
(2016) 08 P&H CK 0330

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 22441 of 2012 (O&M) RACW No. 419 of 2015 in CWP No. 1003 of 2006; CROCP No. 18 of 2015 (O&M).

Narain Singh and Others - Petitioners @HASH State of Haryana and Others

Date of Decision : 05-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 RCRCivil 502

Hon'ble Judges : Surya Kant and Augustine George Masih, JJ.

Bench : Division Bench

Advocate : Shailendra Jain, Sr. Advocate with Ms. Mannu Chaudhary, Advocates, for the Petitioners; R.D. Sharma, DAG, Haryana, for the Respondents; Kamal Sehgal, Advocate, for the HSIIDC

Final Decision : Disposed Off

Judgement

Surya Kant, J. - This order shall dispose of the instant writ petition (CWP-22441-2012) and the suo motu review proceedings as well as criminal contempt of Court proceedings initiated by this Court vide order dated 25.08.2015. It will be fruitful to reproduce the order dated 25.08.2015, which reads as follows:

"The petitioners, claiming ownership of land measuring 285 kanal 17 marlas in the revenue estate of village Naharpur Kasal, Tehsil and District Gurgaon, challenged the notifications dated 17.9.2004 and 25.11.2011 under Sections 4 and 6 respectively of the Land Acquisition Act, 1894 in the present writ petition. The petitioners have made a reference to CWP-1003 of 2006 filed on 17.1.2006. A perusal of the said writ petition shows that the said writ petition was filed by all the 14 petitioners. The said writ petition was allowed on 28.1.2011 along with LPA No.504 of 2010 and other cases. It also transpires that the petitioners, except two, also filed another CWP No.7966/2006 in respect of land measuring 285 kanal 17 marla including the land which is subject matter of the present writ petition. The said writ petition was dismissed earlier on 16.4.2009.

A perusal of the record shows that no LPA was filed against the order of learned

Single Judge against the order of 16.4.2009 though the writ petitions CWP No.7996/2006 filed by the petitioners was dismissed.

We find that the petitioners have concealed material facts while filing the writ petition, one after another, without disclosing the filing of the earlier writ petition. CWP No.7966 of 2006 was dismissed by the learned Single Judge but the decision of the learned Single Bench was not brought to the notice of LPA Bench when CWP No.1003 of 2006 was taken up and decided.

In the present writ petition, the petitioners have disclosed only filing of CWP No.1003 of 2006 and not of CWP No.7996 of 2006.

We find that the petitioners are prima-facie guilty of concealing and misrepresenting the material facts. Therefore, we deem it appropriate to issue show cause notice as to why contempt proceedings may not be initiated against them. Ms. Manu Chaudhary, learned counsel assisting the learned Senior Counsel appearing for the petitioners, accepts notice and seeks some time file reply to the above facts. May do so within two weeks.

List on 11.9.2015.

Still further, we find that the conduct of the petitioners has led to contradictory decision in respect of same acquisition, i.e., order passed in CWP 7966/2006, which has attained finality, and also the order passed in CWP 1003/2006 on 28.1.2011, whereby, the writ petition is allowed.

Therefore, we deem it appropriate to post the matter before an appropriate Bench for considering as to whether the subsequent order dated 28.1.2011 in CWP 1003/2006 passed by Division Bench warrants recall.

List on 5.10.2015 after obtaining the orders from Hon"ble the Acting Chief Justice for consideration of suo motu review before an appropriate Bench."

[Emphasis by us]

2. A brief reference to the facts is necessitated.

3. State of Haryana issued notification dated 17.09.2004 under Section 4 of the Land Acquisition Act, 1894 (for short, 'the 1894 Act') proposing to acquire more than 956 acres land spread over the revenue estate of five villages including Naharpur Kasan, Tehsil and District Gurgaon. The proposed acquisition included about 249K land of the petitioners also. Declaration under Section 6 was notified on 27.10.2004, which too included the petitioners' land.

4. The petitioners approached this Court in January 2006 through CWP-1003-2006 challenging the acquisition of land measuring 19K 4M only and not the entire acquisition qua their land. Their dispossession was stayed. Meanwhile, the award for the left out land was announced on 09.03.2006.

5. Thereafter came a spate of writ petitions challenging the subject acquisition. The petitioners too filed their second petition, i.e. CWP-7966- 2006 questioning

the acquisition of their entire land (including 19K 4M which was the subject matter of CWP-1003-2006), without disclosing the filing or pendency of first writ petition, i.e. CWP-1003-2006.

6. The bunch of writ petitions including CWP-7966-2006 was disposed of by a learned Single Judge whereby the writ petitions filed before passing the award were allowed but those filed thereafter were dismissed. Similarly, writ petitions filed by such owners who purchased the land after Section 4 notification, were also dismissed. In this manner, CWP-7966-2006 which was admittedly filed after passing the award came to be dismissed.

