



CWP No.17301-2013 (O&M)

-: 1 :-

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

CWP No.17301-2013 (O&M).

Date of Decision: 30.05.2024.

Dharminder Singh

....Petitioner.

Versus

Amritsar Improvement Trust and others

....Respondents.

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA**

Argued by: Mr. Kanwaljit Singh, Senior Advocate with
Mr. K.S. Brar, Advocate for the petitioner.

Mr. Sudhir Nar, Advocate for respondent No.1.

Mr. Maninder Singh, Senior Deputy Advocate General, Punjab.

Mr. Rishu Mahajan, Advocate for respondents No.4 and 5.

Lalit Batra, J.

CM-8139-CWP-2017

Documents Annexures R-4/1 to R-4/4 as well as amended memo
of parties, are taken on record, subject to just exceptions.

CM stands disposed of.

CM-11163-CWP-2017

Site-plans Annexures R-1/4 to R-1/5 are taken on record, subject
to just exceptions.

CM stands disposed of.

CM-17615-CWP-2017

Additional affidavit of petitioner and documents Annexures P-13
to P-16 are taken on record, subject to just exceptions.

**CWP No.17301-2013 (O&M)****-: 2 :-**

CM stands disposed of.

CM-13937-CWP-2016

For the reasons mentioned in the application, same is allowed and applicant-Raj Kaur @ Rajwant Kaur is ordered to be impleaded as respondent No.4.

Main Case

This petition under Articles 226/227 of the Constitution of India has been filed by petitioner-Dharminder Singh, for issuance of a writ in the nature of certiorari for quashing of order/communication dated 17.04.2013 (Annexure P-11) and order/communication dated 07.05.2013 (Annexure P-12), passed by respondent No.1-Amritsar Improvement Trust (hereinafter to be referred as 'respondent No.1-Trust'), vide which it was held that land measuring 14 Kanals comprised in Khasra No.118/35/1 stood acquired by respondent No.1-Trust, vide Notification dated 19.02.1973 issued by Government of Punjab. Further, petitioner has sought quashing of proceedings dated 21.02.2006 (Annexure P-10), in terms of which, respondent No.1-Trust has shown that above said Khasra number has been acquired and possession thereof has been taken by respondent No.1-Trust, whereas the said land was not part of Award (Annexure P-2). Petitioner has further sought issuance of writ in the nature of Mandamus directing respondents No.1 and 2 to conduct a fair and impartial enquiry to ascertain the fact as to why the land of petitioner, which was not acquired, as is evident from Award (Annexure P-2), has been wrongly shown to have been acquired by respondent No.1-Trust and further for issuance of directions to respondents No.2 and 3 to make necessary corrections in the revenue record.

**CWP No.17301-2013 (O&M)****-: 3 :-**

2. Petitioner's case in brief is that his father Bachan Singh was in possession of property measuring 14 Kanals comprised in Khasra No.118/35/1, situated at Ajnala Road, Amritsar (hereinafter to be referred as 'land in dispute'), since 1950 and had raised construction of a residential house thereon and he alongwith his family was residing in the said house. In the year 1968, one Ms. Sarla Baldev Inder Singh filed a civil suit seeking possession of land in dispute, on the ground that the said land was owned by her, whereas Bachan Singh was in illegal possession of the same. On the contrary, Bachan Singh claimed himself to be owner of land in dispute by adverse possession. The above said civil suit was dismissed by the then Sub Judge IInd Class, Amritsar, vide judgment and decree dated 29.08.1970, however, while dealing with the issue of adverse possession, it was held by the Trial Court that Bachan Singh had become owner of the land in dispute by adverse possession as his possession was open, exclusive, continuous, hostile and unbroken. Ms. Sarla Baldev Inder Singh preferred Civil Appeal No.137 of 1970 against judgment and decree dated 29.08.1970, which was dismissed as withdrawn on 19.08.1971, with liberty to file a fresh suit against Bachan Singh. However, thereafter, no fresh civil suit was ever instituted against Bachan Singh and, thus, by virtue of judgment and decree dated 29.08.1970, Bachan Singh became owner of the said land and the family of petitioner is in continuous possession of the same for the last 63 years. The Government of Punjab, vide Notification dated 19.02.1973 issued under Section 41 of the Punjab Town Improvement Act, 1922 (hereinafter to be referred as 'Act, 1922'), notified an expansion scheme for area measuring approximately 537 acres bound by Ajnala Road, Municipal Boundary

