
(2015) 12 P&H CK 0022
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 13027 of 2014

Harjas and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 24-12-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 11(1), 18, 36, 4

Citation : (2015) 12 P&H CK 0022

Hon'ble Judges : Hemant Gupta and Raj Rahul Garg, JJ.

Bench : Division Bench

Advocate : M.L. Sharma, Senior Advocate and Sunil K. Sharma, Advocate, for the Appellant; Palika Monga, DAG, for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—This order shall dispose of aforesaid writ petition as well as the writ petitions mentioned at the foot note of the order, as identical questions of law and facts are involved in all the writ petitions. However, for the facility of reference, the facts are being taken up from CWP No. 13027 of 2014.

2. In the present writ petition, after announcing of the Award by the Land Acquisition Collector, the land-owners have executed sale deeds in favour of the private respondents, which sale deeds are subject matter of challenge in the present writ petition. In all other writ petitions, the sale deeds have been executed by the land-owners before the announcing of the Award.

3. The petitioners, who are owners of land comprising in Rect./Killa No. 4//24(8-0), 25(6-17), 14//2/1/2(1-7), 3/2(5-22), 4(7-11), 8/1(6-0), 8/2(2-0), 9/1(2-8), 13(8-0) measuring 47 Kanal 5 Marla situated in the revenue estate of Village Kundli, Tehsil & District Sonapat, are aggrieved against the acquisition of land measuring 664.13 Acres including the land measuring 117.50 Acres situated in the revenue estate of Village Kundli vide notification dated 29.01.2001 issued under Section 4 of the Land Acquisition Act, 1894 (for short "the Act") for a

public purpose namely "for development of residential and commercial Sector - 58, Sonapat". The petitioners have filed objections to such notification, but the State Government proceeded to publish notification under Section 6 of the Act on 28.11.2002 in respect of land measuring 654.62 Acres including the land measuring 111.12 Acres of Village Kundli. It is, thereafter, notices under Section 9 of the Act were issued on 28.10.2004 and the Award announced on 24.11.2004 in respect of land measuring 110.75 Acres situated in Village Kundli. After the announcement of the Award, entry in the revenue record was made vide rapat roznamcha dated 24.11.2004.

4. The case set up by the petitioners is that a General Power of Attorney (GPA) was executed in favour of the private respondents on 20.12.2004 i.e. after the announcement of the Award. On the same date, a Collaboration Agreement and an agreement to sell were also entered. A copy of the Collaboration Agreement has been appended with the writ petition as Annexure P-12. It was in pursuance of the agreement to sell, the sale deeds were executed on 02.03.2006 and/or on other various dates in the month of March, 2006. It is also pointed out that though there is no power conferred on the attorney to sell the land, but on 13.05.2007, License No. 177/07 was granted in respect of land measuring 53.50 Acres including the land in question.

5. The grievance of the petitioners is that the sale deeds were executed on the basis of power of attorney, which does not confer any power to sell. The sale deeds have been executed after the vesting of the land with the State Government, therefore, the action with regard to the grant of license to develop a colony on the land, which vested with the State Government, is illegal, arbitrary and without jurisdiction.

6. It is also pointed out that the petitioners did file a civil suit challenging the sale deeds before the Civil Court on 16.08.2012, which was withdrawn on 23.05.2014 with permission to file the present writ petition. Therefore, on the basis of judgment of this Court in CWP No. 19096 of 2011 titled "Sant Singh & others v. State of Haryana & others" decided on 20.12.2013, the petitioners have sought a declaration that the sale deeds executed by them are illegal, void and ineffective qua the rights of the petitioners. The petitioners have pleaded that the land is not free from encumbrances and does not vest with the acquiring authority, as supplementary award in respect of superstructures was to be assessed by the Engineering Cell, but since compensation has not been assessed of the superstructures, the land does not vest with the acquiring authority.

7. On the other hand, Mr. Monga during the course of arguments has produced the communication dated 27.12.2005 (Mark-X) vide which the land in question i.e. 53.505 Acres was released from acquisition. Such release of land was preceded by a note dated 14.09.2005 (Mark-Y) of the Director, Urban Estate. Such note was approved by the Chief Minister on 13.12.2005. The relevant extract from the note dated 14.09.2005 reads as under:

"M/s. Omaxe Housing Developers Pvt. Ltd. has applied for grant of license for land measuring 54.995 acres in the revenue estate of village Kundli, District Sonapat. As per details on noting page 24 and the shazra plan at flag "T" an area measuring 53.505 acres that was notified under section 4 and 6 of the Land Acquisition Act and the award of which was announced on 24.11.2004, is under stay dispossession as per the orders of the Hon"ble High Court. The said applicant had applied for the grant of license for developing a plotted colony over an area of 54.995 acres. The land measuring 1.49 acres and falling in khasra Nos. 12//3/2/2/1, 14/2//2/1, 13//8 stands finally acquired and cannot be considered for grant of licence. The case is submitted for consideration and taking decision regarding further proceedings of acquisition of law.

