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

205

**CWP-22449-2018 (O&M).
Date of Decision: 29.08.2024.**

MAHANT TARAN DASS CHELA MAHANT JAMUNA DASS

... Petitioner

Versus

STATE OF HARYANA AND ANOTHER

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

**Present: Mr. Ashwani Kumar Chopra, Sr. Advocate, with
Mr. Akshit Chaudhary, Advocate,
for the petitioner.**

**Mr. Pankaj Mulwani, DAG, Haryana, with
Ms. Neenu Goyal, ADA and Mr. Megh Shyam, Asst.
for the respondents.**

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present writ petition is to the Notifications dated March 22, 1991 (Annexure P-12) and September 14, 1995 (Annexure P-14), whereby the respondent-Government of Haryana, Archaeological and Museum Department has notified acquisition of the land of the petitioner in exercise of powers conferred under Section 4 (1) and Section 4 (3) respectively of the Punjab Ancient and Historical Monuments and

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Archaeological Sites and Remains Act, 1964 (hereafter referred to as 'the Act of 1964') along with all the enabling powers claiming that the said notification lapses on account of efflux of time and failure to pay compensation and would cease to have any impact on the right, title and interest of the petitioner as owner of land measuring 6 Kanals 6 Marlas comprising in Khasra No.21/28, Hadbast No.41, situated within the revenue estate of village Pehowa, District Kurukshetra and alternatively it is contended that the compensation be released in favour of the petitioner, as is admissible under the Act of 1964 and the rules framed thereunder.

2 Learned Senior counsel contends that the petitioner is owner of the land measuring 6 kanals 6 marlas as detailed above. The same was owned by Vasdev Chela Jassi Ram Faquir Udasi, resident of the village, as per Jamabandi of the year 1886-87 A.D. The said land was purchased by Mahant Narain Dass Chela Sudha Dass from Vasdev Chela Jai Ram vide Sale Deed dated June 22.06.1887 and a mutation in this regard was sanctioned in favour of said Mahant Narain Dass and his name figured in the Jamabandi for the year 1899-1900. Mahant Narain Dass continued to be recorded as owner in subsequent Jamabandis and on his demise, a mutation of inheritance was later sanctioned in favour of Charan Dass Chela Narain Dass. The Jamabandis upto the year 1931-32 reflected the ownership and possession of Charan Dass Chela Narain Dass and succeeded by Chetan Dass. Eventually the same was sanctioned in favour of Jamna Dass Chela Charan Dass. The jamabandis continued to reflect the ownership and

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possession in the above order and there has been no dispute with respect to the same. Jamna Dass eventually died on 16.08.1986 and the mutation of inheritance was sanctioned in favour of Taran Dass, the present petitioner, on 31.08.1986 which was duly recorded in the jamabandi for the year 1989-90 and continued to reflect him as owner in possession of the said land thereafter. The respondent-Archaeological and Museum Department issued a notification on 22.03.1991, in exercise of powers conferred under Section 4 of the Act of 1964, and all other enabling powers notifying the intention of the respondent-State to declare the land of the petitioner as the ancient and historical monument of “**Vishwamitra Ka Tila.**” The petitioner approached this Court challenging the above said notification by filing C.W.P. No. 8964 of 1993, titled ‘ Mahant Taran Dass Chela Jamun Dass Vs. State of Haryana and another.’ The said Writ Petition was disposed of vide order dated 26.01.1994, granting two months' time to the petitioner to raise appropriate objections before the competent authority.