**CWP No.17301-2013 (O&M)****-: 4 :-**

Fatehgarh Churian Road and bye-pass road, situated beyond the municipal limits but within the local area of the respondent No.1-Trust, under Section 24 read with Section 28(2) of Act, 1922. On the basis of the said Notification, land was acquired by respondent No.1-Trust. However, during the entire process of acquisition, land in dispute was never acquired and the same was not included in the scheme of acquisition. Award No.1 dated 04.05.1974 (Annexure P-2) was pronounced qua land acquired by the Land Acquisition Collector, respondent No.1-Trust and perusal of the said Award clearly reveals that land in dispute was never acquired, which is evident from Award Statement for Determination of Compensation, in terms of which, no compensation was awarded qua the said land. Further, a perusal of *Jamabandis* for the years 1974-75, 1979-80, 1984-85 and 1989-90, reveals that land in dispute continued to be recorded in the name of Ms. Sarla Baldev Inder Singh, original owner and as such said land was never acquired. On 03.01.1985, Bachan Singh (father of petitioner) moved an application (Annexure P-4) before the Tehsildar, Amritsar, for sanction of mutation in his name qua the land in dispute on the basis of judgment and decree dated 29.08.1970, however, no action was taken on the said application and the matter got delayed on one pretext or the other and during this period, Bachan Singh, expired on 03.10.1986. In the year 2012, officials of respondent No.1-Trust started visiting house of petitioner claiming that land in dispute has already been acquired by respondent No.1-Trust and he was asked to vacate the said land and his house would be demolished and possession of the land would be taken. Though petitioner informed the authorities concerned that land in dispute was never acquired and further not to initiate any action qua

**CWP No.17301-2013 (O&M)****-: 5 :-**

that property but to no avail. Thereafter, petitioner verified the revenue record and came to know that in the *Jamabandi* for the year 2009-10 (Annexure P-5) qua land in dispute, entry of owner-in-possession of said land was wrongly shown in the name of respondent No.1-Trust. Faced with this situation, petitioner had moved a complaint dated 04.10.2012 (Annexure P-6) to Tehsildar for correction of above said entry in the revenue record. On the above said complaint, an inquiry was ordered by respondent No.3 and relevant clarification was sought from the officials of respondent No.1-Trust. During inquiry, Senior Clerk of respondent No.1-Trust appeared alongwith record before respondent No.3 and made statement on 31.10.2012 (Annexure P-7) that land in dispute was not included in the Award and neither its possession was taken nor the said land was included in the Award Statement. Executive Officer of respondent No.1-Trust, vide communication dated 02.11.2012 (Annexure P-8) informed respondent No.3 that land in dispute was not included in the Award and neither its possession was obtained nor said land was included in the Award Statement. Respondent No.3 while giving reference to the statement of Senior Clerk of respondent No.1-Trust and correspondence dated 02.11.2012 (Annexure P-8), submitted report dated 20.11.2012 (Annexure P-9), to respondent No.2 to the effect that land in dispute was not included in the Award and hence mutation of said land in the name of respondent No.1-Trust was incorrect. However, despite the above said report dated 20.11.2012, entries pertaining to land in dispute in the name of respondent No.1-Trust were never corrected and mutation of said land was not sanctioned in the name of petitioner. Thereafter, respondent No.1-Trust had written to respondent No.2 that land in dispute was acquired and even

**CWP No.17301-2013 (O&M)****-: 6 :-**

possession thereof was taken by said Trust and to this effect pressed into service copy of proceedings dated 21.02.2006 (Annexure P-10), in terms of which, possession of land in dispute was stated to be taken. Respondent No.1-Trust, vide communication dated 17.04.2013 (Annexure P-11) and communication dated 07.05.2013 had intimated respondent No.2 that land in dispute was acquired and the complaint made by petitioner is not genuine and, thus, no correction in the mutation already recorded in the name of respondent No.1-Trust, was required to be made. During the pendency of the inquiry, the officials of respondent No.1-Trust have started pressurizing the petitioner to vacate the land in dispute and they are attempting to take the possession thereof forcibly. In view of above, impugned orders/communications dated 17.04.2013 and 07.05.2013 (Annexures P-11 and P-12) rendered by respondent No.1-Trust and proceedings dated 21.02.2006 (Annexure P-10), are liable to be quashed.

3. In its written statement, respondent No.1-Trust has raised preliminary objection that allegations levelled by the petitioner are nothing but an attempt to re-open the issues and disturb the rights that have already been settled decades ago. The land in dispute formed part of Ajanala Road Expansion Scheme dated 19.02.1973, for total area 537 acres bounded by Ajanala Road, Municipal Boundary Fatehgarh Churian Road, duly sanctioned under Section 41 of Act, 1922, vide Notification No.117(41)-3GI-73/4951 and subsequently, the Land Acquisition Collector passed an Award on 04.05.1974 (Annexure P-2). After passing of the Award, possession of the land was taken by Land Acquisition Collector, Amritsar Improvement Trust, under Section 16 of Land Acquisition Act, 1894 (hereinafter to be referred as

