

2024:PHHC:099201-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(103)

CWP-1527-2018 (O&M)

Decided on: 02.08.2024

Bharam Pal

.....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.Manoj Kumar Sood, Advocate, for the petitioner (s).

Mr.Ankur Mittal, Addl.A.G., Haryana

Mr.Saurabh Mago, DAG, Haryana.

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

1. Challenge in the present writ petition, filed under Article 226/227 of the Constitution of India, are to the acquisition proceedings initiated on 03.07.1973 (Annexure P-2) issued under Section 6 of the Land Acquisition Act, 1894 (for short, the 'Act'). It is pertinent to notice that the writ petition was filed in the year 2018 while taking the advantage of the fact that there was a lapsing clause which has been subject matter of consideration in **Indore Development Authority Vs. Manoharlal & others, AIR 2020 SC 1496**. Challenge has also been raised to the order dated 15.01.2018 (Annexure P-10) whereby the claim for release of the land was rejected on the ground that the land was required for making road.

2. The history of the case is interesting to note since the argument raised is that 1 kanal 6 marlas of land comprising in

Rectangle No.63, Killa No.20/2(1-0) and Rectangle No.64, Killa No.25/2/1(0-6) was never acquired as per notification dated 03.07.1973 but the mutation had been sanctioned in favour of respondent No.1 without acquisition. It is in such circumstances an order was also passed by the Co-ordinate Bench on 14.02.2024 that an affidavit be filed whether any compensation amount has been determined by the Collector concerned regarding the land details. The necessary affidavit has also been filed today. Same is taken on record.

3. Initially, CWP-10114-2014 came to be filed before this Court on the ground that the proceedings have lapsed and the respondents be directed not to interfere in the possession of the petitioner's land. The Co-ordinate Bench on 12.05.2015 gave liberty to file a detailed and comprehensive representation before the authority, which was to be decided within a period of 4 months. It is pertinent to notice that in the above-noted writ petition, there was a specific claim that the said land had never been acquired as per the notification dated 03.07.1973. In such circumstances, the Co-ordinate Bench had directed that the matter be decided after affording an opportunity of hearing to the petitioners.

4. The impugned order dated 15.01.2018 passed by the authority would go on to show that compensation to the tune of Rs.3,073.95 was deposited in the sub-Treasury on 15.01.1975 and none of the 5 persons including Tulsi Ram, father of the present petitioner had withdrawn the said amount and his share came to Rs.614.79. Reference was also made to Civil Suit filed which was decided on 26.03.2014 (Annexure P-8) whereby declaration was sought that the petitioner owner in possession of the suit land and mutation had wrongly been entered and the same had been

decided against the plaintiff-Tulsi Ram. Resultantly, it was held that possession was also with the PWD Department and the representation was accordingly rejected which is also subject matter of challenge. It was noticed that the land was situated adjacent to Village Abadi of Kheri Kalan and the other alternate road which was connecting Kheri Kalan with Kheri Khurd village was having blind turn and was accident prone area with a total width of only 22 feet which was unable to cater to the demand of increasing traffic volume. The land in question was connecting Kheri Kalan to Kheri Khurd village was the bye-pass road of Village Phirni and was 44 feet wide and could meet the traffic needs. It was thus noticed that the road had already been widened on both sides and the land was needed to make the road wider to avoid traffic hassles and question of releasing the land acquisition in 1974 would not arise. Disciplinary action was also proposed against the erring officers/officials who had failed to construct and widen the road on the part of land already acquired from the petitioner's father.

5. Mr.Sood has vehemently argued that the revenue numbers had not been mentioned in the Section 6 notification and therefore, the land had never been acquired and the State having not been able to produce the Section 6 notification showing the above-said numbers, relief of release of the land is to be granted.