For orders please."

8. In the written statement filed on behalf of respondent Nos. 2 & 3, it is inter alia pleaded that respondent No. 15 - M/s. Omaxe Housing & Developers Ltd. in collaboration with 82 land-owners submitted application on 09.08.2004 for grant of license under the provisions of Haryana Development and Regulation of Urban Areas Act, 1975 (for short "the 1975 Act") to set up a residential plotted colony on the land measuring about 60 acres. It is also pointed out that petitioner No. 3 - Samunder Singh son of Jot Ram along with other land-owners entered into Collaboration Agreement with respondent No. 15 - M/s. Omaxe Housing and Developer Ltd. in July, 2004 in respect of 1/2 share of land measuring 48 Kanal 5 Marla. Though petitioner No. 3 was an applicant for a license, but he transferred his land in favour of his sons i.e. petitioner Nos. 1 & 2 namely Harjas Kumar and Jai Singh respectively, vide released deed dated 05.07.2004, which was approved on 08.08.2004. It is pointed out that License No. 177/07 was granted in the names of petitioner Nos. 1 & 2 as well as other land-owners by releasing the land in question from acquisition proceedings. It is categorically stated that the land of the petitioners measuring 48 Kanal 5 Marla stands released from acquisition and form part of License No. 177/07 granted in favour of petitioner Nos. 1 & 2 for development of residential plotted-cum-Group Housing Colony for a total area of 53.505 Acres. It is also pointed out that M/s. Omaxe Housing and Developers Ltd. applied for transfer of license in favour of respondent No. 18 - M/s. Gateway Realtors Pvt. Ltd., respondent No. 17 - M/s. Century Township Pvt. Ltd., respondent No. 16 - M/s. Yadgaar Properties Pvt. Ltd. & Navjit Realtors Pvt. Ltd. vide application dated 20.06.2007. All these companies are the associate companies of respondent No. 14 - M/s. Taneja Developers and Infrastructure Ltd. It is also pointed out that petitioner Nos. 1 & 2 executed sale deed in favour of respondent No. 16 - M/s. Yadgaar Properties Pvt. Ltd. on 03.03.2006. It is pointed out that the official respondents have no role in the transfer of land and in case, the petitioners are aggrieved, they may avail legal remedy as available in this regard. It is further pleaded that no license for development of a colony under the 1975 Act is granted for which notifications have been issued under Sections 4 & 6 of the Act. In respect of land in question, it is averred to the following effect:

"8.The applicants/individual land owners through collaborator company applied for grant of license for development of a residential colony on 09.08.2004 i.e. before announcement of award. The land was owned by the applicants before issue of notification under Section 4 . However, after announcement of award by the Land Acquisition Collector, the land-owners filed different petitions i.e. CWP No. 7993 and 7994 of 2004, 13791 of 2005, 13792-93 of 2005 and 13798-99 of 2005 before this Hon"ble Court and obtained orders of stay dispossession. In view of the above said position, the case was examined by the Department/ Government for grant of license by releasing land applied for license. After obtaining orders of the State Government in the Urban Estate Department, land was released from acquisition by the Urban Estate Department vide letter dated 27.12.2005 and License No. 177 of 2007 was granted for development of the land in question upon release of land and disposal of cases referred above by this Hon"ble Court vide orders dated 21.05.2004 and 01.09.2005.

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On Merits

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8. That the averments made in para No. 8 of the petition are wrong and denied. As per submissions made in para No. 2, 3 & 10 of the preliminary submissions, the licenses were granted by releasing land as per policy of the Government, which have been upheld by this Hon"ble Court in many cases. It is also wrong that the applications for grant of license for development of the land in dispute were submitted after announcement of award. The applications for grant of license by the individual land owners through the collaborator company were submitted prior to announcement of award. Even licenses by releasing land except in case of License No. 177 of 2007 were granted before announcement of award on 24.11.2004. In case of License No. 177 of 22007, land was released after announcement of award keeping in view the fact that the land owners had filed writ petitions before this Hon"ble Court challenging the acquisition proceedings and obtained orders of stay dispossession. Therefore, the land was released in accordance with the policy of the State Government."

