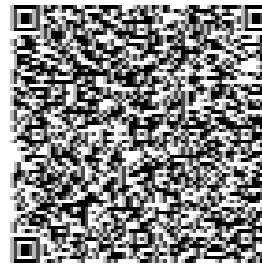


2024:PHHC:093707-DB



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

(114)

CWP-6849-2024

Decided on: 24.07.2024

Naval Singh & others

.....Petitioner (s)

Versus

State of Haryana & others

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MRS.JUSTICE MEENAKSHI I. MEHTA**

Present: Mr.Prateek Gupta, Advocate
Mr.Shubham Pathania, Advocate for the petitioner (s).

Mr.Ankur Mittal, Addl.A.G., Haryana
Mr.Saurabh Magu, DAG, Haryana.

Mr. Ankur Mittal, Advocate
Ms.Kushaldeep Kaur, Advocate, for respondent No.4-HSIIDC.

G.S. Sandhawalia, J. (Oral) :

1. Challenge in the present writ petition, filed under Article 226 of the Constitution of India is to the order dated 23.01.2024 (Annexure P-9) whereby representation made to respondent No.4 regarding denotifying the land of the petitioners comprising in Khasra No.30//4/1/1 (0 K 2 M), 4/1/2 (4K 6M) and 24//24/1 (4K 8M) (total land measuring 8 Kanal 16 Marlas) as per their respective share situated in Village Naharpur Kasan, Sub Tehsil, Manesar, Tehsil & District Gurugram was rejected

under Section 101-A of the Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013.

2. The present writ petition is a classic case of how the landowners pertaining to Gurugram in Haryana continue to retain possession of premium land though the same was acquired while putting into mode the urgency clause whereby the notification dated 17.09.2004 was issued for the purposes of setting up of Chaudhary Devi Lal Industrial, Commercial, Recreational & other public utilities in various villages including Village Naharpur Kasan. Challenge had never been raised in 2006 when possession had been taken vide Rapat Rojnamcha No.654 dated 09.03.2006 and the landowners also having lifted the compensation.

3. Keeping in view the fact that there was a controversy, qua the issue of lapsing, 14 years later, CWP-3296-2018 titled *Naval Singh & others Vs. State of Haryana* was filed which was dismissed on 31.08.2020 by the Co-ordinate Bench in view of the judgment in **Indore Development Authority Vs. Manoharlal & others, AIR 2020 SC 1496**. The matter was thereafter taken to the Apex Court whereby SLP (Civil) Diary No(s). 24012/2021 titled *Naval Singh & others Vs. The State of Haryana & others* which was dismissed on 29.10.2021. However, a window was left open that the landowners could take benefit of the observations made in **Raghubir Singh & another Vs. State of Haryana & others, 2021 (3) RCR (Civil) 533**. Resultantly, the said orders have been passed and the representation dated 24.11.2021 had been decided vide a detailed order dated 23.01.2024 (Annexure P-9).

4. Mr.Gupta has been at pains to take us to the site-plan as to the usage of the land in question which is stated to be still in the occupation of the petitioners. The usage of acquired lands which were notified in the year 2004 and even some land in 1992 in Gurugram are now being put to use for housing labour, which has become a common phenomenon. The authorities have also noticed this by coming to the conclusion that the land has been lying vacant at the site and as per the report received on 13.02.2023, the landowners had constructed tenantment rooms at the site and complete construction had been made after issuance of Section 4 notification. We have also gone through the photographs which have been appended with the site-plan which goes on to show that the land has been put to use which apparently has been done by the landowners to earn huge profits and they continue to sit and enjoy the benefits of the land though not being the owner of the land and the same having vested in the State way-back in the year 2006. The occupation is totally unauthorized and illegal but on account of the controversy due to the 2013 Act, the benefit has continued to flow to the erstwhile landowners without any right, as such. The authorities have noticed that subsequent to judgment passed in Raghubir Singh (supra), the judgment in SLP (C) No.16421 of 2021 titled as *Ram Swaroop (D) through L.Rs, and another Vs. State of Haryana* decided on 15.11.2021 has also come wherein observations have been made that the provisions cannot be used to defeat the public purpose of development and utilization of the land and to continue in possession is not a vested right. It has also been noticed in detail that the compensation has been lifted and the land was vacant before issuance of Section 4 notification and the landowners had constructed tenantment rooms on the

land which is forming part of the 18 meter wide road and the Industrial plot. Relevant part of the order under challenge reads as under:

“14. After hearing the landowners/applicants, and going through the facts of the case, it is observed that the land of the landowners/applicant was notified u/s 4 and u/s 6 on 17.09.2004 and 27.10.2004 respectively of Land Acquisition Act, 1894 for setting up of Chaudhary Devi Lal, Industrial Model Township, Phase-V, Manesar to be planned and developed as an integrated Complex for Industrial, Institutional, Commercial, Recreational and other public utilities etc. in villages Nawada Fatehpur, Naurangpur, Manesar, Lakhnoula, Naharpur Kasan and Shikhopur, Tehsil & Distt. Gurugram. The award of the said land was announced on 09.03.2006, thereafter possession of the said land is with HSIIDC vide Rapat Roznamcha No.654 dated 09.03.2006. The applicants already lifted the compensation amount. The land in question was vacant before notification of land u/s 4 of Land Acquisition Act, 1894. However, landowners/applicants, after Section 4 notification, constructed tenant room on the land in question which is forming part of 18 mtr wide road and industrial plot.

15. The claim as such made out in the representation that the land has become unviable or non-essential and it should be de-notified is without any basis. Even otherwise it is to be noticed that the said provision has been subject matter of consideration by the Apex Court in SLP (C) No.16421 of 2021 titled as Ram Swaroop (D) through L.Rs, and another Vs. State of Haryana and others decided on 15.11.2021. The said judgment kept into consideration the earlier judgment passed in Raghubir Singh and another Vs. State of Haryana and others, 2021 (3) RCR (Civil) 533 and, accordingly, the Apex Court came to the conclusion that the said provisions are not to be exercised on the asking of the persons whose land stands acquired and the provisions as such cannot be used to defeat the public purpose of acquisition of the land for development and utilization and could not be used for the purpose to continue in possession on one pretext or the other and it is not a vested right.

16. In view of the position explained above, the committee finds that the land in question is very much required for the public purpose and it has not become non-essential and unviable. The Committee finds no merit in the representation made under Section 101A of the Act, 2017 and thus recommended to reject the claim. The above recommendation made by the committee have been approved by the State Government and hence the relief sought by the applicants u/s 101A of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Haryana Amendment) Act, 2017 be rejected.”

5. We have perused the site-plan and the photographs as mentioned above. A perusal of the same reinforces our thought process that the land developers are suffering due to the protracted litigation and the whole purpose of acquisition has been frustrated even though the urgency clause had been invoked. The land had been planned for the development and having not raised any challenge at that point of time and having accepted the compensation, the landowners now cannot turn around and say that the public purpose has become unviable and non-essential. In CWP-14077-2022 titled *Rameshwar Vs. State of Haryana & others*, on 14.03.2023, the State was directed to identify the valuable land situated in Gurugram which continues to be occupied by the landowners inspite of the fact that they have lost their title more than 25 years back. The said interim order reads as under:

“We are coming across a large number of cases, where land was acquired in District Gurugram more than two decades back. Due to various litigations by landowners challenging the notification which eventually have been decided against them, the landowners have continued to remain in possession at the cost of the State, who has deposited the compensation amount running into hundreds of crores, specially in District Gurugram. A second round of litigation was also initiated on account of the Right to

Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 coming into force and the dispute regarding “lapsing issue” under Section 24 of the said Act. Apparently, ‘A Class’ constructions have also been raised in District Gurugram on the acquired land which belongs to the State.