3 Accordingly the petitioner preferred his objections before the Commissioner and Secretary, Department of Archaeology, Government of Haryana. It is alleged that without deciding the objections filed by the petitioner, the respondents exercised the powers under Section 4 sub section 3 of the Act of 1964 and issued the notification dated 14.09.1995 declaring the **site as a protected Archaeological Site and Remains.** The objections filed by the petitioner were thereafter dismissed by the respondent authorities on 18.09.1995. The said order was also challenged by the

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petitioner by filing CWP No.16443 of 1995 which however, was dismissed on 06.12.1995. He contends that even though there was no dispute with respect to the title of the petitioner in the land, yet, the writ petition was dismissed after inter alia observing that the petitioner was not able to establish his title to the premises that had been declared as a protected area. The said order was challenged by the petitioner by way of an SLP before the Hon'ble Supreme Court. Even though the Hon'ble Supreme Court did not interfere with the order of the High Court, however, it was made clear by the Hon'ble Supreme Court that the observations with respect to the title of the petitioner over the site would not preclude him from establishing his title in an appropriate proceedings, vide its order dated 30.04.1996 passed in Special Leave to Appeal (Civil) No.9542 of 1996. The operative part of the order reads thus:-

*“UPON hearing Counsel, the Court made the following
ORDER*

We have heard Shri Harbans Lal, the learned Senior Counsel Appearing for the petitioner. We do not find any ground to interfere with the impugned judgment of the High Court. It is, however, made clear that the observations made in the said Judgment regarding the title over the site which has been declared as the protected area would not preclude the petitioner from establishing his title in appropriate proceedings. The Special Leave Petition is, therefore, dismissed.”

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4 It is also contended that the Department had got registered an FIR No.91 dated 12.04.1993 under Section 30 of the Punjab Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1994, against the petitioner at Police Station Pehowa, District Kurukshetra. The said FIR was challenged by way of filing a quashing petition CRM Case No.6564-M of 1993 under Section 482 of the Code of Criminal Procedure and was quashed vide judgment dated 25.09.2002.

5 He further contends that pursuant to the liberty granted by the Hon'ble Supreme Court to the petitioner to establish his title in an appropriate proceedings, the petitioner filed a Civil Suit No.568 of 2003 in the Court of Civil Judge (Sr. Divn.), Pehowa seeking permanent injunction for restraining the respondents from raising any construction at the site. The said civil suit was contested by the respondents. In the written statement so filed, the ownership of the petitioner with respect to the suit land was however not disputed. Vide judgment and decree dated 10.05.2006, the suit of the petitioner was decreed with respect to both the properties in so far as the title of the petitioner was concerned. However, with respect to property I (a), the Civil Court directed as under:-

“18. In view of my discussion foregoing, the suit of the plaintiff succeeds and is decreed with no order as to cost to the effect that the defendants are restrained from raising any construction over the suit property as detailed in para No. 1(b) of the pliant and are restrained the defendant from dispossessing the plaintiff therefrom. However, defendants are restrained from raising any kind of construction over the suit

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property as detailed in para No. 1(a) of the plaint without following the procedure as provided in the Ancient and Historical Monuments and Archaeological Sites and Remains act 20 of 1964. Decree Sheet be prepared accordingly and file be consigned to the Record Room after due compliance.”

6 Hence, the respondents were restrained from raising any kind of construction over the suit property without following the procedure prescribed under the Act of 1964. The said judgment and decree dated 10.05.2006 has become final. A further direction was also issued to the respondents to comply with the procedure as embedded under Section 5, 6 and 27 of the Act of 1964. Despite the finalization of the judgment and decree passed by the Civil Judge (Sr.Divn.), Pehowa, no process was initiated by the respondents to de-notify the land or to pay compensation to the petitioner. Representations in this regard were sent by the petitioner to the Chief Minister, Haryana. Two of the said representations dated 17.03.2008 and 19.11.2009, have also been appended with the present writ petition. He contends that the respondents had initiated certain notings on the said representations wherein in the internal discussion, they have acknowledged the entitlement of the petitioner to claim compensation with respect to the land in question.

