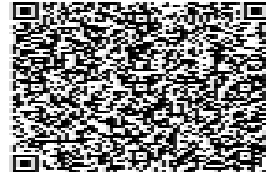


2024:PHHC:120434-DB



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

CWP-14769-2002

Reserved on: 05.09.2024

Pronounced on: 13.09.2024

Raghuwar Dayal

.....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.Amar Vivek Aggarwal, Advocate
Ms.Sanchi Bindra, Advocate for the petitioner (s).

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

Mr.Pankaj Kundra, Advocate, for
Mr.Deepak Sabherwal, Advocate
for respondent No.3-HSVP.

G.S. Sandhawalia, J. :

1. Prayer in the present writ petition, filed under Article 226/227 of the Constitution of India, is for quashing of notification dated 24.08.2000 (Annexure P-3) issued under Section 4 of the Land Acquisition Act, 1894 (for short, the 'Act') with the notification under Section 6 of the Act dated 22.08.2001 (Annexure P-5) on the ground that for the A-Class construction comprising in Khewat No.1 Rect. No.21 Kila No.14 (6-7), 15 (3-7), measuring 9 kanal 14 marla and agricultural land Rect. No.21 Kila No.4 (7-12), 7/2 (6-18), 7/1 (0-14) measuring 15 kanal 4 marla situated within the revenue estate of Village Tigra, Tehsil & District Gurgaon, Hadbast No.91 from the time of forefathers. It is pertinent to notice that the Writ Court was approached at the initial stage before the

award had been passed and demolition had been stayed on 12.09.2002. The award accordingly came to be passed on 21.07.2003.

2. The grouse was on the ground that A-Class construction had been acquired of the petitioner whereas B-class and C-class constructions had been left out of the other residents. Reliance is placed upon the electricity connection and telephone connection installed at the premises. It is submitted that A-class construction was prior to 1990 but revenue entry has been shown from the year 1997 and the land abutted the *Lal Dora* of the village and there were private colonies like South City, Phase-II and May Fields Garden around and it was also surrounded by other houses of new abadi. Objection had been filed under Section 5A for release of the residential house where construction had been raised, appended as Annexure P-4. The father of the petitioner was owner of the house and by virtue of the Will, the petitioner had become the owner. The area consisted of residential houses, Dharamshala, Piao, Mandir and Samadhi of father and forefathers and he was also in possession of electricity connection and telephone connection and in association of Ansal Company, sewer and water lines were provided in the whole premises of the petitioner and he was paying house tax. The land had been purchased by private colonizers and as per the policy decision of the Haryana Government, the residential houses existing at the time of issuance of section 4 notification were to be left out of the acquired land. The claim was that opportunity of hearing was not given regarding the fate of the objections. Reliance was placed upon the release of land in Khasra Nos.22/3/2, 22/3/1, 22/4/1, 22/9, which were stated to be vacant land and kachha structures. Specific reference was also made to the release of the

land falling in Khasra Nos.21/6/1, 6/2, on which tin-shed and kothi had been constructed and the report under Section 5-A of the Act is attached as Annexure P-6 to make out a case of discrimination.

3. A perusal of the said report would go on to show that the land falling in Khasra No.21/6/1 (2-0), 6/2 (6-0), of Jiwan Lal, Mehar Chand, Indraj, Bhoop Singh, sons of Rattan Lal son of Bihari had been recommended for release. As per the representation given by the objectors, there was a construction of the house of respondents which had been released and lakhs of rupees had been spent and in Khasra No.6/2, there was a pucca Samadhi of Mahant Silk Ram and there was a old Ram Temple. It is also pertinent to notice that for Khasra Nos.22/10 (5-12), 22/18/1 (1-5) and 21/15 (3-1) there was no recommendation for release. The site-plan showing the location of Khasra No.21/15 (3-7) which the State acknowledges to have construction at the time of acquisition is closure to the village abadi whereas the other Killa No.21/14 (6-7) is though abutting the land but is on the further side and away from the village.