9. In a separate reply filed on behalf of respondent No. 7 - Land Acquisition Collector, it is averred that the possession of the land of the petitioners was handed over to the Estate Officer, HUDA on the date of Award i.e. 24.11.2004 and entry to this effect had been made in the Rapat Rojnamcha vide rapat No. 141 dated 24.11.2004.

10. As per separate reply filed on behalf of respondent No. 14 - M/s. Taneja Developers and Infrastructure Ltd., vide document Annexure R-2, possession of land measuring 47 Kanal 5 Marla and vide document Annexure R-1 possession of land measuring 1 Kanal is purportedly delivered to M/s. Omaxe Construction Limited i.e. respondent No. 15.

11. Learned counsel for the petitioners has vehemently argued that after announcing the Award, the land vested with the State free from all encumbrances, therefore, such land could not be made subject matter of a license. It is also contended that the land could be released from acquisition after the vesting of the land with the State by way of notification in terms of Section 48 of the Act. Reliance was placed upon a Full Bench judgment of this Court in *Ram Murti Sarin & others v. State of Haryana & others* AIR 2014 (Punjab) 152.

12. On the other hand, Ms. Monga, DAG, Haryana, admitted that the amount of compensation has neither been offered to the petitioners nor deposited before the Reference Court though the same is lying deposited with the Land Acquisition Collector. It is pointed out that the possession of the land acquired has been taken on the date of the acquisition except the land, which is under stay of dispossession granted by this Court. It is admitted that there was no stay of dispossession in respect of land measuring 47 Kanal 5 Marla, subject matter of present writ petition.

13. With this factual background and arguments raised, the questions required to be examined are; (i) whether the land shall vest free from all encumbrances with State on announcing of the Award, or (ii) whether the land could be released by the State on the basis of communication dated 22.12.2005 without notification in terms of Section 48 of the Act.

14. However, before dealing the said questions, the relevant provisions of the Land Acquisition Act, 1894 are required to be extracted. The same are as under:

"11. Enquiry and award by Collector - (1) On the day so fixed, or any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8 , and into the value of the land and at the date of the publication of the notification under section 4 , subsection (1), and into the respective interests of the persons claiming the compensation and shall make an award under his hand of-

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him;

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12. Award of Collector when to be final - (1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among

the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

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16. Power to take possession - When the Collector has made an award under section 11 , he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.

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48. Completion of acquisition not compulsory, but compensation to be awarded when not completed - (1) Except in the case provided for in section 36 , the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section."

15. In Ram Murti Sarin's case (supra), the role of the State Government after announcing the Award was considered by the Full Bench by framing the following two questions:

"14. xx xx

(i) When the Land Acquisition Collector deposits the amount of compensation and takes symbolic possession; or

(ii) When after deposit of compensation, actual physical possession is taken."

16. While considering the said questions, the Bench observed and concluded as under:

"16. The right of the land-owner to challenge the acquisition for the reason that actual physical possession has not been taken would stand on a different footing than the right of the State Government to withdraw from the acquisition after announcing of the Award. The Award is announced and the compensation determined after approval of the State Government under proviso to Section 11(1) of the Act. Once the State Government has approved the amount of compensation and the Collector has announced the Award; amount of compensation is deposited and the award recites that the possession is taken,

the vesting of land is complete in favour of the State though the land-owner may still have a right to impugn the acquisition in terms of the judgments referred to above. Thereafter the State Government can act to withdraw from the acquisition only by publication of notification under Section 48 of the Act after the announcing of Award; deposit of amount of compensation and the recital of taking possession.

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23. It is conceded by Mr. Hooda that in pursuance of the recommendations of the High Powered Committee for withdrawal from acquisition, no notification under Section 48 of the Act has been published. We find that the withdrawal of acquisition only on the basis of the report of the High Powered Committee is contrary to the scheme of the Act and is illegal. The withdrawal from acquisition has to be by way of a notification and by following the same process as is required in the manner of acquisition.

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27. In view of the above, we hold that:

(i) The State Government is within its executive powers to seek opinion of such person or authority before it exercises jurisdiction conferred on it under the provisions of Land Acquisition Act, 1894 i.e under Section 6 or under Section 48 of the Act but the final decision can be only by the State Government and too by way of the notifications; and

(ii) But if the possession has not been taken by the Land Acquisition Collector as per the Award announced by it, the State Government can allow the acquisitions proceedings to lapse without publication of notification under Section 48 of the Act, if it is no longer interested in acquisition of land."

