therefore, finding these two khasra numbers to be not viable, they were not included in the acquisition notification. It is not that because of any influence of the owner of those khasra numbers, the land was released from the acquisition proceedings, rather the said land was never notified to be acquired being not viable and useful for apposite public purpose.

15. The very plea of the applicant that the land of khasra nos. 2098 and 2099 was released as the owner of these khasra numbers was an influential person and the land of the applicant has been acquired being poor farmer and has no foundation to stand. As discussed above, the suitability of the petition land for achieving the apposite public purpose was duly considered. It is for the authority who is carrying out development plan to take such decision. It is not possible for the Court to sit in appeal over such decision of the authority. We find support for the aforesaid view from a judgment of the Hon'ble Supreme Court rendered in **M/s Anand Buttons Ltd. vs State of Haryana, 2005(1) R.C.R. Civil 224.** The relevant paras are reproduced as under:-

“11. This reasoning of the High Court cannot be faulted

for the simple reason that the authority, who has to carry out the planned development of the industrial estate, is in the best position to judge as to which land can be exempted from the acquisition without jeopardising the development scheme. It is not possible for the court to sit in appeal over the exercise of such satisfaction by the authority vested with the task of implementing the development plan.

13. It is trite law that not only land but also structure on land can be acquired under the Act. As to whether in a given set of circumstances certain land should be exempted from acquisition only for the reason that some construction had been carried out, is a matter of policy, and not of law. If after considering all the circumstances, the State Government has taken the view that exemption of the lands of the appellants would render askew the development scheme of the industrial estate, it is not possible for the High Court or this Court to interfere with the satisfaction of the concerned authorities. We see no ground on which the appellants could have maintained that their lands should be exempted from acquisition. Even if three of the parties had been wrongly exempted from acquisition, that gives no right to the appellants to seek similar relief.”

16. That not even a single instance has been referred by the learned counsel for the applicant to substantiate that the land which has been released from acquisition is more suitable than the land of the applicant/petitioner whereas, the respondent-Trust categorically spells out the relevant and appropriate reasons. The issue of town planning being complex subject and having complex intricacies cannot be usually

interfered by the Court on the ground of its discrimination at the drop of hat. The Hon'ble Supreme Court in *Association of Vasanth Apartments' Owners vs V. Gopinath & Ors., Civil Appeal No. 1890-91 of 2010, decided on 13.2.2023*, held that to prove the discrimination, heavy burden lies on the person to lay clear foundation in the pleadings and further to discharge the burden by establishing the same. The relevant para is reproduced as under:-

“51. We are unable to persuade ourselves to hold that the impugned rule violates Article 14 on the score that it is discriminatory. In a challenge to a provision based on discrimination under Article 14, the burden is on the applicant to lay clear foundation in pleadings and further to discharge the burden by making good the case and the court will not lightly enter a finding of discrimination. Town planning being a complex subject involving various inputs and value judgements which are intended to ensure the orderly, visionary and planned development, they require greater deference from courts.”

17. In view of the tried law settled by the Hon'ble Supreme Court, we do not find any merit in the instant review application and therefore, the same is accordingly dismissed.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

September 22, 2023

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<i>Whether speaking/reasoned ?</i>	<i>Yes/No</i>
<i>Whether Reportable ?</i>	<i>Yes/No</i>