

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-22090-2017
Reserved on: 18.04.2024
Date of Decision : May 06, 2024

JINESH CHAND JAIN

...Petitioner

V/S

STATE OF HARYANA AND OTHERS

...Respondents

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

Present : Mr. Abhinav Sood, Advocate with
Ms. Achintaya Soni, Advocate and
Ms. Anmol Gupta, Advocate
for the petitioner.

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

Mr. Prateek Mahajan, Advocate and
Mr. Daanish Mahajan, Advocate
respondent No.3.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner prays for the making of a writ in the nature of *Certiorari*, thus for quashing the impugned notices, respectively dated 16.05.2017 (Annexure P-8), and, dated 01.08.2017 (Annexure P-10), whereby the petitioner has been asked to remove his construction from the lands in dispute.

FACTUAL BACKGROUND

2. The petitioner is the owner of land comprised in rectangle No.319, Killa No.23(1-15) and 22/2(1-8), and, the same was purchased

through a registered sale deed dated 10.08.1966. The petitioner installed a petrol pump on the said land in the year 1967 after obtaining requisite permissions from the department concerned. Subsequently, the petitioner vide registered sale deed dated 08.08.1974, purchased 5 kanal 8 marlas of lands, comprised in rectangle No.330, Killa No.3/2, thus for extension of the petrol pump. On the said land, he has grown fruit trees, and, had also constructed a room, besides had installed a tube well thereins.

3. A notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as “the Act of 1894”), became issued on 11.04.2002 (Annexure P-2), to acquire lands situated within the then revenue estate of villages Garhi Bohar, Kheri Shad and Pehrawar, Tehsil and District Rohtak, thus for a public purpose namely development of residential/commercial Sectors 27-28, Rohtak by HUDA. The said notification became succeeded by a declaration made on 08.04.2003 (Annexure P-3), under Section 6 of the Act (supra), and subsequently three awards i.e. award Nos. 1, 2 and 3, became passed under Section 11 of the Act of 1894, on 06.04.2005 (Annexure P-4), for three different villages for the total land measuring 422.44 acres including 280.14 acres of land in village Garhi Bohar.

4. The petitioner challenged the notifications, thus through his filing CWP-7025-2005 before this Court. Through an order made on 24.12.2008, the writ petition was allowed, relevant operative paragraph whereof becomes extracted hereinafter.

“In view of all the aforesaid, we allow this writ petition with direction to the respondents to pass appropriate order in accordance

with law in regard to release of 3 kanals and 3 marlas land of the petitioner, comprising of Rect. No.319, killa nos.23 (1-15) and 22/2 (1-8), from acquisition and also the area of land measuring 533.93 square yards having A & C class constructions thereon since before the issuance of notification under Section 4 of the Act, out of a total area of 5 kanals and 8 marlas which comprised of Rect. No.330, Killa no.3/2, subject to usual terms and conditions. We also direct the respondent authorities to consider petitioner's claim in respect of remaining portion of land (out of 5 kanals and 8 marlas) having fruit bearing trees and park in terms of prevalent policy applicable in the case of this land."

5. That the order (supra), never became challenged by the State of Haryana. Thereafter, it came to the knowledge of the petitioner that some other land in the same area was purchased by a private builder, and, the said land was released from acquisition. In view of the said fact, other land-owners filed writ petition before this Court bearing CWP-19096-2011, challenging the notifications issued under Sections 4 and 6 of the Act of 1894. Several other land-owners also filed similar writ petitions. All the writ petitions were decided by this Court on 20.12.2013, whereby this Court quashed and set aside the notifications and the subsequent award, relevant paragraphs whereof become extracted hereinafter.

