



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

CWP No.11318 of 2022 (O&M)

Date of Decision: 13.11.2024

Kusum & another

...Petitioners

Versus

State of Haryana & others

...Respondents

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

Present:- Mr. Sandeep Sharma, Advocate,
for the petitioners.

Mr. Ankur Mittal, Additional AG, Haryana with
Mr. Saurabh Mago, DAG, Haryana.

Mr. Ankur Mittal, Advocate with
Ms. Kushaldeep Kaur Manchanda, Advocate,
for the respondent-HSVP.

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G.S. SANDHAWALIA J. (Oral)

Prayer in the present writ petition, filed under Articles 226/227 of the Constitution of India, is to the extent of releasing the land of the petitioners as per Policy dated 14.09.2018 (Annexure P-19) which has been issued under Section 101-A of the Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation & Resettlement (Haryana Amendment) Act, 2018 (for brevity 'the State Act').

2. The petitioners are owners of the land bearing Khasra No.9//6/2/2 situated in Mauja Gulab Nagar Hadbast No.404 Tehsil Jagadhari District Yamunanagar. The respondents had issued the



notifications under Sections 4 and 6 the Act of 1894 for the development and utilization land as residential, commercial area for Sectors 22, 23 & 24 in Revenue Estate Jagadhari District Yamunanagar, by resorting to the acquisition proceedings initiated on 30.05.2005 (Annexure P-1) under Section 4 of the Land Acquisition Act, 1894 (for short, 'the Act of 1894') and the subsequent notification dated 22.05.2006 (Annexure P-2) issued under Section 6 of the Act of 1894 followed up by the Award dated 16.07.2007.

3. The respondents in their reply has met out the aspect of the viability of the acquisition and the essentiality which is pre-requisite condition by averring as under in para 19:-

“19. That is further respectfully submitted that land in question affects the planning of housing board and is therefore, an integral part of the planning of sector. Considering the essentiality of the land in question, it cannot be released from acquisition proceedings. True copy of the layout plan is being annexed herein as Annexure R-3/1 for the kind perusal of this Hon'ble Court.”

4. Perusal of the layout-plan (Annexure R-3/1) would go on to show that the development of the land stated to be allegedly built up is held up. As per the sale-deed dated 24.08.2004 (Annexure P-4) and the mutations dated 17.11.2005 (Annexures P-5 & P-6), the plot is stated to be 100 square yards. The present litigation is not first round of litigation, therefore, the arguments which, now, has raised before this Court on the ground of sympathy and equity on the constructed portion is liable to be rejected. Apparently, the petitioners have taken the risk in raising the



construction, if any, which is now claimed on the plot in question.

5. Initially, the petitioners had approached this Court challenging the acquisition along-with one Jiwan Kapil by filing CWP No.10700 of 2007 and was arrayed as petitioners No.2 & 3 the said writ petition was dismissed on 05.08.2008 (Annexure P-10) by specifically noting that the plot of the petitioners was found to be vacant land and the same could not be recommended favourably and thus, new construction had been raised in the year 2007. The relevant portion of the said order reads as under:-

“It appears that constructed portion of ‘C’ class of residential house of the petitioner Jiwan Kapil having a covered area of 18.44 square meters along-with four times vacant land, being total area 6m x 15m (90 square meters) has been recommend for release under Section 48 of the Land Acquisition Act. Since plots of petitioners No.2 & 3 were found to be vacant land, the same could not be recommended favourably. Learned counsel for the petitioners took us to the photographs annexed with the writ petition. On bare perusal thereof, they appear to be photographs of new constructions admittedly taken by the petitioners at the time of filing of this writ petition in May, 2007 whereas, notification under Section 4 of the Land Acquisition Act, was issued two years back, i.e in May, 2005.

As the relief has been granted in part and the Director concerned has given and reasons recommending released of the land in favour of petitioners No.2 and 3, are not inclined to interfere with the order.

Accordingly, CWP No.10700 of 2007 is disposed of in view of the aforesaid order of the



Director”.

6. It has also come on record that even Special Leave Petition (C) No.19637 of 2010 filed by the petitioners against the order dated 05.08.2008 was dismissed on 07.07.2010. Thereafter, CWP No.6297 of 2021 was filed by Baldev and Kusum seeking the relief of release of their land from acquisition on the ground of parity and had claimed ‘C’ class construction which was rejected on 20.04.2022 (Annexure P-11) by noting as under:-

“Short question for consideration in this petition is,”whether the petitioners can seek release of their land by claiming parity with the land of Mohender Kumar, which has been released pursuant to the order dated 18.06.2008.

When the inspection was carried out, claim of the petitioners was dismissed on the ground that inspection carried does not recommend release of their land. As far as the petition (CWP No.12435 of 2007) filed by Mahender Kumar is concerned, it was disposed of vide order dated 05.08.2008, as the recommendation for release of his land had been made by the Director, Urban Estate. This fact is clear from the information received under the Right to Information Act, 2005 (Annexure P-32).

