

(2019) 07 P&H CK 0188

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11338 Of 2015

Khazan Singh And Others

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 25-07-2019

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 5A, 6, 11
Code Of Civil Procedure, 1908 — Order 2 Rule 2(3)
Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 07 P&H CK 0188

Hon'ble Judges : Daya Chaudhary, J;Sudhir Mittal, J

Bench : Division Bench

Advocate : Anmol Rattan Sidhu, Pawan Kumar, Ankur Mittal, Kulvir Narwal

Final Decision : Dismissed

Judgement

Daya Chaudhary, J

Petitioners have approached this Court by way of filing the present writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of impugned order dated 03.11.2006 (Annexure P-12) and all the consequential proceedings including agreement dated 23.06.2008 (Annexure P-10/A) and also the action of the respondent-authorities in adopting pick and choose policy whereby, respondent No.7 has been given benefit totally in an illegal and irregular manner. A prayer has also been made for quashing action of official respondents in releasing the land of respondent No.7 with further direction to release the land of the petitioners, which falls under the same category viz-a-viz respondent No.7.

Briefly, the facts of the case as made out in the present petition are that the petitioners were joint owner of land falling in Khasra No.39//18 (8-0), 39//24(7-2), 39//25/1(1-16) situated within the revenue estate of village Para, Tehsil and District Rohtak. The land of the petitioners as mentioned above was also made part of notification issued under Section 4 of the Land Acquisition Act

(hereinafter called as 'the Act'). Thereafter, notification under Section 6 of the Act was also issued and land of respondent No.7 was also acquired. Objections were filed by the petitioners as well as respondent No.7. The land was acquired for commercial Sectors 4 and 5 under the Haryana Urban Development Authority Act, 1977. The Award was passed on 29.12.2004 by the Land Acquisition Collector. The acquisition proceedings were challenged by various land owners by way of filing various writ petitions, which were dismissed by relying upon the decision passed in CWP No.15067 of 2004 titled as Jagbir Singh Narwal vs. Union of India and others decided on 18.07.2006. Petitioners came to know that vacant piece of land owned by respondent No.7 was ordered to be released by the State Government. After issuance of notification under Section 6 of the Act, the State Government decided to carry out a fresh re-survey for releasing various chunks of land acquired by adopting pick and choose manner and no criteria was followed. Respondent No.7 filed CWP No.15067 of 2004, which was dismissed on merits and in spite of dismissal of the same, still his land was released.

The petitioners are aggrieved by the action of respondent-authorities as the case of the petitioners was on equal footing but still their land was not released whereas land of respondent No.7 was released. It is also the grievance of the petitioners that CLU was granted to respondent No.7 on the basis of forged documents just to give him undue benefit. Learned senior counsel for the petitioners submits that the action of respondent-authorities was discriminatory and malafide as land of respondent No.7 and some other persons was released in spite of dismissal of writ petition filed by them. The case of the petitioners cannot be said to be on different footing as not only writ petition filed by the petitioners was dismissed but CWP No.202 of 2005 filed by other persons was also dismissed. By giving undue advantage to respondent No.7, his land was released but claim of the petitioners was not considered. Learned counsel further submits that there was construction over the land of the petitioners and the same has not been taken into consideration. Learned counsel also submits that the malafide of the respondent-authorities is also clear not only from releasing the land of respondent No.7 but that land was used for construction of ITI. Respondent No.7 was given benefit of CLU, which was on the basis of forged documents.

Learned State counsel has opposed the submissions made by learned counsel for the petitioners and has raised a preliminary objection that the present petition is not maintainable not only on the ground of delay but that the earlier writ petition was dismissed on the same grounds. The cause of action arose when notification under Section 6 of the Act was issued on 31.12.2002 and award was passed on 29.12.2004. The present writ petition was filed in the year 2015. Learned State counsel further submits that the present petition is liable to be dismissed only on the ground of delay and laches. Learned State counsel also submits that no writ petition is maintainable after pronouncement of award. The land was acquired in accordance with the provisions of the Act. The petitioners were given opportunity to file objections under Section 5A of the Act. After consideration of objections,

the land of the petitioners was acquired. The land measuring 64.43 acres was released under Section 5A of the Act because of constructions. Learned State counsel also submits that all the land owners including the petitioners were awarded fair and adequate compensation as per prevailing market price and after considering the relevant factors like location of the acquired land and the recommendation of the Divisional Level Evaluation Committee headed by the Commissioner of Rohtak, Division Rohtak.