4. In the initial reply filed by respondents No.1 & 2 way-back on 20.07.2003, it was mentioned that Lakhi Ram was recorded as Dholidar and the ownership was of Jai Dayal and there was nothing to show that the land was owned and possessed by them and the revenue entry in the form of mutation is also on the basis of Dholidar. There was an admission that on Khasra No.21/15 (3-7), there were 2 rooms/shops and tube-well which were prior to the issuance of Section 4 notification. The construction over Khasra No.21/14 was raised after the issuance of the Section 4 notification and therefore, recommendation had been given by the LAC regarding

Khasra No.21/15 but the Joint Inspection Committee recommended to acquire the land on account of construction being raised after the notification which had been acquired for the purpose of residential, commercial and industrial development at Sector 57 of Village Tigra. It is pertinent to note that the land of the petitioner touches the Lal Dora and the land adjoins the land of private colonizers. The recommendation had been sent to the Government after considering the report of the LAC and the Section 6 notification had been issued as per the recommendations.

5. Respondent No.3 filed a detailed reply and it has been averred that as per the Section 4 notification dated 24.08.2000 for Village Tigra Hadbast No.91 measuring 189.93 acres, award was passed on 21.07.2003 for 172.52 acres. The recommendation, as noticed, was for release of Khasra Nos.21//15 (3-7) in which 2 rooms, verandah and tube-well were constructed before the Section 4 notification. In Khasra No.21/14 (6-7) construction was done after the Section 4 notification in which there are two separate rooms, one tin shed, one samadhi and one shop. The report of the Joint Site Inspection Committee was otherwise on the whole of the land and was recommended for acquisition. The possession in question was stated to have been taken on 21.07.2003 (Annexure R-3/4) and by doing the necessary proclamation by beating of drums and making munadi. The market value had been fixed @ Rs.6,20,000/- per acre for Chahi land, Rs.5,50,000/- per acre for abrani land and Rs.4,50,000/- per acre for Bhodd land, Rs.4,20,000/- per acre for Banjar and Rs.7 lakhs for Gair Mumkin land. The petitioner had filed reference petition under Section 30 of the Act on 11.08.2003 (Annexure

R-3/5) and the entire amount of compensation of Rs.3,75,06,175/- had been sent to the District Judge.

6. In the petition filed by the petitioner, titled as *Raghuwar Dayal Vs. Laxmi Narain @ Kaloo Ram & others*, pay orders dated 06.04.2006 in favour of the Reference Court had been attached. The land in question was affecting the 20 number of plots of 14 marla category, 4 number of plots of 10 marla category, 14 number of plots of 8 marla category, 7 plots of 4 marla category, kiosk site, 4 number of 10 meter wide internal road and some part of green area site, as per the approved lay-out plan of Sector 57 (Annexure R-3/8). It was clarified that initially, there was a demolition order dated 09.05.2011 and the writ petition was dismissed for want of prosecution and the possession of the land had been taken over by registering Rapat Roznamcha No.64 dated 17.10.2011 (Annexure R-3/11) and the case was restored to its original number on 16.12.2011.

7. The application for lapsing under Section 24 of the Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013, was also filed bearing CM-1805-CWP-2018 which was dismissed as not pressed on 14.08.2024. Speaking order was also passed on 29.08.2017 (Annexure R-3/12) rejecting the case on that account wherein it was noticed that the land was required for plots in question, as noticed above and that the father of the appellant, Lakhi Ram had been shown as Dholdar in half share in Killa No.21//7/1 (9-14) and compensation of Rs.3,75,06,175/- had been sent to the Reference Court. It was held out that the State was the authority to decide which part of the

land could be released and even the structure could be acquired and the power of 'Eminent Domain' was pressed forth.

8. The petitioner filed rejoinder (sic. replication) on the same grounds of discrimination and that he was the Priest of the Temple and there was a discrimination by not releasing his land. Reliance was made to one release order in favour of Rameshwar son of Sube Ram, the land falling in Khasra No.7//23/2, measuring 3 kanals 13 marlas vide memo dated 30.10.2006 (Annexure P-11) much after passing of the award. It was pleaded that the said land was adjacent to the land of the petitioner and was a vacant land and thus, there was gross discrimination. It is pointed out that the petitioner had not even accepted the compensation.