Petitioners are claiming that their ‘C’ class construction should be released as par with Mohender Kumar.

Learned State counsel has referred to the order dated 05.08.2008 passed in CWP No.10700 of 2007 (Annexure P-10), wherein this Court had taken into



account the order dated 18.06.2008, which was passed pursuant to the direction dated 14.03.2008 given by this Court in a bunch of writ petition. As per the said order land of petitioner Nos.2 and 3 (petitioners herein) had not been recommended for release, as the same was found to be vacant land. Even Special Leave Petition i.e SLP (C) No.19637 of 2010 against this order, was dismissed vide order dated 07.07.2010(Annexure P-10/A).

Now, after a gap of almost 13 years, the petitioners cannot claim parity of release of land at par with Mahender Kumar, whose land/constructions had been recommended for release after carrying out a survey by the competent authority and the said report had been accepted by this Court in toto while dismissing the earlier writ petition filed by the petitioners, i.e CWP No.10700 of 2007 (Annexure P-10).

*Since the earlier writ petition has been dismissed and has attained finality, the petitioners, now, cannot claim benefit of release of land as per Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 keeping in view the judgment passed in **Indore Development Authority vs. Manoharlal and others**, SLP (C) No.9036-9038 of 2016.*

Resultantly, finding no merits, the present petition is dismissed.”

7. Without appealing against the said order, the present writ petition was filed on 20.05.2022 seeking the relief of release. As noticed earlier, the essentiality aspect has already been rejected by the State. It has



also been mentioned in the written-statement that the petitioners did not file the objections under Section 5-A of the Act of 1894 and the possession of the land was taken vide Rapat Roznamcha No.1996 dated 16.07.2007. It has also been averred that a sum of Rs.56,259/- has been deposited for the vacant land qua petitioner No.1 as well as Rs.1,45,455/- for the structure and Rs.56,259/- for vacant land to petitioner No.2 but they had chosen not to receive the same. The total amount of award for the acquisition in question was Rs.20,87,22,222/- for four villages as per the notification under Section 4 of the Act of 1894 out of which Rs.17,85,89,081/- has already been disbursed and rest amount is already deposited before the Land Acquisition Collector.

8. It has also to be noticed that second writ petition was filed in the year 2021 and the issue of Section 101-A of the State Act was also raised and the relief as per the Policy dated 14.09.2018 (Annexure P-19) was never claimed. Under similar circumstances, in **CWP 6297 of 2021** titled as **Baldev Singh & another vs State of Haryana & others**, we have held that the principle of constructive *resjudicata* would apply, therefore, the second round of litigation could not have been initiated on the same facts and circumstances. The acquisition having been upheld till the Apex Court way back in the year 2010, is, now, not liable to be interfered in the manner sought by the petitioners at this stage.

9. Learned counsel for the State submits that in '**Raghubir Singh and another vs. State of Haryana and others**', (2022) 4 SCC 728 it was held by the Apex Court that the issue of non-viability or non-essentiality of



the land is to be decided by the Government as such and that in case, it chooses to de-notify certain land, it is for the State to decide as such. In such circumstances, the claim, at this belated stage, is not liable to be entertained. Even the representation dated 06.01.2022 (Annexure P-20) was moved by the petitioners for release of their land as per the Policy dated 14.09.2018 (Annexure P-19), much after the judgment dated 06.03.2020 in **Indore Development Authority vs. Manoharlal and others, (2020) 8 SCC 129.**

10. The said aspect, thereafter, was re-considered by the Apex Court in ***Civil Appeal No.16421 of 2021 'Ram Swaroop (dead) through LRs & another Vs. State of Haryana and others'*** and the Apex Court, thus, clarified that Section 101-A of the State Act does not give a vested right to the landowner to seek de-notification. It is not for this Court to sit over the opinion of the competent authority, who has to ensure effective town planning and whether the land is required, which stood vested in the State once the Award was passed on 13.08.2002. Claim as such is only on the ground that possession continues, which cannot be sustained, since the petitioners have apparently continued to be in unauthorized occupation, thereafter and have raised construction after the notification under Section 4 the Act of 1894 as noticed in the earlier round of litigation. The relevant observations read as under:-

“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.”

11. Resultantly, keeping in view the above-stated facts, we are not inclined to direct that the State shall decide the representation of the petitioners keeping in view the fact that the issue of viability and essentiality has already come on record and also the fact that the petitioners have never chosen initially to agitate for the said grievance as noticed above in the second round of litigation. It is actually a case of relentless litigant rushing to the Court time and again. However, keeping in view that the fact that the plot in question is only 100 square yards, we refrain ourselves from imposing exemplary costs which we would have resorted to in the normal circumstances for clogging the judicial system of this Court.
12. With the above-said observations, the present writ petition is dismissed.
13. All the pending application(s) stand disposed of accordingly.

(G.S. SANDHAWALIA)
JUDGE

November 13, 2024
seema

(MEENAKSHI I. MEHTA)
JUDGE

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