6. We are of the considered opinion that the petitioner cannot be allowed to blow hot and cold at the same time and is bound by the stand taken by his father himself in the Civil Suit. The said suit was instituted way-back on 18.09.2010 seeking a declaration, as noticed above, for permanent injunction and mandatory injunction and to restore the

plaintiffs to the possession of the suit land. It was specifically mentioned in para no.3 that the land was acquired vide notification dated 14.01.1973 and the award was passed on 17.10.1974 and possession was taken and mutation no.3394 dated 21.04.1975 was also sanctioned in favour of the Haryana Government and possession of PWD allegedly recorded in the revenue records which was only acquired for the purpose of construction of road from Kheri Kalan to Kheri Khurd and the plaintiffs had not received any compensation.

7. The stand of the State was categorical admitting the factum of the award and the mutation and taking the plea of delay and laches. The mutation having been sanctioned in the year 1975 and the suit having been filed in the year 2010. It has been averred that the land had been acquired by the State and till date, no pucca road had been constructed and the plan made by the Government could not be executed. The said mutation was produced by the father of the petitioner himself as Ex.P-14. The Trial Court framed the following issues:

“1. Whether the plaintiff is entitled for decree of declaration ?
OPP

2. Whether the plaintiff is entitled for decree of mandatory injunction if during the pendency of the suit, the defendants succeeds in dispossessing the plaintiff from the suit land ? OPP

3. Whether the present suit is time barred, the suit property has been acquired by the Govt. in the year 1974 ? OPP

4. Whether the present suit is not maintainable in the present form ? OPD

5. Whether suit has no cause of action lies in favour of plaintiff ? OPD

6. Whether the plaintiff has no locus standi to file the present suit ? OPD

7. Whether the plaintiff has not come with clean hands and concealed the true material facts from the Court ? OPD

8. Relief.”

8. The plea was never taken in the Civil Suit that the Section 6 notification did not mention the said khasra numbers and neither there was an admission that the award had been passed. Having not taken the said plea in the Civil Suit, we are of the considered opinion that on an earlier occasion having approached this Court and taking the plea and getting an order for deciding the representation was only for prolonging the litigation. The Apex Court in **Government of India & another Vs. P.Venkatesh, 2019 (15) SCC 613** has said that “to decide my representation’ only prolongs the litigation and this is exactly what has happened in the present case. The Civil Court had also commented upon the delay and laches at that point of time when the suit was filed and dismissed the same. The petitioner not being satisfied, filed the writ petition and got direction for deciding the representation and thereafter, when the said representation was rejected, filed the present petition.

9. In such circumstances, once the petitioner’s father having accepted that the land stood acquired and the fact that compensation stands deposited and not withdrawn at that point of time, we are of the considered opinion that only on account of the passage of time and because the record being not available due to the fact that the land earlier fell in the larger Gurgaon District, the acquisition proceedings are not liable to be interfered with. In the affidavit filed today, revenue record has been brought on record vide Annexure A-1 which also would go on to show the Section 6 notification was mentioned as 14.01.1973 and the award dated 17.10.1974 as propagated by the plaintiff himself in the suit and the mutation entry in favour of the State.

10. Mr.Sood though has argued that the notification is same in the 2 acquisitions, we are of the considered opinion that the plea having not been raised in the Civil Suit, the principle of *Constructive Res-Judicata* would come into play apart from the delay and laches. Merely by filing continuous petitions, the challenge cannot be made afresh. The vernacular portion of the revenue record also go on to show that the Assistant Collector, 2nd Grade had sanctioned the mutation no.3394 dated 21.04.1975 in favour of the State which was subject matter of challenge and even in the present case also, it is admitted that the mutation has been entered. Having lost the matter before the Civil Court and not challenged the same, apparently the second round of litigation mainly on account of the Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013 coming into force wherein the issue of lapsing was subject matter of consideration, cannot be sustained.

11. Resultantly, in view of the above discussion, the present writ petition is hereby dismissed.

(G.S. SANDHAWALIA)
JUDGE

02.08.2024
Sailesh

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :	Yes	