9. The stand of the respondents that the Dholidar do not have any substantive right was objected on the ground that similarly situated persons have been declared owners while placing reliance upon the order dated 19.05.2015 (Annexure P-12) passed by the SDM and directions had been issued to enter the name of the said person as owner in possession which is regarding the same land bearing Killa No.21/21//18/. Reliance was again placed upon the release of Rectange 21/22 pertaining to the family of Tej Ram and that the said landowner had further entered into agreement with the developers. The issue that construction had been done after Section 4 notification in Khasra No.14 was disputed.

Entitlement to compensation :

10. The factual matrix, as notice above, having been crystallized is also to be noticed that on 14.08.2024, we had asked for the details of petition filed under Section 30 of the Act, bearing LAC-269 of 2006. The said petition was decided on 14.11.2011 by the Addl.District Judge while

deciding a bunch of cases. Resultantly, the Reference Court apart from assessing the market value, also decided the issue of right of compensation and in what proportion between the landowners and Dholidars', as per issue no.(ii), while enhancing the compensation for the acquired land from Rs.1216/- per sq.yard to Rs.1700/- per sq.yard. Reference Court, thus, came to the conclusion that due to the nature of the holding as a Dholidar, though not an owner of the land yet otherwise, a landlord being in possession of the land, the total amount of compensation was not payable to the proprietors on the one hand and the Dholidars on the other hand were not entitled to receive compensation. Relevant part of the judgment read as under:

“28. A perusal of revenue record placed on record as Exh.R1 to Exh.R31/T shows that predecessors in interest of present claimants/Dholidars are recorded to be in possession over the land in question as Dholidar Bila Lagan Ba Vajah Punarth. Even in statement No.19 placed on record by the LAC, they are recorded to be in cultivating possession of the acquired land as Dholidars. As such, from the evidence on the file it is proved that petitioners/Dholidars are in possession of the acquired land as 'Dholidar Bila Lagan Ba Vajah Punarth'.

29. Learned counsel for the petitioners argued that 'Dholi' tenure is a permanent gift, which is irrevocable. A Dholi or Punkhata land given punarth as a religious offering, cannot be taken back.

30. In case-law Sewa Ram Vs. Udegir – AIR 1922 Lahore 126, it was held that :

“The Dholi tenure is a peculiar kind of tenure to be found in the South-Eastern districts of Punjab. It is a rent free grant of a small plot of land by the village community for the benefit of a temple, mosque or shrine or to a person for a religious purpose. In the revenue records, the proprietary body are recorded as the owners of the property, and the grantee is recorded as a tenant in the column of cultivation. So long as the purpose, for which the grant is made, is carried out, it cannot be resumed, but should the holder

fall to carry out the duties of his office, the proprietors can eject him and it in some one—else under a like tenure”.

31. In judgment Baba Badri Dass Vs Dharma & Others-1981 PLJ 477, a Division Bench of our own Hon’ble High Court while referring Sewa Ram’s case (Supra) held that Dohli tenure is a holding the right of which had been acquired by the Brahman, who received it as such as a death bed gift from a land owner and is an instance of Malik Kabza and neither a perpetual tenancy nor covered by concept of tenancy at all and that a Dholidar though not an owner of the land yet otherwise a landowner because he is in possession of land and responsible for payment of land revenue.

32. Our Hon’ble High Court in the case of Ram Pat Vs Mangal 2009(4) PLR 59, after considering the judgment earlier delivered in Dharamvir Vs Bahadur Singh & Others – 2007 (2) RCR (Civil) 217, made distinct observation by admitting Dholi created for Punarth or a Chah Pukhta, without following any terms, either express or implied, to be an absolute gift to the Dholidar, thereby, holding him or having become absolute owner of the land, with no right of reversion with the owner of the land.

33. Position is the same in the present case as well and as such, it is held that petitioners/Dholidars alone are entitled to receive the compensation qua the acquired land under Dholidari.

34. As a result of above discussion, there is no question of apportionment of compensation between the proprietors on the one hand and the Dholidars on the other side. It is held that Dholidars herein alone are entitled to receive the entire amount of compensation of the acquired land as mentioned in Statement No.19 under dholidari. This issue is decided accordingly.”