17. As per Ram Murti Sarin's case (supra), after the vesting of land with the State Government, the land can be released only after publication of notification under Section 48 of the Act. However, the vesting of the land has been said to be completed only if the possession has been taken by the Land Acquisition Collector as per the Award and the compensation paid to the persons interested entitled thereto and/or on deposit of the amount of the compensation in the Court to which a reference under Section 18 would be submitted. Such is the view taken by the Hon''ble Supreme Court in Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others, .

18. Admittedly, the amount of compensation has not been offered or deposited before the Reference Court. Therefore, as held by the Full Bench of this Court in Ram Murti Sarin's case (supra) in para 16, as reproduced above, the vesting of land is not complete in favour of the State. Once the vesting is not complete, notification under Section 48 of the Act is not mandatory for the release of the land. Therefore, the decision of the State Government to release the land from acquisition through communication dated 27.12.2005 does not offend any of the

statutory provision. If vesting of the land is not complete, the land sold by the petitioners and purchased by the private respondents cannot be said to be illegal or without any title.

19. The question; as to whether, the sale deeds executed could be disputed by the land-owners, has been examined by this Court in CWP No. 558 of 2013 titled "Chet Ram & another v. The State of Haryana & others" decided on 24.02.2015, CWP No. 16775 of 2015 titled "Vijay Pal & others v. State of Haryana & others" decided on 14.08.2015 and CWP No. 13611 of 2009 titled "Kali Ram & others v. State of Haryana & others" decided on 27.08.2015.

20. In Viiay Pal's case (supra), the judgment of another Division Bench in Sant Singh's case (supra) was referred to and distinguished, when it has been held to the following effect:

"In Sant Singh's case (supra), no argument was raised that writ petition has been filed after the expiry of the limitation to seek setting aside the sale deed. It has been consistently held that the writ jurisdiction should be invoked without any delay or laches but the period to institute suit cannot be ignored. Had the petitioners filed a civil suit to dispute the sale deed now, it would have been barred by limitation. The sale deeds were executed by the petitioners even prior to the publication of the notification under Section 48 of the Act. Thus we find that the challenge to the notification under Section 48 of the Act suffers from gross delay and laches.

The earlier writ petitions filed by the petitioners have been dismissed finding that the Writ Court is not the appropriate forum. This Court directed the authorities to hold a fact-finding inquiry when the writ petition was to be treated as a representation. Such order would not confer jurisdiction on the authorities under the Land Acquisition Act, 1894; Haryana Urban Development Authority Act, 1977 or Haryana Urban Development and Regulation of Urban Areas Act, 1975 to declare the sale deeds as null and void. The Competent Court to declare the sale deeds as null and void on any of the ground is the Civil Court alone or may be writ court. By virtue of an order passed by this Court, no jurisdiction can be conferred on the authorities to declare a sale deed as null and void. Therefore, a sale deed cannot be declared to be null and void by the authorities.

The disputed question of fact that as to whether there was misrepresentation, coercion or fraud exercised over the petitioners to execute the sale deeds could be examined only by the Civil Court which is competent to declare a sale deed null and void on the grounds pleaded on the basis of the evidence led before it. Such disputed questions of fact are generally not examined by the Writ Court. Therefore, the order passed by the Competent Authority that it has no jurisdiction to declare the sale deeds as null and void cannot be said to be illegal and unwarranted."

21. In the present case, the sale deeds were executed in the year 2006. The suit to challenge the sale deeds was filed in the year 2012 i.e. after more than three

years. The limitation to cancel or set aside a document is 3 years from the date when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him. It is not the case of the petitioners that they were not aware of the nature of transaction being entertained upon by them, when on 20.12.2004, they executed General Power of Attorney and entered into an agreement to sell as well as collaboration agreement. The license was granted to the petitioners as well. Therefore, the petitioners cannot be permitted to dispute the sale deeds after three years of its execution.

22. Though, in the suit filed, counsel for the plaintiffs has made a statement that suit is being withdrawn with permission to avail the remedy of writ petition, but even if no such liberty is granted by the Court permitting the withdrawal of the suit, the petitioners cannot be permitted to dispute the sale deeds after the expiry of period of limitation by way of present writ petition.

23. In view of the above, we do not find any merit in the present set of writ petitions. The same are accordingly dismissed.