7 Be that as it may, respondent No.2 who is Director of the Department of Archaeological and Museum Department, Haryana sent a letter on 11.06.2014 to the District Revenue Officer, Kurukshetra for determining and forwarding the rate of compensation regarding land

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measuring 6 kanals 6 marlas “Vishvamittar Ka Tilla”. An information was sent to the petitioner vide Memo No.16/35-86/Arch./1644 dated 11.06.2014 that the Government has decided that “Vishvamittar Ka Tilla” was an ancient Ramayan Mandir Archaeological site and historically important monument, thus, proceedings to release this land, as unprotected site, could not be initiated. The petitioner was called upon to contact the office of respondent No.2 in case he was interested to proceed with the matter under Sections 5 and 6 of the Act of 1964 failing which the Department shall, in compliance with the order of the Court, commence proceedings to acquire the said site. The petitioner sent a letter to the respondents clearly conveying his intention to not enter into any agreement as suggested by the respondent and requested them to acquire the land and to pay compensation to him so that he may undertake subsequent projects on behalf of the Dera to construct a Temple and a Sanskrit School, on receipt of the compensation. Despite the said request having been served on the respondents, no decision was taken thereupon. Numerous requests were made by the petitioner and finally a legal notice dated 11.06.2014 was also sent but as no decision was taken, the petitioner has approached this Court.

8 During the course of arguments, learned Senior counsel contends that he would confine his prayer at this juncture only to the grant of compensation as is admissible to the petitioner in terms of Section 28 of the Act of 1964 and the rules framed thereunder and gives up his challenge to the setting aside of the notification due to efflux of time.

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9 Learned Senior counsel has also drawn the attention of this Court to paras No.10 and 11 of the writ petition which are extracted as under:-

“10. That in compliance to the directions issued by the Ld. Additional Civil Judge, (Senior Division), Pehowa, Respondent No.2 vide memo No. 16/35-86/1643, dated June 11, 2014, wrote to District Revenue Office, Kurukshetra, for determining and forwarding the rate of compensation regarding land measuring 6 Kanals 6 Marlas, i.e. the land in question and the site of State Protected Monument i.e. Vishvamittar Ka Tilla, situated at Pehowa. Respondent No.2, inter-alia, requested the District Revenue Officer, Kurukshetra, to determine the amount of compensation payable to the land owner Mahant Taran Dass, in compliance of the order passed by the learned Civil Court. Further, the District Revenue Officer, Kurukshetra, was requested to forward the determination of compensation to respondent No.2 so that the amount of compensation is paid to the Petitioner-land owner. A copy of the said letter dated June 11, 2014, is annexed hereto as Annexure P-22.

11. That Respondent No.2 vide his memo bearing No. 16/35-86/1644 dated June 11, 2014, wrote to the Petitioner inter alia, mentioning that the Government had decided Vishvamittar Ka Tilla, was an ancient Ramayan Mandir, Archeological site and action for its de-protection could not be initiated. Thus, the Petitioner was requested to contact the office of Respondent No.2 in case he was interested to proceed in this matter under Sections 5 and 6 of the Act, failing which the Department shall, in compliance with the order of the Court, would commence

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proceedings to acquire the said site. A copy of the letter dated June 11, 2014, is annexed hereto as Annexure P-23. Thus, a perusal of the said letter would show that it was decided to proceed with the matter under Sections 5 and 6 of the Act for acquiring the land in question in accordance with the law.”

10 He contends that in response to the above said paras the respondents had admitted the contents of said paragraph. The response filed by the respondents is extracted as under:-

“10. That the contents of Para No.10 of the petition are matter of record hence requires no reply.

11. That the contents of Para No.11 of the petition are mater of record hence requires no reply.”

11 Learned counsel for the respondent-State, on the other hand, has referred to the averments contained in the reply. The averments raised with respect to the challenge to the notification are not required to be gone into at this juncture since the petitioner is not seeking a de-protection/de-notification of the site in question and is only pressing his relief with respect to his entitlement to the compensation under Section 28 of the Act of 1964.

