

2024:PHHC:122075-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(105)

CWP-23217-2024

Decided on: 13.09.2024

Varinder Singh

.....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.M.L.Sharma, Mr.Sushil Kumar Sharma
Ms.Meenakshi Sharma, Advocates, for the petitioner.

Mr. Ankur Mittal, Addl.A.G., Haryana
Mr. Saurabh Mago, DAG, Haryana, for the State of Haryana

Mr.Ankur Mittal, Advocate
Ms.Kushaldeep K.Manchanda, Mr.Siddhant Arora,
Advocates for respondent-HSIIDC.

G.S. Sandhawalia, J. :

1. Challenge in the present writ petition, filed under Articles 226/227 of the Constitution of India, for the third time, is to the acquisition proceedings initiated on 17.09.2004 (Annexure P-7) issued under Section 4 of the Land Acquisition Act, 1894 (for short, the 'Act') read with Section 17(2)(c) of the Act whereby the land was sought to be acquired for Villages Nabada Fatehpur, Naurangpur, Manesar, Lakhnoula, Naharpur Kasan and Shikopur, Tehsil & District Gurugram.

2. The fresh cause of action apparently is on account of the notice issued to him for removal of the construction on the site in question falling in Village Lakhnoula, while noticing that the second writ petition bearing CWP-11839-2018 had been dismissed on 29.04.2024. The said notice reads as under:

“Sh. Virender Singh s/o Sh. Rammehar,
Village Nakhrola, Tehsil Manesar,
Distt. Gurugram.

Sub: Notice for Removal of illegal Hotel, Dharam Kanta and Tin Shed in Khasra No.46//4, 4 and 40//25 at IMT Manesar.

Dear Sir,

In this connection, it is intimated that you have constructed illegal Hotel, Dharam Kanta and Tin Shed in Khasra No.46//4, 4 and 40//25 at IMT Manesar the above said land has already been acquired by HSIIDC vide award No.15 dated 28.12.2015. Further, the CWP No.11839 of 2018 has already been dismissed by Hon'ble High Court on dated 29.04.2024.

You are therefore, requested to remove the illegal construction from the acquired land of HSIIDC, IMT Manesar within 10 days positively, otherwise action will be taken against you as per procedure.

Thanking you,

Yours faithfully,

For Hr. State Ind. & Infra. Dev. Corp. Ltd.”

3. The necessary declaration under Section 6 of the Act was issued on 27.10.2004 (Annexure P-8) and the award came to be passed on 09.03.2006 (Annexure P-9), while noticing that certain landowners had approached this Court and therefore, the possession of those landowners could not be taken. The petitioner, at a belated stage, filed CWP-11621-2006 (Annexure P-10) in which he was arrayed as petitioner No.4 in which he stated that he was owner in possession of 7 kanals 15 marlas of land. The necessary averments read as under:

“2. That the petitioners are owners in possession of the land comprising khasra/killi No.46//4/2 (7-15) total measuring 7 Kanal 15 Marlas. The land in question is situated in the village Lakhnaula, Tehsil and District Gurgaon.”

4. The said writ petition was dismissed on 16.04.2009 (Annexure P-11), keeping in view the orders passed in the lead case bearing CWP-17108-2004 titled *Tara Chand & others Vs. State of*

Haryana & others, on account of the fact that it was filed after the award had been passed. The appeal bearing LPA-1016-2010, filed by the petitioner had been disposed of on 07.10.2010 (Annexure P-12) along with two other appeals, filed by the other landowners, in terms of the order dated 01.02.2010, passed in LPA-114-2010 titled *Prem Parkash Vs. State of Haryana*. The decision in the said appeal was upheld by the Apex Court on 13.12.2010 in SLP No.32783 of 2010.

5. The petitioner, thereafter, filed CWP-11839-2018 challenging the acquisition proceedings regarding Khasra No.27/5/3 (0-18), 46/4/2 (7-15) on the ground that the award had not been announced regarding the same and therefore, the proceedings had lapsed. The said writ petition was dismissed on 29.04.2024 (Annexure P-17) by noting that the amount had been duly deposited and the petitioner was only a trespasser and they are required to be lawfully evicted and the public purpose was integral component of the lay-out plan.

6. The plea taken by the State in the said writ petition was that the land in question was affecting sector dividing road of Sector 81, 75 meter wide ROW, 60 meter wide Green Belt along NH-48 and the compensation of Rs.3,50,452/- had not been accepted. The land was stated to have been required under the urgency provisions and it was categorically averred that Khasra No.46//4/2 belongs to the petitioner measuring 7 kanals 14 marlas and 46//4/1 belongs to PWD (B&R) and that mention of Khasra No.46//4/1 may be read as Khasra No.46//4/2. This was apparently on account of the plea taken in the second writ that the State had not offered compensation for the said khasra number. The relevant para reads as under:

“It is pertinent to mention that HSIIDC has informed that as per report of DTP/IMT Manesar vide memo dated 1077 dated 06.09.2022, khasra No.46//4/2 belongs to petitioner measuring 7 kanal 15 marlas and 46//4/1 belongs to PWD B& R, Haryana and as per Award No.12 dated 09.03.2006 khasra No.46//4/1 (7-15) has been mentioned. Therefore, khasra No.46//4/1 (7-15) may kindly be read as 46//4/2 (7-15) of village Lakhnoula, Gurugram.”

7. A perusal of the judgment in question would go on to show that no document was advanced of the clerical error which had occurred and it has always been the case of the petitioner that he has been fighting for the release of Khasra No.46//4/2, as noticed in the earlier round of litigation way-back in the year 2006. The revenue record now attached as (Annexure P-11) would also go on to show that he was the owner of Khasra No.46//4/2 measuring 7 kanals 15 marlas which as per the mutation also and rapat No.163, an award has been made regarding the same.

8. In the present writ petition, the petitioner has now stated that he is owner to the extent of his share in Khasra No.46//4/1 (7-15) out of the total land of 72 kanals 18 marlas, which is in contradiction to his earlier stand and thus, has raised challenge to the acquisition proceedings again.

9. We are of the considered opinion that firstly having challenged on a plea regarding his ownership of the land in Khasra No.46//4/2, he cannot take a contradictory stand regarding the ownership. Secondly, having failed to successfully challenge the acquisition on the strength that the said khasra number did not find mention in the award, he cannot now raise the issue again since the State has specifically clarified in

the earlier round of litigation and mentioned that Khasra No.46//4/1 has to be read as Khasra No.46//4/2 and it is thus always open to the State to issue necessary corrigendum. The question of interference, at this belated state, does not arise as the amount of compensation of Rs.3,50,452/- also stands deposited and petitioner having lost in the challenge raised to the acquisition twice, now cannot raise the issue of a clerical error which may have occurred. Therefore, having not been successful in the earlier two rounds of litigation, he now cannot raise the same issue in the third round of litigation.

10. Accordingly, in view of the above cumulative discussion, the present writ petition stands dismissed.

(G.S. SANDHAWALIA)
JUDGE

13.09.2024
Sailesh

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :	Yes	