"[94]. In the light of the discussion and for the reasons stated above, we allow these writ petitions in the following terms:-

[i] Since the subject acquisition neither intended nor has achieved its 'public purpose', the notifications dated 11th April, 2002 and 8th April, 2003 issued under Sections 4 and 6 of the Land Acquisition Act, 1894 are hereby quashed in entirety. As a result thereto, the subsequent awards passed on 06th April, 2005 can not sustain and are consequently quashed;

[ii] As a necessary corollary, the licences granted to respondent No. 11- Builder-cum-Developer dated 12th June,

2006, 1st August, 2006, 1st September, 2006 or issued thereafter, even if not brought on record but pertaining to the acquired land, are hereby declared null and void and quashed;

[iii] Consequently, the release orders like dated 12th June, 2006 [P-28 and P-29] or any such like release orders pertaining to the land acquired vide the notifications dated 11th April, 2002 and 08th April, 2003, passed in purported exercise of powers under Section 48[1] of the 1894 Act are hereby quashed;

[iv] As a result of the declaration and directions issued at [ii] and [iii] above, the Sale Deeds executed in favour of respondent No. 11 on different dates in January, 2007 in respect of the acquired land are declared to be null and void and non-existent in the eyes of law;

[v] Those landowners who have neither received compensation nor entered into any Collaboration or Agreements to Sell with respondent No. 11, shall be restored with the possession of their respective land forthwith.

[vi] Those landowners who have received compensation but have not entered into any Collaboration or Agreements to Sell with respondent No. 11, shall also be returned their respective land subject to their deposit of the entire amount of compensation along with simple interest at the rate of 9% as prescribed under Section 28 of the Land Acquisition Act, 1894. The possession shall be restored in their favour within one week of refund of the compensation amount;

[vii] Those landowners who have entered into Collaboration or Agreements to Sell with respondent No. 11, shall be given option to return the Sale Consideration received by them from respondent No. 11 along with simple interest @ 7% per annum within a period of three months from the date of receipt of certified copy of this order. If any one of them has received compensation from the State, he/she shall be required to refund the same in the manner as laid down for the landowners falling in direction No. [vi] above. On doing so,

the possession of their acquired land shall be restored to them within one week;

[viii] If any of the landowners falling in Category [vii] above fails to return the sale consideration to respondent No. 11 or the compensation amount to the State, title of his/her land to that extent, shall stand transferred in favour of respondent No.11;

[ix] If the landowners fail to return the consideration amount to the private Builder as directed above and Respondent No. 11 perfects its title qua their land, the State Government would be free to grant Licence to the said respondent to the extent of such land, if so permissible under the 1975 Act;

[x] Respondent No. 11 shall be entitled to seek refund of the Licence fee, CLU or other statutory charges from the State, within a period of six months but without any interest, to the extent and for the land which shall stand released in favour of the original owners;

[xi] There shall be cost of `50,000/- [Fifty Thousand] in each case on respondent No. 11 which it shall deposit within one month with [i] Mediation and Conciliation Centre and [ii] Lawyers' Welfare Fund of High Court Bar in equal share.

[95]. This order, however, shall not preclude the State from acquiring the subject-land afresh if so needed for a lawful public purpose.”

6. The State of Haryana challenged the above said order before the Hon’ble Apex Court, through its filing Civil Appeal bearing No.5072-2016 along with five other appeals. All these appeals were decided by the Hon’ble Apex Court, through a detailed order passed on 13.05.2016, whereby the Hon’ble Apex Court allowed the civil appeals, and, thereby notifications dated 11.04.2002, and dated 08.04.2003, besides the award(s) dated 06.04.2005 thus were upheld, and, it was held that the land covered therein vest in HUDA free from all encumbrances. It is also directed that HUDA

may forthwith take possession thereof, relevant paragraphs as carried in the apposite verdict become extracted hereinafter.

“29. Keeping the above in mind, we are of the view that ends of justice will be served by moulding the relief as follows:

i) Notifications dated 11th April, 2002, 8th April, 2003 and awards dated 6th April, 2005 are upheld. The land covered thereby vests in HUDA free from all encumbrances. HUDA may forthwith take possession thereof.

(ii) All release orders in favour of the builder in respect of land covered by the Award in exercise of powers under Section 48 are quashed.

iii) Consequently, all licences granted in respect of the land covered by acquisition will stand transferred to HUDA.

iv) Sale deeds/ other agreements in favour of the builder in respect of the said land are quashed. The builder will not be entitled to recover the consideration paid to the owners but will be entitled to reimbursement as indicated hereinafter. Creation of any third party rights by the builder also stand quashed.

v) The sale consideration paid by the builder to the land owners will be treated as compensation under the award. The land owners will not be required to refund any amount. The land owners who have not received compensation will be at liberty to receive the same. The land owners will also be at liberty to prefer reference under Section 18 of the 1894 Act within a period of three months, if such reference has not been earlier preferred.