Thus, illegalities of encroachment have apparently been permitted by the officials of the State which is leading to the planned development taking a back seat on account of illegal constructions having been raised; litigation being initiated on the ground that the balance of convenience is involved of the persons, who have raised the construction irrespective of the fact that it is illegal and that they are rank trespassers. Resultantly, the planned development of the State has been put to naught and its claim that it is a Cyber City has been shattered as there are shanties along the roads alongwith the illegal constructions which have come up on these lands.

In such circumstances, we are constrained to issue the following directions to the Chief Administrator, Haryana Shehri Vikas Pradhikaran (HSVP), Panchkula:-

- (i) To firstly identify the lands which had been acquired for the public purposes and specially for the development of the sectors, roads and the green belts in District Gurugram and awards of which were passed and have become final. Thereafter, an exercise be conducted as to the extent of encroachments on these lands, which have been deemed to be vested with the State by virtue of the awards having been passed and the status of the original landowners would be of trespassers.
- (ii) The said exercise be conducted along all major roads i.e. National Highway, State Highway, Sector Roads, areas abutting the Highways, emanating out of the town of Gurugram, as we feel that this malice is not only affecting Gurugram, but affecting the State of Haryana in all urban areas where acquisition was initiated by the erstwhile Haryana Urban Development Authority (HUDA) presently HSVP for the Planned Development of the Sectors as per the Master Plan.

- (iii) The said exercise of identifying the lands be divided into two parts; one for the land which is falling adjoining roads i.e. National Highway and State Highway, main roads and the other whereby the acquisition is for other public purposes including sectors.
- (iv) The status report shall be filed showing the layout plans of acquired land and the level of encroachment by highlighting them in red.
- (v) The necessary exercise be conducted within a period of two months by the said authority by constituting a High Powered Committee consisting of senior officials and also those belonging to the Revenue Department.

Adjourned to 01.05.2023.”

6. In such circumstances, the State having applied its mind that the land is required for the development of the area, the narrow window which the Apex Court had given to landowners have been slammed shut. The Co-ordinate Bench disposed of Rameshwar (supra) on 20.10.2023, along with bunch of cases the lead case of which is CWP-12432-2023 titled *Anil Suri & another Vs. State of Haryana & others*, rejecting the plea raised for release of land on account of unviability and non-essentiality, keeping in mind the doctrine of “Eminent Domain” and the fact that the State had chosen to reject the claim for releasing the land in view of the provisions of Section 101-A of the 2013 Act. The Court rather directed a continuous mandamus, directing the State that remedial measures be taken for using the land to subserve the apposite public purpose for which it was acquired and put it to use which would be clear from the relevant portion of the judgment passed in the said case, as reproduced below:

“102. The directions (supra), as made by this Court, and, which as revealed (supra), are in the process of being complied with by the respondent(s) concerned. Therefore, thereby though the respondent-State has been galvanized into action rather for

ensuring, that the requisite remedial measures are ensured to be promptly taken by it, for thereby bringing the acquired lands to subserve the apposite public purpose. Nonetheless, the actions, which are in the process of being taken by the respondent-State, in compliance of the directions (supra), are yet required to be most promptly put into action. Therefore, the other functionaries also, as disclosed in above extracted paragraph 8 and 9, are also directed to take further action in pursuance to the above made directions.

103. In consequence, the actions proposed to be taken, be ensured to be so taken within three months from today, under intimation to this Court. As such, the above shall be construed to be a continuous mandamus, upon, the respondent-State and its functionaries, accordingly, with a direction to the Registry of this Court, to list the instant matters before this Court, as and when the apposite action takings are done, to be so revealed, thus through an affidavit being filed by the respondent(s) concerned, before this Court.”

7. Resultantly, in view of the above discussion, we do not find any ground to interfere with the well reasoned order passed by the authorities below. Accordingly, the present writ petition is hereby dismissed.

(G.S. SANDHAWALIA)
JUDGE

24.07.2024
Sailesh

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :	Yes	