11. It is not disputed that the said judgment is further now issue of appeal in RFA-1594-2012 filed by the petitioner, not satisfied with the amount of compensation. The State or the original landowner-Jai Dayal, have apparently not challenged the findings, as such. Thus, for all practical purposes the benefit of compensation would accrue to the present

petitioner and therefore, the State is in no position to question the *locus standi* of the petitioner for the benefit of release of land.

Release in favour of other landowners of the village :

12. The issue, thus, arises, as to whether the State was justified, in such circumstances, despite of the recommendation in favour of the petitioner as there was construction on the land measuring 3 kanals 7 marlas in Khasra No.21/15 and there was a positive recommendation which was overruled without any legal basis, as per the record of the Joint Site Inspection Committee. Similarly situated landowners had also got the benefit of release in Village Tigra, which we have noticed in CWP-7855-2017 titled *Raj Kumar & others Vs. State of Haryana & others*, decided vide separate judgment of even date. The said case was decided along with other cases also bearing CWP-7980-2017 titled *Mahender & others Vs. State of Haryana & others* where there was a release of as much as 8 kanals 18 marlas of land in which there was construction out of 39 kanals 13 marlas of land which had been acquired. We have dismissed the said writ petitions on the ground that the landowners had concealed the factum of release of land in their favour and therefore, the issue of discrimination would not arise since the other landowners had also got the benefit of release and all of them were similarly placed.

13. Similarly, in CWP-23810-2017 titled *Jagdish Chand Vs. State of Haryana & others*, pertaining to the same village, decided by a separate judgment of even date, we have noticed that 1 kanal 12 marlas had been left out, out of the original 4 kanals of land, even though the entitlement of the petitioner was as a Dholidar. We have rejected his case for raising a plea qua the other land on account of concealment of facts

and lack of declaration having been given that they were owners under the Haryana Dholidar, Butimar, Bhondedar and Muqararidar (Vesting of Proprietary Rights) Act, 2010.

14. Another set of landowners, where an order of release was passed in their favour on account of filing CWP-11572-2008 titled *Hazari Parshad Vs. State of Haryana & others*, decided on 05.07.2013, leading to the release of 2 kanals 12 marlas of land to the family of Mehar Chand. The said release was out of 7 kanals 16 marlas after noticing that they were unauthorized occupants in a partition of land which was directed to be vacated. It is also not disputed that the release order has also been appended by the petitioner in the replication whereby 3 kanals 13 marlas of land in favour of Rameshwar in Khasra No.7//23/2 has been directed to be released vide order dated 30.10.2006 (Annexure P-11), much after the passing of the award on 21.07.2003. The order is also silent as to on what basis the release has been directed and neither there was any reference that it was as per the orders of the Court nor otherwise.

15. In such circumstances, we are of the considered opinion that the petitioner has been discriminated against and the constructed portion as recommended by the LAC should have been released as the benefit was given to other landowners of the village. The site-plan would also go on to show that the land is adjoining the abadi of the village and therefore, the contention raised is justified that there was construction raised on it. As noticed, even Jiwan Lal, Mehar Chand etc. released approximately 8 kanals of land, as per Annexure P-6, which further, is not denied by the State in their reply. In the absence of any justification, the principle of equality would also come in favour of the petitioner, keeping in view the

fact that there was construction already in Khasra no.21//15 measuring 3 kanals 7 marlas adjacent to the *Lal Dora*, we allow the present writ petition, to the limited extent that the said land shall be considered for release on parity and on the same terms as granted to the other landowners of the village.

16. Writ petition is, accordingly, allowed, in the above-said terms. However, we dismiss the writ petition qua the balance land as admittedly construction was raised after issuance of the Section 4 notification and even the LAC had recommended acquisition of the said land. As noticed, the said land is also required for planned development of Sectors as large number of plots and utility factors like the road approaching the said plots of the village have to be carved out of the acquired land. The benefit, however, shall be conditional, to the extent that the petitioner shall surrender the possession of the balance land before the issuance of the release order.

(G.S. SANDHAWALIA)
JUDGE

13.09.2024
Sailesh

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :		No