

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

CWP No. 29778 of 2022
Date of Decision: 09.02.2023

Vidya Devi and others

.....Petitioner(s)

Versus

State of Haryana and others

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Mohit Garg, Advocate,
for the petitioners.

Mr. Ankur Mittal, Addl. A.G., Haryana,
and Mr. Karan Jindal, AAG, Haryana.

G.S.SANDHAWALIA, J.

1. The present writ petition has been filed under Articles 226 and 227 of the Constitution of India praying for issuance of a writ in the nature of mandamus directing the respondents to pass appropriate orders on the representation dated 19.01.2022 (Annexure P-10) and seeking release of the land of the petitioners situated in village Kanhai, Tehsil and District Gurugram as per the policy dated 14.09.2018 (Annexure P-9) on the ground that it cannot be utilized as per clause no.7 of the said policy. The prayer is made not to demolish the structures raised by the petitioners on the said land which is stated to be situated in Khasra No.34//22/2 in the said village and measuring 4 kanals and 17 marlas. The same is stated to be adjacent to the land of the petitioners which has been left over by the respondent-Government.

2. In the writ petition, though it has been mentioned that there was

earlier litigation in the form of *CWP No. 22269 of 2020, Sanjay and others vs. State of Haryana and others* but there is studied silence regarding the decision on merits in CWP No. 14184 of 2016 and the challenge raised to the order dated 21.03.2016 (Annexure P-11) in the said writ petition though there is an averment that SLP (C) No. 21440 of 2022 was dismissed as withdrawn on 02.12.2022. Neither the said order passed in the SLP has been attached, which rather goes on to show that the same was preferred against the writ petition, detail of which has not been mentioned.

3. Counsel for the petitioners, at the outset, has though tried to justify that there is a mistake as such and it is only the subsequent writ petition filed the same had been mentioned, which rather we feel is only an attempt to conceal facts and to delay the handing over of possession of the land which was acquired way back on 20.04.1990 (Annexure P-1) vide notification issued under Section 4 of the Land Acquisition Act, 1894 (in short 'the 1894 Act') and followed up by the notification under Section 6 of the said Act on 18.04.1991 (Annexure P-2). The land stood vested in the State with the passing of the award dated 23.03.1993 (Annexure P-3). The said notification would go on to show that the land was acquired for the purposes of development and utilization of the development plan by the erstwhile HUDA which included land from village Jharsa, Hadbast No.94; village Kanhai, Hadbast No. 73; village Bindapur, Hadbast No.93 and village Shamashpur Hadbast No.92, Tehsil and District Gurugram. The rate was fixed at Rs.3.5 lakhs per acre for *chahi* land for village Kanhai at that point of time and eventually compensation of Rs.12,27,47,937.60/- was assessed and the land was to vest in the ownership of the Haryana Government and on

Vikas Pradhikaran (HSVP).

4. Mr. Ankur Mittal, Addl. A.G., Haryana and Mr. Karan Jindal, AAG, Haryana on account of having advance copy, has brought to the notice of this Court that the petitioners challenged the said notification only on account of the fact that the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short 'the 2013 Act') had come into force. Accordingly, the benefit of lapsing was sought and the plea taken was that physical possession had not been taken whereas the stand of the respondent-State was that in the form of *rapat roznamcha* No. 425, possession had been taken and it is a valid mode of taking possession. The compensation as such had been made available for disbursement. The co-ordinate Bench headed by Hon'ble the Chief Justice, in ***CWP No. 14184 of 2016, Sanjay and others vs. State of Haryana and others*** decided on 31.08.2022, noticed that the land had been acquired for public purpose i.e. development and utilization of land as residential, commercial, institutional area, recreational zone and open space in Sectors 44, 45 and 46, Gurugram and it was essential to achieve the public purpose as it was to be developed as per the layout plan. The plea of discrimination that land of certain others had been released was rejected and eventually the order which had been impugned dated 21.03.2016 (Annexure P-11 therein) was upheld by relying upon the principles laid down by the Constitution Bench in ***Indore Development Authority vs. Manohar Lal and others, AIR 2020 SC 1496*** and ***Shanti Sports Club and another vs. UOI and others, (2009) 15 SCC 705***. The relevant portion of the judgment passed in *CWP No. 14184 of 2016* reads thus:-

