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

CWP-37985-2018

Date of decision:28.08.2023

UDHEY SINGH

...Petitioner

Versus

CHANDIGARH ADMINISTRATION AND ANOTHER

...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Vijay Pal, Advocate
for the petitioner.

Mr. Jaivir Chandail, Advocate
for U.T. Chandigarh.

SURESHWAR THAKUR, J. (ORAL)

1. The petitioner's lands were subject to acquisition through issuance of notifications respectively under Sections 4 and 6 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act of 1894"). The notifications became respectively issued on 27.09.2006, and, on 21.09.2007. The award as became made by the learned Collector concerned, in terms of Section 11 of the Act of 1894, was drawn on 18.09.2009 (Annexure P-12). In the instant writ petition, the petitioner claims for the making of a writ of certiorari, to thus, quash the above notifications, and, the said contention is erected upon directions, being passed earlier by this Court in a verdict drawn by this Court, on 09.12.2016 in CWP-22181-2013.

2. The further relief as asked for in the instant writ petition is for a mandamus being made upon the respondents concerned, to release the petition lands, in terms of the verdict (supra).

3. For appreciating the vigor of the above made contention, it is necessary to extract the operative part of the verdict, as drawn by this Court, on 09.12.2016, upon CWP-22181-2013. The said operative part becomes extracted hereinafter.

“(9) In the light of the above discussion, these writ petitions are allowed to the extent that the Chandigarh Administration is directed to constitute a team of Officers including the Land Acquisition Collector to conduct a fresh survey and wherever residential houses/structures are found in existence before Section 4 notification was issued and if such structures are adjoining or near to the village abadi deh or the exempted land/properties, let such structures/houses be also released from the acquisition subject to the deposit of development and other statutory charges by the owners/occupiers of the properties.

(10) The respondents are further directed to release some reasonable open space also to enable the owners to utilize their houses/structures. Rest of the vacant land/area can be kept under acquisition.

(11) Let appropriate decision be taken within a period of three months from the date of receipt of certified copy of this order.

(12) Till then petitioners or any other person shall not raise any further construction at the site.”

4. A reading of the above extracted directions reveals, that the respondents concerned, were ordered to consider the makings of release of those structures of residential house or structures, which were but in existence before the issuance of a notification under Section 4 of the Act of 1894. Moreover, if such structures were adjoining to or near to the village abadi deh or the exempted land properties, thereupon also a mandamus was passed, upon the respondents concerned, to subject to payment of

development and other statutory charges, to thus regularize such constructions.

5. In the reply on affidavit furnished to the writ petition by the respondents concerned, though there is a categorical speaking, that after making verification of the relevant sites, it has been discovered, that only three persons were, but prior to the issuance of a notification under Section 4 of the Act of 1894, thus holding occupation of residential houses on the relevant lands, whereas, the remaining persons were having cattle shed cum store type structures on the relevant sites. If so, when the operative part of the verdict (*supra*), as became made by this Court, in the earlier round of litigation reveals, that only those residential houses and structures discovered or were found to be in existence on the disputed lands, and, which were raised thereon prior to the issuance of a notification under Section 4 of the Act of 1894, thus were amenable to become released from acquisition. Therefore, when there is no mention therein of any cattle shed cum store type structures, as are declared in the reply on affidavit furnished to the writ petition, by the respondents, being also amenable for becoming released from acquisition. Therefore, any argument as made before this Court by the learned counsel for the petitioner, that the said cattle shed cum store type structures are also amenable for being released from acquisition, as are the residential houses or structures raised on the disputed lands, and, which became raised prior to the issuance of a relevant notification.

6. Be that as it may, though this Court in the operative portion of the verdict (*supra*), did also made directions, upon the respondents concerned, to regularize constructions subject to payment of certain statutory charges, if the said structures are adjoining to or are near to the

7. In the above regard, in the reply on affidavit furnished to the writ petition by the respondents concerned, it has been disclosed, that the petition lands thus do not fall within the extended abadi deh rather they fall outside the abadi deh. Furthermore, when it has also been revealed on affidavit furnished to the writ petition, that the erections, and, re-erections of exempted buildings or construction in the property, as are the one(s) over the writ lands, thus not permissible to become so raised, except with the previous permission of the Authority prescribed under the Periphery Act, 1952. Therefore, for want of the above prior requisite approvals at this stage, thus the directions, as, passed by this Court, that even when some structures or houses are outside the abadi deh, as are some of the petitioner's houses, yet in the wake of the said houses being not erected or re-erected with the prior permission of the Authority prescribed under the Periphery Act of 1952. Resultantly, the regularization of such houses outside the abadi deh subject to payment of certain statutory charges rather cannot be permitted to be made, unless the contemplated Authority under the Periphery Act, 1952 proceeds to, if not already done, and, if the petitioner is falling in that category, considers the lawful granting of ex post sanction to the raised construction, thus prior to the issuance of the relevant notification, so that the directions (supra), as made by this Court are implemented in the fullest spirit.

8. Disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

28.08.2023

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(MANISHA BATRA)
JUDGE