vi) The builder will be entitled to refund/reimbursement of any payments made to the State, to the land owners or the amount spent on development of the land, from HUDA on being satisfied about the extent of actual expenditure not exceeding HUDA norms on the subject. Claim of the builder will be taken up after settling claim of third parties from whom the builder has collected money. No interest will be payable on the said amount.

vii) The third parties from whom money has been collected by the builder will be entitled to either the refund of the amount, out of and to the extent of the amount payable to the builder under the

above direction, available with the State, on their claims being verified or will be allotted the plots at the price paid or price prevalent whatever is higher. No interest will be payable on the said amount.

viii) The State shall give benefit of “Rehabilitation and Resettlement of Land Acquisition Oustees” policy of the State/ HUDA to the land owners. Area so required shall be reserved out of the acquired land itself.

ix) The State Government may enquire into the legality and bona fides of the action of the persons responsible for illegally entertaining the applications of the builder and releasing the land to it, when it had no title to the land on the date of the notification under Section 4 of the 1894 Act and proceed against them in accordance with law.

x) This Judgment be complied with within one year.

xi) Quarterly progress report of the action taken in pursuance of this judgment be filed by the State in this Court and final report of compliance may be filed within one month after expiry of one year from today for such further direction as may become necessary.

30. The matters will be treated as disposed of except for consideration of the report of compliance to be submitted by the State Government.”

7. Thereafter, the respondent concerned issued the impugned notice dated 16.05.2017 (Annexure P-8), with speakings therein to remove the construction made over the subject lands, thus within a period of 21 days, else legal action shall be taken.

8. Faced with this situation, the petitioner again approached this Court through his filing CWP-13695-2017, but the same was dismissed vide order dated 13.6.2017. In the said verdict, this Court observed that if the petitioner has any grievance, then the remedy available to the petitioner was before the Hon’ble Apex Court and not before this Court. Relevant

“If the petitioner has any grievance in that regard, in our opinion, his remedy was before the Supreme Court by way of an interlocutory application etc. and not before this Court.

Consequently, this petition is dismissed with the aforesaid observations.

Yet, the petitioner having made out a case before us, as per both the contentions, we deem it appropriate to order status-quo as it exists today for one month, to enable the petitioner to file an appropriate application before the Supreme Court for consideration of their Lordships”

9. Subsequently, the petitioner was again served with another impugned notice dated 01.08.2017 (Annexure P-10), whereby the petitioner was again directed to demolish the construction and handover the possession to the respondent concerned.

10. The orders passed by this Court, in CWP-13695-2017, on dated 13.6.2017, led the petitioner to approach the Hon’ble Apex Court, through his filing SLP(C) No.21530-2017. The said SLP(C) became disposed of by the Hon’ble Apex Court through an order made on 01.09.2017, but with liberty to take his remedies at an appropriate Forum in accordance with law. Relevant paragraph whereof becomes extracted hereinafter.

“Heard learned senior counsel for the petitioner.

Since it is pointed out that the release of land in favour of the petitioner was not the subject matter of consideration before this Court in Uddar Gagan Properties Ltd. Vs. Sant Singh and Others in Civil Appeal No. 5072 of 2016, the petitioner is at liberty to take his remedies at an appropriate forum in accordance with law.

The special leave petition is, accordingly, disposed of.”

11. It is relevant to mention here, that the orders passed by this Court, on 24.12.2008, upon earlier writ petition bearing No.CWP-7025-2005

acquired lands were ordered to be released, but subject to usual terms and conditions, and, (ii) the second segment was qua the respondent authorities being directed to consider the petitioners claim for release of the lands which are also the subject lands in the instant writ petition. Therefore, in terms of the second segment of the order (supra), the petitioner was required to be making a representation before the respondent concerned, for thereby his seeking release of the remaining portion of land (out of 5 kanals and 8 marlas), thus having fruit bearing trees and park, as only, on the said representation becoming made qua thereby the said representation could have either rejected or accepted.