precedent as far as the aspect of discrimination is concerned. The perusal of the aforesaid observation clearly reveals that it is incumbent on the petitioner/landowner alleging discrimination to show that in what manner he has been discriminated and how he is identically placed to such persons in whose favour the order of release of land has been passed. Suffice to mention that if the order relied upon is itself illegal and against the provisions of law, the land owner/petitioner(s) cannot claim parity even if he is identically placed because Article 14 of the Constitution of India, does not envisage the concept of negative equality and thus cannot be used as tool to perpetuate illegality time and again. Applying the aforesaid principles onto the case at hand, the only conclusion which can be drawn is that the petitioners have miserably failed to setup a plea of discrimination. Also, we are in complete agreement with Mr. Mittal that in view of the law settled by the Apex Court in Indore Development Authority (supra) once possession of the land has been taken, which in the case at hand was taken by recording Rapat Roznamcha and the land stands vested in the State, no order of divesting can be passed and any such order would be against the provisions of the Act and the position of law. Even the judgments being relied upon by the petitioners are not applicable on the case at hand as same were passed when the law as regards the mode of taking possession was not clear, which has now been clarified in Indore Development Authority (supra) wherein taking possession of the land by way of Rapat Roznamcha is a valid mode of taking possession of the land and once such possession is taken, the land vests in the State free from all encumbrances. Once land is vested in the State,

no power under section 48 of Act of 1894 can be exercised, and thus, the reliance placed on the orders by the petitioners as regards the release of land and the judgments passed by the Hon'ble Court in this regard cannot be relied upon.

22. As a sequel of the above discussion and in view of law summarized in para 363 of Indore Development Authority (supra), specifically after having recorded that in the case at hand, the physical possession of the land in question having been taken, the obligation for payment of compensation stands discharged and also considering that the land in question is very much essential to achieve the public purpose, we have no hesitation to hold that in the instant the state has fully discharged its obligation qua both the contingencies occurring in section 24 (2) of 2013 Act and it being so, the instant petition is dismissed. Accordingly, the order impugned in the petition is hereby affirmed.

23. Having dismissed the main writ petition, pending application(s), if any, is the same fate. Status quo, if any, stands vacated.”

5. The said order was upheld by the Apex Court in ***SLP (C) No. 21440 of 2022, Sanjay and others vs. State of Haryana and others*** on 02.12.2022 wherein, permission was granted to withdraw the SLP unconditionally. The order reads thus:-

“After making elaborate submissions, when the Court was not inclined to entertain the present Special Leave Petition, learned counsel for the petitioners seeks permission to withdraw the present Special Leave Petition unconditionally.

The Special Leave Petition stands dismissed as withdrawn unconditionally.”

6. It is pertinent to notice that in the intervening period, another writ petition i.e. *CWP No. 22269 of 2020* was filed whereby, directions had also been sought for release of the land on the ground of parity. The said writ petition was dismissed as not pressed on 10.11.2022, which reads thus:-

“Ms.Nikita Garg, Advocate for Mr. Sandeep Sharma, Advocate makes a statement at the bar that she has instructions from the petitioners not to pursue the instant writ petition.

In the light of such statement, writ petition is disposed of as not pressed.

Pending applications, if any, shall also stand disposed of.”

7. Now, the present petition has been filed claiming that a representation dated 19.01.2022 (Annexure P-10) has been filed which is to be decided. The said representation is based on the relief claimed under a policy dated 14.09.2018. When CWP No. 22269 of 2020 was filed, the petitioners had all the right to claim the benefit of the said representation but chose not to do so and rather took a chance only on the ground of parity as such. Their claim for parity has already been dismissed as noticed in CWP No. 22269 of 2020 and upheld till the Apex Court and, therefore, now they cannot claim that the representation be decided. It is settled law that the principles of constructive *res judicata* would apply to them and, thus, if they did not opt as such to claim the relief in the earlier round of litigation, they cannot be allowed to agitate for it on their whims and fancies.