7. The order of learned Single Judge dated 16.04.2009 was assailed in Intra-Court appeal, i.e. LPA No.504 of 2010 which was decided on 28.01.2011. The Division Bench held that though Sections 4 and 6 notifications were issued invoking the "urgency clause" under Section 17 of the 1894 but keeping in view the delay of almost 1 ½ years, in passing the award, there was no justification to apply the urgency clause and the affected owners ought not to have been denied their right to submit objections under Section 5A of the Act. Consequently, notification dated 27.10.2004 issued under Section 6 read with Section 17 of the 1894 Act was quashed, leaving it open for the State to proceed further with the acquisition proceedings from that stage. Resultantly, the award dated 09.03.2006, in so far as it pertained to the land under litigation, became redundant.

8. The first writ petition filed by the petitioners, i.e. CWP-1003-2006 was also allowed alongwith LPA-504-2010 on 28.01.2011 for the reason stated above.

9. The petitioners thereafter filed objections under Section 5-A of the 1894 Act in respect of their land measuring 19K 4M, which was the subject matter of CWP-1003-2006. Those objections were rejected and a fresh notification under Section 6 was issued.

10. Thus, came the instant third writ petition, i.e. CWP No. 22441 of 2012 in which the petitioners have questioned the original Section 4 notification dated 17.09.2004 as well as fresh declaration under Section 6 notified on 25.11.2011.

11. The petitioners filed one more CWP No. 24452-2012 which has since been dismissed as withdrawn.

12. During the hearing of this petition, it was brought to the notice of this Court that there is a concealment of fact by the petitioners regarding filing of CWP-1003-2006 as they did not disclose its pendency in their second writ petition, i.e. CWP-7966-2006. This is how the criminal contempt of Court proceedings have been initiated and a suo motu reference to recall the order dated 28.01.2011 to the extent it allowed the first CWP-1003-2006 has been made vide order dated 25.08.2015 reproduced in the opening paragraph of this order.

13. We have heard learned counsel for the parties at a considerable length and

have gone through the record with their able assistance.

14. It transpires from the record as well as from the averments made in writ petitions that the petitioners indeed have failed to disclose some of the material facts in their second writ petition including the factum of pendency of the first writ petition. They also did not disclose the dismissal of their second writ petition at the time when the first writ petition was allowed.

15. It would be apt at this stage to quote what the Hon"ble Supreme Court observed in *K.D. Sharma v. Steel Authority of India Ltd. and others* (2008) 12 SCC 481. It said that:

"If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the Court, the Court has inherent power to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with examination of case on merits."

16. In *Kishore Samrite v. State of U.P.*, (2013) 2 SCC 398 also, it has been reiterated that "the obligation to approach the Court with clean hands is an absolute obligation and the Court must assure that the process is not abused".

17. Applying these settled principles to the admitted facts of the case in hand, there can be no escape but to dismiss this petition outrightly and further proceed with the actions as proposed in the order dated 25.08.2015.

18. Nonetheless, it also appears true that the petitioners' ensconcement neither was aimed nor it otherwise fructified into any gains to them and they have not been able to secure any undue advantage out of their deprecable conduct. While no lenient view is warranted for a person who does not approach the Court with clean hands and wishes to procure favourable order by concealing material facts but having regard to the totality of the circumstances, we do not deem it appropriate to initiate the criminal contempt of Court proceedings against the petitioners. The same are accordingly, dropped but subject to the costs of Rs. 1,00,000/- imposed on the petitioners for their unpardonable conduct. The costs are directed to be deposited in the Punjab and Haryana High Court Association Lawyers' Welfare Fund within a period of one month from the date of receipt of a certified copy of this order. The petitioners shall submit an affidavit along with self attested copy of the receipt, failing which the Registry shall list the matters again for hearing. However in the event of compliance, it is not necessary to list the cases again.

19. The matter does not come to an end here. The instant writ petition is also liable to be dismissed as the petitioners have not appropriately disclosed the facts re: filing of previous cases. The sequence of events as narrated by them can also be well termed as selective information only. We, therefore, dismiss this writ petition but with liberty to the petitioners to file a fresh petition on the same cause of action. In case such petition is filed, the respondents shall be at liberty to take the plea of res judicata or it being barred under Order 2, Rule 2 CPC on

the premise that the previous writ petition No.7966-2006 challenging the acquisition of entire land of the petitioners stands dismissed by this Court.

20. As regard to the suo motu review proceedings, it appears that the matter has become redundant and no longer survives for the reason that no actual benefit was drawn by the petitioners out of the order passed in CWP-1003-2006. After the notification under Section 6 read with Section 17 of the 1894 Act dated 27.10.2004 was quashed by this Court in a bunch of petitions, the State Government has proceeded afresh to acquire the said land. Be that as it may, we declare that in future proceedings also the petitioners shall not be able to draw any advantage out of the order dated 28.01.2011.

21. Disposed of.