12. It appears that the said remedy remained unrecoursed. Contrarily, it appears that Annexure P-8 and P-10, became issued in terms of the directions passed by the Hon'ble Apex Court rendered in Civil Appeal No.5072-2016. For impugning the said annexurs, the petitioner accessed this Court, through his filing CWP-13695-2017, and but after dismissal of the said writ petition, he was led to institute a SLP(C) No.21530-2017, before the Hon'ble Apex Court, which resulted in the hereinabove extracted order becoming passed.

13. Though even in terms of the remedy preserved in the second segment of the order passed by this Court, on 24.12.2008, the petitioner was to move a representation before the authorities concerned, besides also it appears on a reading of the above extracted order passed on 01.09.2017, that the Hon'ble Apex Court also did not preserve any liberty in the petitioner, to re-access this Court, but reserved liberty in the petitioner to take remedies at an appropriate forum. Consequently, thereby the said order is in terms of the

second segment carried in the unchallenged order (supra), passed by this Court, thereby the instant writ petition is mis-constituted and is required to be dismissed as such.

14. Be that as it may, for ensuring the doings of complete justice to the contesting litigants, it is deemed imperative to allude to the written statement instituted to the instant writ petition by respondents No.1 and 2. In the said written statement it has been echoed therein, that the possession of the land in question was duly taken by the respondents concerned, vide Rapat Roznamcha No.418 dated 06.04.2005. It is further stated therein, that the compensation amount has been duly tendered at the time of announcement of award, however, the petitioner has chosen not to receive the same.

15. Moreover, in compliance of the said orders, passed by this Court, and, also in terms of the liberty granted to the petitioner to access the appropriate remedies, thus respondent No.3, has filed a speaking order dated 01.04.2024, and, the same is taken on record. In the said office order it has been stated that the Joint Site Inspection Committee was conducted on 26.02.2024, thus in compliance of the order dated 24.12.2008. It is also stated therein, that when the Joint Inspection Committee team visited the site concerned, the present petitioner was also present there. Moreover, it is also stated therein, that the acquisition proceedings have been completed. In addition, it has been further stated that the compensation amount for the land involved in the petition, became offered, to the present petitioner, but it remains uncollected by the petitioner. Furthermore, it has also been spoken

thereins that as per Rapat No.418 dated 06.04.2005, the possession of the

said lands, has been transferred to EO, HSVP, Rohtak, besides the mutation of the said land has been attested vis-a-vis HSVP, thus on the very same day. Moreover, it is also stated therein that the DTP, Rohtak has submitted that layout-cum-demarcation plan of residential Sector-27, Sector-28 (Part) & Sector-26 (Part), Part-II, Rohtak bearing drawing no.DTP(R)2032/21 dated 24.09.2021, and, the land of the petitioner involved in Khasra No.319/22/2(1-8), affects the planning of Petrol Pump, Green Belt, Service Road & GH-site, Khasra No.319/23 affects the planning of Green Belt, Service Road and Khasra No.330/3/2 affects the planning of Dispensary, 12 meter service road & green belt. As such, the relevant public purpose is much viable/essential.

16. Conspicuously, yet for the reasons to be assigned hereinafter the said speaking order is applicable only insofar as, it relates to the second segment of the order (supra), and, is not applicable to the first segment. The reason becomes comprised in the factum, that the earlier order passed by this Court in CWP-7025-2005, remains unchallenged, thereby it acquires binding and conclusive effect.

17. Consequently, if the said order made, on 24.12.2008 subject to compliances being visited to the usual terms and conditions, resultantly therebys insofar as, the first component of the binding order rendered by this Court in CWP-7025-2005, rather requires becoming enforced by the respondents concerned, vis-a-vis the petitioner.

18. Resultantly, insofar as the impugned notices (Annexure P-8 and P-10) if issued in respect of the first component of the said order, therebys

the said impugned notices are beyond the domain of the binding, and,

conclusive verdict recorded in respect thereof. Therefore, the instant petition is partly allowed, and, the impugned notices are quashed and set aside in respect of the first segment of the order (supra), passed by this Court.

19. Accordingly, the instant petition is partly allowed in the aforesaid terms.

20. The miscellaneous application(s), if any, is/are, also disposed of.

(SURESHWAR THAKUR)
JUDGE

06.05.2024

(LALIT BATRA)
JUDGE

Ithlesh	Whether speaking/reasoned:-	Yes/No
	Whether reportable:	Yes/No