12 Learned State counsel contends that the respondent-Department had earlier sent a letter to the petitioner on 11.06.2014 for payment of compensation but no response was received. He further makes a reference to certain documents/correspondence on the official file (which is although not a part of the reply filed before this Court) including the letter bearing No.205/DRA dated 10.02.2016 received from the Collector,

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Kurukshetra as per which the payable compensation for acquisition of the land was Rs.5,36,61,000/- approximately which is taken on record as Mark 'A'. It has also been conveyed that the collector rate of agricultural land is Rs.35 Lakhs but as the land was gair mumkin, the rate was Rs.11,000/- per square yard at the time of issuance of the said letter. He further contends he has no instructions as to the subsequent steps that were taken on receipt of the aforesaid collector rate in the office of the Director General. No such instructions are also forthcoming from the officer who has come present to assist the State counsel in this regard.

13 It is, however, asserted that the monument is a protected monument and the Government does not intend to de-notify or de-protect the monument. The entitlement of the petitioner to the compensation under the Act of 1964 is also not disputed, which such intention is well reflected not only from the letter dated 11.06.2014 but also from receipt of the collector rates by the respondents (Mark-A) as also the statement made in Court during the course of arguments.

14 I have heard learned counsel appearing for the respective parties and have also gone through the documents available on record with their able assistance.

15 The undisputed facts which emerge in the present writ petition are that the petitioner is the owner of the land in question for which notification of intent and final declaration had been duly published by the respondent-Department under the Act of 1964. It is also not disputed that

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the Civil Court had already decreed the suit for permanent injunction filed by the petitioner and had restrained the respondents from initiating any construction, without following the procedure prescribed under the Act of 1964, for payment of compensation. A specific direction had been given by the Civil Court in para No.14 of the judgment that the Government should complete all the formalities within a period of two months from the date of the order to acquire guardianship and title over the land in question. It is also not in dispute that even though a process was initially undertaken by the respondent for seeking assessment of compensation, which is well supported by the contemporaneous correspondence including Memo No.205 dated 10.02.2016, and that the respondent had intended to pay compensation to the petitioner with respect to the land in question and that the prevailing rate of the property was also obtained but the same has not been paid. The Collector Kurukshetra had duly informed the cost of the land to be Rs.5,36,61,000/- approximately. Notwithstanding the aforesaid assessment, there is no evidence on record on the basis whereof it can be assumed that the above said payment was approved by the competent authority or any financial sanction was granted. Even though an attempt had been made by the counsel for respondent No.2 to contend that the department was always ready and willing to make the payment but the petitioner never came forward to collect the same in response to the communication dated 11.06.2014, however, the above stand of the respondent-State fails to inspire confidence since it would be wholly

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unconscionable that a person whose's land has been taken over and who has come before this Court for a third time in civil proceedings and has approached its quashing as well as before Civil Court would not be pursuing his rights. He is not a fence-sitter and has been actively involved in pursuing and protecting his rights and seeking compensation. So much so subsequent legal notices were also sent by the petitioner to the respondents in the 2017 making a specific reference to the earlier said application dated 11.06.2014. The very fact that the respondent authorities have failed to get an approval of compensation despite receipt of applicable rate and in-principal acknowledgement of liability to pay compensation having been granted by the competent authority viz, the Director, Department of Archaeology and Museums in file notings and absence of grant of financial sanction for disbursement in favour of the petitioner shows that respondents are themselves in default. They have also failed to refer to availability of any other fiscal resources at their command and disposal for the said purpose at the relevant point of time to be disbursed to the petitioner. The contention of the respondent Department is no more than an eyewash and it is not readily reflected from the contemporaneous documents or the evidence which is on record on behalf of the respondent-Department. It seems that the respondents had chosen not to take any further steps towards payment of compensation, whilst taking and retaining the actual physical possession of the site in question, by exercising sovereign powers under the notification issued by the respondents.

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16 It is settled legal position that whenever an owner is deprived of his title over the property in exercise of powers conferred under Section 4 of the Act of 1964, compensation is required to be assessed and to be disbursed to an occupier or owner of the land/property. The principles of compensation are duly provided under Sections 27 and 28 of the Act of 1964. The same are extracted as under:-

“27. Any owner or occupier of land who has sustained any loss or damage or any diminution of profits from the land by reason of any entry by this Act, shall be paid compensation by the Government for such loss; damage or diminution of profits.