**CWP No.17301-2013 (O&M)****-: 7 :-**

'Act, 1894') and following the outcome of Civil Writ Petition No.232 of 2006 as mentioned in the possession report (Annexure R-1/1). Thus, when the petitioner is not owner of the land in dispute, he is not entitled to assail the possession nor he is entitled for any compensation. Name of the petitioner had never reflected in the revenue record, whereas Ms. Sarla Devi wife of Baldev Inder Singh was reflected as owner of the land in dispute and the said position remained unchanged throughout till the possession was handed over to respondent No.1-Trust in the year 2006 and petitioner never approached the Land Acquisition Collector to assert his title and claim compensation. Furthermore, Ms. Sarla Devi, who was reflected as owner, had claimed and received compensation and report to the effect of disbursement of compensation is Annexure R-1/2. It is the own case of petitioner that he was declared owner of land in dispute in the year 1973, by virtue of judgment of Civil Court, however, he moved an application for reflecting his status in the revenue record only in the year 1985 and there is no explanation by him for such inordinate delay. Even otherwise, acquisition of land in dispute was completed in the year 1973 itself, thus, it was duty of the petitioner to approach Land Acquisition Collector, at the time of Award, to prove his title to the said land, but his failure to do so, for a period about four decades, completely dis-entitles him to raise a challenge against an acquisition procedure and taking possession on the basis of scheme conducted in complete accordance with law. The acquisition proceedings are already complete and scheme stands fully developed, the plots stood allotted and in most of the cases, even possession has already been delivered to the allottees. Over a span of years, various third party rights have arisen which

**CWP No.17301-2013 (O&M)****-: 8 :-**

now stands vested in the allottees irretrievably. Further, preliminary objections *inter alia* of mis-joinder of parties and non-joinder of necessary parties, maintainability of petition and the petition being hopelessly time barred, have been taken. On merits, the claim of the petitioner was denied and dismissal of the petition has been prayed for.

4. Replication to the written statement of respondent No.1-Trust was filed thereby controverting the stand of respondent No.1-Trust and re-asserting the claim of the petitioner.

5. Learned counsel for petitioner *inter alia* contended that impugned orders/communications dated 17.04.2013 and 07.05.2013 (Annexures P-11 and P-12) rendered by respondent No.1-Trust and proceedings dated 21.02.2006 (Annexure P-10), are liable to be quashed as from the Award (Annexure P-2), it is clearly evident that land in dispute was never acquired nor any compensation was awarded to the petitioner by the Land Acquisition Collector qua the said land. Even as per communication (Annexure P-8), Executive Officer of respondent No.1-Trust had written to respondent No.3 that as per their record, land in dispute was not included in the Award and its possession was never taken and to the same effect are the findings recorded by respondent No.3 in his inquiry report (Annexure P-9). Proceedings (Annexure P-10) are incorrect and a mere cover-up exercise by respondent No.1-Trust. Mutation in the name of respondent No.1-Trust qua the land in dispute has been wrongly sanctioned, whereas the said land belongs to the petitioner and in the absence of any record to show ownership of respondent No.1-Trust, any coercive action for taking forcible possession of land in dispute is arbitrary and violates the basic right of petitioner.

**CWP No.17301-2013 (O&M)****-: 9 :-**

6. On the other hand, learned counsel for respondent No.1-Trust contended that by way of present petition, the petitioner is trying to re-open the issues and disturb the rights that have already been settled decades ago. The land in dispute formed part of Ajanala Road Expansion Scheme dated 19.02.1973, for total area 537 acres bounded by Ajnala Road, Municipal Boundary Fatehgarh Churian Road, duly sanctioned under Section 41 of Act, 1922, vide Notification No.117(41)-3GI-73/4951 and subsequently, the Land Acquisition Collector passed an Award on 04.05.1974 (Annexure P-2) and and compensation has already been claimed and received by the actual owner Ms. Sarla Devi. The acquisition proceedings are already complete and scheme stands fully developed, the plots stood allotted and in most cases, even possession has already been delivered to the allottees. Over a span of years, various third party rights have accrued which now stands vested in the allottees irretrievably. The petition of the petition is time barred and no cause of action has accrued to the petitioner. The petitioner has no locus-standi to file the present petition and the same is liable to be dismissed.