Learned counsel for respondent No.7 has also opposed the submissions made by learned counsel for the petitioners and has also reiterated the arguments raised by learned State counsel. Learned counsel further submits that the petitioners have concealed the material facts as the land of the petitioners was released after passing of award vide impugned order dated 03.11.2006 (Annexure P-12) and the present petition is liable to be dismissed on the ground of concealment of facts. The present petition is also not maintainable as the same is barred by the constructive resjudicata and Order 2 Rule 2(3) CPC as the petitioners earlier filed CWP No.6766 of 2009, which was dismissed as withdrawn vide order dated 11.05.2015. It is also the argument of learned counsel for respondent No.7 that the present petition was filed after unexplained delay and latches as award was passed on 29.12.2004 and order of release was passed on 03.11.2006 whereas the present petition was filed in the year 2015 i.e. after a delay of nine years. Learned counsel for respondent No.7 also submits that the petitioners cannot claim parity with respondent No.7 as he filed CWP No.15087 of 2004 and the dispossession was stayed vide order dated 16.12.2004, i.e. much prior to the date of passing of award i.e. 29.12.2004. It continued upto 18.07.2006 and thereafter also, respondent No.7 continued to be in possession of his share. The land of respondent No.7 was neither acquired nor vested in State of Haryana as compensation amount was not deposited in his account and possession was not taken from him. At the end, learned counsel for respondent No.7 submits that the land belonging to him was utilized for school purpose. The State has also constructed ITI on the land, which was taken in exchange from respondent No.7. Learned counsel for respondent No.7 also submits that certain material facts have been concealed while placing on record the documents as the released land has not been reflected in the documents annexed with the petition. The present petition can be dismissed on the ground of misrepresentation and concealment of facts.

Heard arguments of learned counsel for the parties and we have also perused the documents available on the file.

The only grievance of the petitioners in the present petition is that the respondent-authorities have given undue advantage to respondent No.7 by releasing his land by adopting pick and choose policy whereas the same benefit has been denied to the petitioners. CLU has been issued on the basis of forged documents. It is also not disputed that the petitioners earlier filed CWP No.6766 of 2009 for quashing of notification under Sections 4 and 6 of the Act as well as

for quashing of award dated 29.12.2004 under Section 11 of the Act on the same grounds that action of respondent- authorities was based on pick and choose policy whereby respondent No.7 was granted undue advantage whereas the same benefit was not granted to the petitioners. The earlier petition was dismissed on the same cause of action. There is concealment of facts in the present petition as it has been mentioned that land of the petitioners has not been released whereas this benefit has been granted to respondent No.7.

Allegations of fraud have been alleged for giving not only undue benefit to respondent No.7 but CLU was also stated to be obtained on the basis of forged documents. Meaning thereby, disputed questions of fact have been raised, which can be decided by the Civil Court on the basis of oral and documentary evidence and it is not appropriate to decide the same in this petition filed under Articles 226/227 of the Constitution of India.

The fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to conduct of the former either by words or letter. Where allegations of fraud are there against any person, then just to make it a case of fraud or to prove the allegations of fraud, the allegations of fraud can be proved on the basis of documentary evidence and for that the Court is to record factual finding of fraud. If this exercise is done by the Civil Court and finding of fraud is recorded without setting out the plea of fraud in its order, without referring to the documentary evidence to substantiate the fraud, it would be patently illegal.

On perusal of document Annexure R-7/2 i.e. memo dated 03.11.2006 sent by the Director, Urban Estates Department, Haryana, Panchkula addressed to the Administrator, HUDA, Rohtak, wherein details of all persons/land owners, have been given as to whose land was released. The name of the petitioners is mentioned at page No.170 of the paper book stating that their land was released along with other land owners. The petitioners have not filed any replication to the document submitted by respondent No.7.

Not only allegations of misrepresentation and concealment of material facts are there but allegations of fraud as well are there, which cannot be decided by this Court while exercising jurisdiction under Articles 226/227 of the Constitution of India. Allegations of fraud are matter of evidence, which can be decided by the Civil Court. Moreover, this writ petition has been filed after unexplained delay of more than nine years.

Accordingly, by considering the unexplained delay in filing the petition and the fact as to how the second petition is maintainable when earlier petition has already been dismissed coupled with allegations of fraud, which are matter of evidence, we find no merit in the contentions raised by learned counsel for the petitioners and the petition being devoid of any merit is hereby dismissed.