
(2010) 04 P&H CK 0376
In the Punjab And Haryana At Chandigarh

Joginder Kaur and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 08-04-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 17, 48, 5A

Citation : (2010) 04 P&H CK 0376

Hon'ble Judges : M.M. Kumar, J;Jitendra Chauhan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This petition filed under Article 226 of the Constitution seeks a mandamus to the respondents to restore the possession of acquired land measuring 10 Kanals 1 Marlas, comprised in Khasra No. 1879/2 (46-17), situated in the area of village Kalanwali, Tehsil and District Sirsa, belonging to the petitioners as well as legal heirs of Shri Harchand Singh.

2. According to the averments made by the petitioners, Shri Harchand Singh, father of petitioner Nos. 1 to 4 and grand father of petitioner No. 5 was owner in possession of the land in question, which was acquired vide notifications dated 21.12.1971 and 24.10.1972, issued under Sections 4 and 6 read with Section 17(2)(c) of the Land Acquisition Act, 1894 (for brevity, "the Act"), for carving out a diggy (pond) for storage of dirty water. On 11.6.1974, award was announced by the Collector and compensation was disbursed. It is claimed by the petitioners that no diggy (pond) was carved out at the spot, which was carved out at some other place, resultantly the land belonging to their predecessor-in-interest has remained un-utilised. Due to acquisition of part of their land, their remaining land has been bifurcated into two pieces and the petitioners are unable to harvest their land properly. They are ready to deposit the amount of compensation along with interest or the price of the land at Collector's rate. Accordingly, the petitioners are seeking restoration of the land in question in

their favour. In this regard, the petitioners have placed reliance on a Division Bench judgment of this Court rendered in the case of Jain School Society v. State of Punjab (CWP No. 1829 of 1999, decided on 21.3.2001, Annexure P-3) where the Division Bench has set aside the acquisition proceedings because the land was not utilised for 24 years.

3. In the separate written statements filed by respondent No. 4 and respondent Nos. 1 to 3 the averments made by the petitioners have been denied. It has been asserted that the land in question was never acquired invoking the emergency provisions of Section 17 of the Act, whereas the award was announced after hearing of the objections u/s 5A of the Act. It has also been pointed out that the petitioners have made misleading averments in the instant petition because the land in question is being utilised for storage of garbage. In support of this, respondent No. 4 has placed on record certain photographs of the area as Annexure R-4/3. It has also been denied that the land of the petitioners has been bifurcated into two pieces. It has also been submitted that the Division Bench judgment of this Court in Jain School Society's case (supra) has been set aside by the Supreme Court in the case of Haryana State Handloom and Handicrafts Corporation Ltd. v. Jain School Society 2004 (1) PLR 466. Even otherwise, the petitioners cannot claim restoration of the land after 34 years because once the land vests in the Government free from all encumbrances on finalisation of the acquisition proceedings, the land owner cannot ask for restoration of the possession even if the land is not utilised for the purpose for which it was acquired. In that regard, reliance has been placed by the respondents on the judgments of Hon'ble the Supreme Court rendered in the case of Northern Indian Glass Industries v. Jaswant Singh (2003) 2 SCC 335, Chandragauda Ramgonda Patil and Another Vs. State of Maharashtra and Others, , and C. Padma and Others Vs. Dy. Secretary to the Govt. of T.N. and Others, .

4. After hearing learned Counsel for the parties and perusal of record with their able assistance, we are of the considered view that the matter is no longer res integra. The only question whether the acquired land could be de-notified or restored back after the award and proceedings for taking possession under the Act has been undertaken, which arises in the instant petition, has already been answered by us in the cases of Joginder Singh and Ors. v. Chandigarh Administration and Ors. (CWP No. 7391 of 1988, decided on 23.2.2010) Jain School Society v. State of Haryana and Anr. (CWP No. 3772 of 2010, decided on 4.3.2010) as well as by another Division Bench of this Court (of which one of us, M.M. Kumar, J. was a member) in the case of Gurkirpal Singh v. Financial Commissioner (Revenue) and Secretary, Government of Punjab, Department of Revenue and Ors. (CWP No. 10511 of 2007, decided on 9.5.2008). In the above mentioned cases, after referring to the provisions of Section 48 of the Act and various judgments of Hon'ble the Supreme Court rendered in the cases of State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others, ; Lt. Governor of Himachal Pradesh and Another Vs. Avinash Sharma, ; Bangalore

Development Authority and Others Vs. R. Hanumaiah and Others, ; Pratap and Others Vs. State of Rajasthan and Others, ; Mohan Singh and Others Vs. International Airport Authority of India and Others, ; The Printers (Mysore) Ltd. Vs. M.A. Rasheed and Others, ; Mandir Shree Sitaramji alias Shree Sitaram Bhandar Vs. Land Acquisition Collector and Others, ; Balmokand Khatri Educational and Industrial Trust, Amritsar Vs. State of Punjab and others, ; Balwant Narayan Bhagde Vs. M.D. Bhagwat and Others, ; Union of India and Others Vs. Jaswant Rai Kochhar and Others, ; Ravi Khullar and Another Vs. Union of India (UOI) and Others, ; State of Maharashtra Vs. Mahadeo Deoman Rai alias Kalal and Others, ; Bhagat Singh Vs. State of U.P. and Others, ; S.S. Rathore Vs. State of Madhya Pradesh, ; and Northern Indian Glass Industries (supra) it has been concluded that once the land is acquired in accordance with the procedure established by law, award has been announced and the possession taken then there is no provision in the Act to de-notify the land and restore back possession to the land owners.

5. The position is not different in the instant petition. We do not find any sustainable ground to admit the same. Accordingly, while following the same proposition of law, the instant petition is dismissed.