8. Even otherwise, this Court is of the considered opinion that at the first instance, they had filed CWP No. 14242 of 2015, in which directions had been issued to decide their representation and the same was done on

Estate, Gurugram gave a categorical finding that as per the lay out plan in Sector 45, their land in question in Khasra No.34//22 min measuring 4 kanals 17 marlas was the land which affected the primary school site and, therefore, having been put for the planned purpose for which it was notified, the Committee never recommended for release of the land to the petitioners. Purportedly, the order was passed under Section 24(2) of the 2013 Act but the viability in issue was duly considered whether it was going to be used by State. On account of the non-viability factor which is now sought to be set into operation as per the policy dated 14.09.2018, the issue has already been considered. The relevant part of the order dated 21.03.2016 passed by the authorities read thus:-

“The speaking order is being passed in pursuance of the order dated 17.07.2015 of Hon'ble Punjab and Haryana High Court at Chandigarh in respect of CWP No.14242/2015 titled as Sanjay & others Vs State of Haryana and others was disposed of by the Hon'ble High Court vide order dated 17 07.2015. Operative part of order dated 17.07.2015 is reproduced below:-

"Learned counsel for the petitioners submitted that the petitioners are in physical possession of the land in dispute and the compensation has not been paid to them. It was claimed that in such circumstances, in view of section 24(2) of 2013 Act, the notification u/s 4 and 6 of the Act had lapsed."

After hearing learned counsel for the petitioners, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by granting liberty to the petitioners to file a detailed and comprehensive representation raising all the pleas as raised in the present writ petition before the

appropriate authority. It is directed that in the event of a representation being filed by the petitioners within a period of two months from today, the same shall be decided in accordance with law by passing a speaking order and after affording an opportunity of hearing to them within a period of four months from the date of receipt of representation. The petitioners shall be entitled to lead, any evidence to substantiate their claim before the concerned authority. Till the matter is decided by the said authority, status quo shall be maintained by the parties. It is, however, made clear that in case no such representation is filed within the stipulated period as noticed above, the interim order shall cease to operate, thereafter".

In compliance to the gazette, notification no. 4160 dated 22.05.2015, vide which Zonal Committee (ZC) has been notified to decide the representation of the petitioners as well as other land owners who seek benefit of provision of section 24(2) of the RFCT LARR Act, 2013, DT Gurgaon EO-II HUDA Gurgaon and LAO Gurgaon have supplied their respective reports on the representation of the petitioners dated 05.08.2015 which has received in the O/o Zonal Administrator-cum-ADUE, Gurgaon. The petitioners, in their representation have claimed that the petitioners are owner of bearing Khasra No. 34//22/2 (4-17) and they are in physical possession of the property. Petitioners have not received any compensation of this land. Petitioners had constructed their respective houses more than 10 year prior to the issuance of notification u/s-4 of the land Acquisition Act. Petitioners specifically mentioned about the construction raised by them in the objection u/s-5A also. Petitioners have constructed house in the year 1985 and they are residing alongwith their families. Petitioners have constructed shops and cattle sheds for their livelihood in the said land. The applicants have prayed for releasing of their land bearing Khasra No.

34//22 situated in village Kanhai, District Gurgaon under section- 24(2) of the RFCT LARR Act, 2013.

Opportunity of personal hearing was granted by the duly constituted Zonal Committee on 05.11.2015, in which petitioners appeared and submitted the same prayer as prayed in their representation. He failed to give any additional evidence in support of his plea.

Recommendations of the committee on the prescribed points are submitted below:-

1. LAO Gurgaon reported that the claimed land bearing Khasra No. 34//22 of village Kanhai, District Gurgaon falling in sector-45, Gurgaon. The aforesaid Khasra No's alongwith land measuring 579.81 acres was notified u/s-4 on dated 20.04.1990. The land measuring 63.14 acres was left out u/s-5A. The total land 516.67 acres was notified u/s-6 on 18.04.1991. As per award statement, land bearing Khadra No. 34//22min (4-17) alongwith land measuring 497.17 acres was announced vide award no. 08 dated 23.03.1993 and possession handed over to HUDA vide Rapat Roznamcha No. 425 dated 23.03.1993.

2. LAO Gurgaon reported that the specific public purpose for which land has been acquired is for sector-45, Gurgaon, which is reserved for residential use as reported by DTP Gurgaon.

3. LAO Gurgaon reported that the compensation amount of above mentioned Khasra No. have not been taken by the petitioners.

4. Estate Officer-11, HUDA, Gurgaon reported that the possession of the land is taken by HUDA.

5. DTP, Gurgaon has reported that the planning of acquired land has been shown on Part Layout plan of sector-45, Gurgaon. As per the Part Layout plan of sector-45 Gurgaon, the land affects a Primary School site. The structure plate of survey conducted at the time of section-4 is not available in his office.

6. Estate Office-II HUDA Gurgaon reported that no development

at site.