28. (1) The market value of any property which the Government is empowered to purchase at such value under this Act, or the compensation to be paid by the Government in respect of anything done under this Act, shall where any dispute arises in respect of such market value or compensation, be ascertained in the manner provided in section 3,5,8 to 34, 45 to 47,51 and 52 of the Land Acquisition Act, 1894 (Central Act I of 1894), so far as they can be made applicable:

Provided that when making an enquiry under the said Land Acquisition Act, the Collector shall be assisted by two assessors, one of whom shall be competent person nominated by the Government and one person nominated by the owner, or, in case the owner fails to nominate an assessor within such time as may be fixed by the Collector in this behalf, by the Collector.

(2) Notwithstanding anything in sub-section (1) or in the Land Acquisition Act, 1894 (Central Act I of 1894), in determining the market value of any antiquity in respect of which an order for compulsory purchase is made under sub-

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section (3) of section 23 or under sub-section (1) of section 26, any increase in the value of the antiquity by reason of its being of historical or archaeological importance shall not be- taken into consideration.”

The aforesaid statutory principles of liability have not been disputed or denied by the respondents.

17 There is also no evidence on the file or in the pleadings that the collector rate as conveyed vide letter dated 10.02.2016 was factually incorrect, even though a period of 08 years has elapsed since receipt of the report. There is also no denial of the fact that the respondents had taken possession of the site and have not paid any compensation. It is also not disputed that the petitioner is entitled to the compensation for being denied his title over the land.

18 Once the above factual aspects emerge undisputed, there can be no lawful reason or basis to deny the legitimate dues to an owner. The State cannot forcibly dispossess an owner and take possession of land without payment of the value of the land. The notification under the Act of 1964 is not in the nature of any protected legislation or in furtherance to any agrarian reform. State is expected to be fair in its dealings with citizens and not appear as land grabbers.

19 Learned Senior counsel contends that he does not intend to indulge in a prolonged legal battle with the State for seeking re-assessment of compensation under the Right to Fair Compensation Act, 2013 and

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would offer a waiver in lieu of expeditious settlement of his dues and payment of admissible compensation.

20 In view of the above and considering that the petitioner is pressing only for the grant of compensation and the respondents have re-conveyed their intent not to de-notify or de-protect the monuments, the present writ petition is disposed with following directions:-

- (1) the respondents are directed to pay compensation with respect to the land measuring 6 kanals 6 marlas, owned by the petitioner, as per the rates so received from the Collector Kurukshetra vide Memo No.205/DRA dated 10.02.2016;
- (2) let the above said amount be paid along with interest @ 12% per annum w.e.f. February 2016 when the collector rate had been received by the respondents as agreed by learned Senior counsel appearing on behalf of the petitioner (notwithstanding the interest @ 15% per annum provided under the Land Acquisition Act, 1894 as amended and notwithstanding the provisions having already been amended by the Right to Fair Compensation Act, 2014), to still accept a reduced rate of interest @ 12% per annum, for ending the litigation, if the amount is released within a

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period of 03 months of the receipt of certified copy of this order. It is made clear that in the event of the respondent-Department failing to make the payment within the concessional period of three months as directed above, the respondents shall be liable to pay interest at statutory rate of 15% per annum, so provided under the Act of 1894. The above said concession of 3% in the rate of interest has been extended only to expedite the disbursement of the benefits in favour of the petitioner.

- (3) The respondent-Department shall be at liberty to take appropriate steps against the erring officials and the additional financial burden so cast upon the public exchequer may be recovered from the officials, who were at lapse, for failure to comply with the statutory mandate and disbursement of compensation admissible to the petitioner, despite the judgment and decree having been passed and notwithstanding Section 28 of the Act of 1964 mandating the payment of said compensation.

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The writ petition stands disposed of accordingly.

August 29, 2024
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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