

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

226

CWP-33739-2019 (O&M)

Date of decision: 28.03.2023

JEET RAM

.....Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

.....Respondents

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

Present: - Mr. U.K. Agnihotri, Advocate with
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

Mr. Sudeep Mahajan, Advocate for
Mr. Saachi Mahajan, Advocate
for the respondents No.2 & 3.

VINOD S. BHARDWAJ, J. (Oral)

The instant petition has been filed under Articles 226/227 of the Constitution of India for the issuance of a writ in the nature of mandamus directing the respondents to provide path/access to the house that has been constructed by the petitioner in Rect. No. 24, Killa No. 5/2, Revenue Estate of Village Bas Kushla, Tehsil Harsaru, District Gurugram.

2. Briefly summarized the grievance of the petitioner is that he has not been granted access to his constructed house in the aforesaid rectangle number in the Revenue Estate of Village Bas Kushla, Tehsil Harsaru by the respondent-HSIIDC. The petitioner contends that he alongwith other co-

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sharers was owner of approximately 46 kanal of land. The entire land except for the land measuring 1 kanal 15 marlas comprising in the above said revenue description was subject matter of acquisition by the respondents. An award No. 6 dated 20.05.2004 and award No. 1 dated 24.01.2007 was passed by the Land Acquisition Collector in reference to the above said acquisition. The above said property was left out in the process of acquisition and was not notified on account of the already constructed house by the petitioner. The location of the said house is adjoining to the service road of Hilex company, Sector -8, ITM, Manesar. The petitioner submitted a representation to the respondent authorities to provide access to his house since no path has been made available to enter his house. The above said representation of the petitioner was considered by the Assistant Town Planner, HSIIDC, Manesar alongwith Senior Manager, Estate, however, no decision was taken thereupon. Repeated representations were submitted by the petitioner. The HOD Estate examined the issue and recorded a noting dated 16.09.2018 which reads thus:

“If the subject land is released and if the release has attained finality, it is our obligation to provide Right of Way; Process; examine and put up accordingly. HOD (IPD)/HOD (Estate).

Sd/-6.9.18”

3. Despite such recommendation having been made by the HOD (Estate), the necessary access has not been granted by the respondents as a result whereof the property in question has been rendered unfit for optimum

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utility by the petitioner who is currently using an adjacent vacant plot for accessing his house.

4. Learned State counsel appearing on behalf respondent No.-1 contends that there was no necessity of filing of any separate reply on behalf of respondent No.1-State since the adjoining area is owned, possessed & to be planned by the Haryana State Industrial & Infrastructure Development Corporation i.e HSIIDC.

5. A separate reply by respondents No.2 & 3 had been filed wherein the factum of the above said land not being under acquisition by the HSIIDC is not denied. They also admitted that representation dated 11.05.2018 had also been submitted by the petitioner pointing out that the house of the petitioner has been left out of the acquisition and abuts boundary of Sector M-11, Transport Hub, IMT-Manesar. It is contended that as per the final development plan Gurugram-Manesar, Urban Complex, 2031-AD, the land in question forms part of the controlled area and that the petitioner is using the above said land contrary to the development plan and/or the usage assigned as per the controlled area. It is further averred that the petitioner has constructed the above said housing structure at site without taking any permission from the Director, Town Country Planning, Haryana. Further, the structure in question was submitted as having been constructed in the year 2008. However, the response is silent on providing any access to the house of the petitioner. The reasons given by them for not adhering to and/or not considering the request of the petitioner for grant of access is only that the petitioner has raised construction of the aforesaid house without seeking license/change of land use from the Department of Town & Country

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Planning. It is averred that since the area in question is a controlled area as per the Gurugram-Manesar Urban Complex, 2031 AD, hence, the construction is not in conformity with the controlled area. The prayer of the petitioner thus cannot be acceded to.

6. I have heard learned counsel(s) appearing on behalf of the respective parties and have gone through the documents appended alongwith the present petition.

7. I find myself unable to accept the reasons cited by the respondents to not grant access to the petitioner. The undisputed fact is that entire land surrounding the left out pocket has been acquired by the respondent HSIIDC. The respondents cannot, in their planning isolate the area by not allowing any access to the plot and force it to be abandoned as an island. Providing passage to all properties situated in a planning area is a primary job of the planning agency. Such passage is not dependent on the whims of the executing/planning agency. HSIIDC is not the enforcement agency for utilization of land and appropriate authority for such enforcement already stands constituted. The HSIIDC cannot assume that power to itself or justify its defective planning under such pretext. The right of a citizen to own property also encapsulates the right to access, enjoyment, use and occupation of the property. If such use and enjoyment is in violation of law, appropriate action can be taken as per law but the same does not vest any power with the authority to deny passage. Such an act would be an abuse of sovereign authority and amounting to coercing the owner to give up his property.

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8. Further, insofar as whether the construction has been raised in violation of the controlled area or not, the reply is silent qua the date on which the area was declared as controlled area. Even though a reference is made to the notification of the Development Plan of 2031 to contend that the area in question falls within the controlled area, however, the date of notification of such final development plan under the Punjab Scheduled Roads & Constructed Areas (Restriction on Unregulated Development) Act, 1963 has not been mentioned. The control area would come into force with effect from the date when such a notification is issued. In the absence of apprising the date of the notification, the construction in question can not be said to be in violation of the controlled area, considering that the construction in question had been raised by the petitioner in the year 2008. In any case, in the event of the petitioner carrying out a non-confirming activity, the competent authorities are not precluded from taking action in accordance with law and to ensure that the petitioner brings the land to use in conformity with the development plan. In any case, despite the aforesaid illegality, if any, the petitioner cannot be denied access to his land. The issue can be examined from yet another angle. There is no prohibition in law that the petitioner cannot be granted CLU/License qua the land in question or that the construction raised by him cannot be brought in conformity with the permissible activity as per the development plan. If no access is granted in the planning, there is no way that the petitioner could ever use the premises for a confirming use and even if he gets CLU/License, he may not be able to get any passage to use the property. It would be impossible for the respondent-HSIIDC to thereafter provide access to the petitioner for

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utilization of the aforesaid property. The stand adopted by the respondent is thus unacceptable.

The writ petition is accordingly allowed. The respondent-HSIIDC is directed to provide access to the aforesaid property of the petitioner in accordance with law and subject to fulfillment of the mandatory requirements as prescribed.

All the pending miscellaneous application(s), if any, are also disposed of.

(VINOD S. BHARDWAJ)
JUDGE

MARCH 28, 2023
Vishal Sharma

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