In view of the position explained above, Zonal Committee is of the view, that claim of the petitioners u/s 24(2) of RFCT LARR Act 2013 does not seem to be justified because the claimed land bearing Khasra No. 34//22 of village Kanhai, Tehsil & District Gurgaon falling in sector-45, Gurgaon was notified u/s-4 along with land measuring 579.81 acres on dated 20.04.1990 and land measuring 516.67 acres u/s-6 on dated 18.04.1991. As per award statement, land bearing Khasra No. 34//22min (4-17) alongwith land measuring 497.17 acres has been announced vide award no. 08 dated 23.03.1993 and possession handed over to HUDA vide Rapat Roznamcha No. 425 dated 23.03.1993. The compensation amount of above mention Khasra no. have not been taken by the petitioners. The awarded land in question has already been planned, for the purpose for which it was notified. The awarded land in question has been planned for Primary School Site.

In view of the facts mentioned above, it appears acquisition proceedings have attained finality because out of 516.67 acres land which was notified, 497.17 acres land stands awarded and planned and developed as per the Layout plan of sector-45, Gurgaon. Hence, the provisions of section 24(2) are not attracted in this case as possession was taken by HUDA vide Rapat Roznamcha No. 425 dated 23.03.1993 and subsequently planned for Primary School. Therefore the committee does not recommend for release of land to the petitioner.

In view of the facts mentioned above, it appears acquisition proceedings have attained finality in case of petitioners land in question. Hence, the provisions of section 24(2) are not attracted in this case.

In view of the above discussion, the recommendations of the constituted zonal committee have been approved by the competent authority, whose decision was conveyed vide letter Memo No. A-1-2016/2451-55 dated

14.03.2016 and accordingly the present representation is hereby disposed of in view of the observations made above. Thus, order of the Hon'ble High Court dated 17.07.2015 in respect of CWP No. 14242/2015 is complied with.

All concerned be informed by registered post.”

9. As noticed, the said order already stands upheld uptill the Apex Court. The Apex Court has already noticed in ***SLP (C) No.16421 of 2021, Ram Swaroop (D) through L.Rs. and another vs. State of Haryana and others*** the provisions of Section 101-A of the 2013 Act while noticing the judgment in ***Raghubir Singh and others vs. State of Haryana, 2021 (3) RCR (C) 533*** and held that these are only attempts to hold on to the land and to continue in possession on one pretext or the other trying to defeat the public purpose of acquisition. The relevant observations reads thus:-

“8. Section 101-A of 2013 Act (as inserted in State of Haryana) gives liberty to the State Government to denotify such land, on such terms, as considered expedient by the State Government, including the payment of compensation on account of damages, if any, sustained by the landowner due to such acquisition. Section 101-A is an enabling provision with the State Government to denotify the land vested with the State if it finds that any public purpose for which land was acquired under the Land Acquisition Act, 1894 becomes unviable or nonessential. In other words, the power is with the State Government on its satisfaction that the land acquired has become unviable or non-essential. No landowner has a vested right to assert that the land acquired has become unviable or non- essential mainly because the landowner continued to be in possession by virtue of an interim order passed by the High Court.

xxxx xxxx xxxx xxxx xxxx

11. The claim of the appellants for release of land on account of Section 24(2) had been rejected by the State Government on 12.09.2016. The writ petition against the

said order stands dismissed on 12.10.2020. Thus, the present appeal is merely an attempt to continue to be in possession of the land on one pretext or the other so as to defeat the public purpose of acquisition of the land for development and utilization of residential, commercial and institutional area, Sector-51, Gurgaon (now Gurugram). This Court in Raghubir Singh has held that Section 101-A does not give a vested right to the landowner to seek denotification or even that upon denotification, the land in question must return to the erstwhile owners only. The State Government is at liberty to pass such order other than release of land in favour of the landowners. 12. Therefore, the appellants cannot compel an exercise of power by the State Government in their favour as the appellants have no vested right to seek denotification of the land. Consequently, the present appeal is dismissed.”

10. Thus, keeping in view the chequered history of the litigation, we do not feel that it is a fit case as such to call upon the State to file reply or to issue any directions for consideration for release of land as the land owners cannot be allowed to defeat the purpose of the acquisition by filing repeated litigations and raising piecemeal arguments to suit their whims and fancies.

11. Accordingly, the present petition stands dismissed.

(G.S. SANDHAWALIA)
JUDGE

09.02.2023
shivani

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes
Yes