7. We have heard learned counsel for the parties at length and carefully perused the record.

8. While having due regard to the contentions of respective parties, it is observed that petitioner is substantiating his claim over the land in dispute solely on the basis of judgment and decree dated 29.08.1970 (Annexure P-1), passed in Civil Suit No.191 of 1968, by Sub Judge IInd Class, Amritsar, whereby it was held that Bachan Singh (father of petitioner) had become owner of the said land by adverse possession. It is pertinent to mention here that though Ms. Sarla Baldev Inder Singh feeling aggrieved of

**CWP No.17301-2013 (O&M)****-: 10 :-**

above said judgment and decree had preferred Civil Appeal No.137 of 1970, but the same was withdrawn by her, vide order dated 19.08.1971 with liberty to file fresh suit against Bachan Singh but no fresh civil suit was ever instituted by Ms. Sarla Baldev Inder Singh. It will not be out of place to mention here that after the passing of judgment and decree dated 29.08.1970 and especially after withdrawal of Civil Appeal No.137 of 1970 on 19.08.1971 by Ms. Sarla Baldev Inder Singh, no application for sanction of mutation favouring Bachan Singh was moved and, thus, for the said reason alone, in the *Jamabandis* for the years 1974-75, 1979-80, 1984-85, 1989-90 (Annexure P-3 colly), Ms. Sarla Devi has been reflected as owner as well as cultivator of land in dispute. Though petitioner has placed on record application dated 03.01.1985 (Annexure P-4) stated to be moved by his father Bachan Singh to the Tehsildar, Amritsar, for approval of mutation of land in dispute in his name in pursuant to judgment and decree dated 29.08.1970, but no corresponding corroborative document has been brought on record to show that the above said application was ever moved by the father of petitioner and what was the fate thereof. On the other hand, revenue record (*Jamabandis*), as detailed above, depicts another state of affairs. In this view of the matter, it can be easily concluded that even though judgment and decree dated 29.08.1970 brought respite to the cause of predecessor-in-interest of petitioner but no effort was made for decades to convert the said relief in letter and spirit.

9. In the meanwhile, Punjab State Government through Department of Local Government sanctioned Ajnala Road Expansion Scheme on 19.02.1973 under Section 41 of Act, 1922, corresponding to Section 6 of Act,

**CWP No.17301-2013 (O&M)****-: 11 :-**

1894, and rolled out the process of acquisition for an area 537 acres bounded by Ajnala Road, Municipal Boundary Fatehgarh Churian Road, which included land in dispute comprised in Khasra No.118/35/1. The Land Acquisition Collector, respondent No.1-Trust, pronounced the Award No.1 of 1974, on 04.05.1974 and delivered the physical possession of the land to respondent No.1-Trust, by virtue of which, said Trust became absolute owner of the land free from all encumbrances. As mentioned earlier, since in the revenue record prevalent at the time of acquisition of land in dispute i.e. *Jamabandi* for the year 1974-75 (Annexure P-3 colly), Ms. Sarla Devi was reflected as owner-cum-cultivator of land in dispute (Khasra No.118//35/1), for the said reason alone, in terms of Award Statement (Annexure R-1/2) regarding Ajnala Road reveals that for acquisition of land in dispute, compensation was awarded, which was received by Ms. Sarla Devi. Since in terms of Award No.1 of 1974, land in dispute was part and parcel of acquired land, possession of said land bearing Khasra No.118//35/1 (14-0) was obtained by respondent No.1-Trust, vide proceedings dated 21.02.2006 (Annexure P-10). Once the entire record i.e. Award No.1 of 1974 (Annexure P-2), Award Statement (Annexure R-1/2) and Proceedings of physical possession dated 21.02.2006 (Annexure R-1/1), were scrutinized by respondent No.1-Trust, thus, vide communication dated 17.04.2013 (Annexure P-11), letter was sent by Executive Officer of said Trust to respondent No.2-Deputy Commissioner, that land in dispute comprised in Khasra No.118//35/1(14-0) was acquired and compensation thereof was disbursed in terms of Award Statement (Annexure R-1/2) in favour of Ms. Sarla Devi wife of Baldev Inder Singh and further the fact that possession of



CWP No.17301-2013 (O&M)

-: 12 :-

said land has already been delivered in favour of respondent No.1-Trust on 21.02.2006. While reiterating the above said factual position, vide communication dated 07.05.2013 (Annexure P-12), Chairman of respondent No.1-Trust had informed the entire scenario to the Additional Deputy Commissioner (General), Amritsar.

10. In view of above, as the land in dispute has already been acquired for Ajnala Road Expansion Scheme by respondent No.1-Trust and that too in the year 1974, the compensation thereof already stood disbursed in favour of Ms. Sarla Devi wife of Baldev Inder Singh and further the fact that possession of said land stood delivered in favour of respondent No.1-Trust, present petition moved at the instance of petitioner, successor-in-interest of Bachan Singh (since deceased) cannot be entertained on account of laches and the same is not maintainable. Petitioner, if aggrieved, may seek appropriate remedy, if any, in accordance with law and that too against Ms. Sarla Devi wife of Baldev Inder Singh, for compensation.

11. As a sequel to above, instant petition, being devoid of merits, is dismissed.

12. Pending application, if any, also stands disposed of.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

30.05.2024
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Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No