
(2017) 01 P&H CK 0050
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 3916 of 2015 (O&M)

Rajneesh Gandhi

APPELLANT

Vs

Collector, Gurgaon

RESPONDENT

Date of Decision : 19-01-2017

Acts Referred:

Land Acquisition Act, 1894 — Section 16, Section 4, Section 6
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24(2)

Citation : (2017) 2 RCRCivil 261

Hon'ble Judges : Amit Rawal, J.

Bench : Single Bench

Advocate : Ashok S. Chaudhary, Advocate, for the HUDA; Sandeep Singh Mann, Sr. DAG, Haryana, for the Respondent; Shailendra Jain, Sr. Advocate with Sahil Nayyar, Advocate, for the Petitioner in both Writ Petition

Final Decision : Allowed

Judgement

Amit Rawal, J. (Oral) - This order of mine shall dispose of aforementioned two writ petitions, whereby the petitioner is aggrieved of the action of the State in mutating the land of the petitioner in favour of the HUDA-the beneficiary by virtue of the acquisition proceedings initiated under the Erstwhile Land Acquisition Act 1894.

2. Mr. Shailendra Jain, Sr. Advocate assisted by Mr. Sahil Nayyar, learned counsel appearing on behalf of petitioner in both writ petitions submits that petitioner had acquired the ownership and possession of land situated in the revenue estate of Village Islampur, Tehsil and District Gurgaon. In CWP No.5742 of 2015, Khasra Nos.326 measuring 1 bighas 2 biswa and 327 measuring 1 bigha and 6 biswa and in CWP No.3916 of 2015, Khasra No.337 measuring 1 bigha and 8 biswa was sought to be acquired by promulgation of notification under Section 4 of 1894 Act dated 27.11.2003. Thereafter, the petitioner challenged the aforementioned notification under Section 6 of 1894 Act issued on 24.11.2004

and award dated 22.11.2006 under Section 11 of the Act came to be passed but before that on 17.11.2006, both the petitioner had filed CWP No.18163 of 2006 challenging the compulsory acquisition. This Court on 21.10.2013 while issuing notice of motion had also grant the status quo with regard to the possession which continue to be in force till the disposal of the writ petition on 21.10.2013. However the mutation No.3016 was effected on 21.01.2015.

3. He further submits that no procedure as contemplated under Section 16 of 1894 Act has been complied with i.e. procedure of taking over the possession. In the absence of the same, mutation could not have been effected. He also relies upon the stand of the State taken in the written statement, whereby it has been stated that compensation determined by Land Acquisition Collector is still lying with them. He submits that writ petition bearing No.20691 of 2014 by taking the benefit of provision of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is stated to be pending in this Court. Since as per the reply possession continues to vest with the petitioner, petitioner is hopeful of succeeding in the aforementioned writ petition. In the absence of any proceedings, mutation could not have been effected, thus, mutation qua land of the petitioner is liable to be set aside.

4. Mr. Ashok S. Chaudhary, learned counsel appearing on behalf of respondent-HUDA submits that one opportunity may be given to file reply which was opposed by Mr. Shailendra Jain, Sr. Advocate, as numerous opportunities have been taken.

5. Mr. Shailendra Jain, Sr. Advocate has also drawn the attention of this Court to para No.2 of the written statement of the Land Acquisition Collector, which reads thus:-

"2. That the notification under Section 4 of the Land was issued on dated 27.11.2003 and the declaration under Section 6 of the land in question was issued on 24.11.2004. After that the award of the land in question in the revenue estate of Village Islampur was announced on 22.11.2006 and the possession of the acquired land was not taken by the answering respondent due to the stay of dispossession order passed by this Hon"ble Court on dated 17.11.2006 in civil writ petition No. 18163 of 2006."

6. Mr. Sandeep Singh Mann, Sr. DAG, Haryana reiterates the averments taken in the written statement and submits that compensation has stands already deposited with the Collector. In fact, petitioners have not given any consent in writing to receive the compensation and other documents to prove the ownership, therefore, amount of compensation is pending for disbursement and is available for the payment immediately to the landowners.

7. I have heard learned counsel for the parties and appraised the paper book and of the view that there is force and merit in the submissions of Mr. Jain, for, extracted portion of the written statement i.e. stand of the respondent No.4 irresistibly leads to conclusion that possession is still lying with the petitioner. No documentary evidence has been placed on record by the Land Acquisition

Collector of having taken the proceedings under Section 16 of 1894 Act, thus, presumption is liable to be drawn against them and positive in favour of the petitioner, thus, mutation of 21.01.2015 (Annexure P-4) could not have been passed in favour of the HUDA i.e. the alleged beneficiary qua the land of the petitioner. Until and unless procedure aforementioned is not followed, the Land Acquisition Collector, or revenue authorities cannot cause the mutation i.e. No.3016 in favour of beneficiary, in essence, entire procedure has to be adhered to. Even for the purpose of entry in mutation, no opportunity of hearing has been given to the petitioner particularly when the compensation stated to have been not disbursed.

8. Resultantly, aforementioned writ petitions are allowed. Mutation No.3016 (Annexure P-4) is hereby set aside.

9. Consequential effect of the same would automatically i.e. as necessary, corollary, would follow. I cannot remain unmindful that petitioner has already availed remedy under Section 24(2) of aforementioned Act.

10. This order of mine shall be subject to the final outcome of the writ petition bearing No.20691 of 2014 which is stated to be pending.