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**(2008) 12 P&H CK 0008**  
**In the Punjab And Haryana At Chandigarh**

Smt. Asha Malik and Another

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

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**Date of Decision :** 02-12-2008

**Acts Referred:**

Land Acquisition Act, 1894 — Section 16, 4, 48, 5A, 6

**Citation :** (2009) 153 PLR 320 : (2009) 3 RCR(Civil) 151

**Hon'ble Judges :** M.M. Kumar, J;Jora Singh, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

M.M. Kumar, J.—The instant petition is directed against the notification issued u/s 4 on 23.2.1989 and declaration made u/s 6 on 22.2.1990 (Annexures P-2 & P-24) of the Land Acquisition Act, 1894 (for brevity, "the Act"). The public purpose for acquisition of the land is for the development and utilization of land for residential and commercial area for Sector 13, Panipat.

2. Brief facts of the case are that the petitioners are owner of land measuring 3 Bighas 14 Biswas, comprised in Khasra No. 4428/2 and 4430/2, situated in Taraf Insar Panipat. The land in question was purchased by them vide sale deeds dated 25.3.1988 and 6.5.1988. It is claimed that the petitioners have spent huge amount of 35-40 lacs for leveling of land and raising construction for setting up factory under the name and style of "The Karigar Factory". The machinery worth crores of rupees was installed in December, 1988 and the factory started functioning prior to 31.12.1988. It has been further claimed that the petitioners have about 200 employees and the unit is producing export oriented merchandise.

3. On 23.2.1989, a notification u/s 4 of the Act was issued for acquiring the land of the petitioners and other land owners (P-2). Objections u/s 5-A of the Act were filed by the petitioners (P-3). On 22.2.1990, notification/declaration u/s 6 of the Act, bearing No. LAC(P)-NTLA-90/1457, was issued. Though in the

declaration Khasra Nos. 4428/2 and 4430/2 were not specifically shown, however, since the aforementioned Khasra numbers are part of main Khasra Nos. 4428 and 4430, therefore, it can be safely inferred that land falling under Khasra Nos. 4428/2 and 4430/2 was also acquired through declaration u/s 6(P-24). It has further been asserted that another notification bearing No. LAC(P)-NTLA-90/1458 (P-25) was issued simultaneously in which Khasra Nos. 4428 and 4430 were not mentioned. The said khasra number were also not included in the Rapat Roznamcha. Thus, the petitioners have contended that presumption be drawn that their land was excluded from acquisition. They have also claimed that only Rapat Roznamcha No. 312, dated 23.2.1990, was published in consonance with notification No. LAC(P)-NTLA-90/1458, for giving public notice, wherein Khasra Nos. 4428 and 4430 including Khasra No. 4428/2 and 4430/2 were not included, meaning thereby their land was released from acquisition.

4. The petitioners have claimed that after considering the objections, a survey was conducted by the officials of the Land Acquisition Collector-respondent No. 4 and vide letter No. 1365, dated 9.6.1994, recommendation was made to the D.T.P. Panipat for release of the factory belonging to the petitioners. A list of release cases in Sector 13-17, Panipat, which was prepared by Shri Randhir Singh, J.E., has been placed on record as Annexure P-4, wherein at Sr. No. 23 the name of the factory of the petitioners appears.

5. It has further been claimed that on the basis of the recommendations by the D.T.P. Panipat a number of industries were released from acquisition. A list of those industries has been placed on record as Annexure P-5, wherein the name of the factory of the petitioners appears at Sr. No. 17. It has been pointed out that when despite recommendation the property of one Mahalakshmi Spinning Mills was not released, a writ petition bearing C.W.P. No. 5070 of 2007 was filed in this Court, which was allowed by a Division Bench vide order dated 4.5.2007 (P-6) and subsequently review application No. 116 of 2007 was also allowed on 15.5.2007, since there was some ambiguity regarding the parcels of land to be released (P-7).

6. Under the impression that their land was released from acquisition, the petitioners kept quiet and did not avail any remedy available in law. However, when the officials of respondent Nos. 3 and 4 visited their factory and wanted to demolish the factory the petitioners filed the instant petition.

7. On 19.2.2008, when the matter came up for consideration, learned Counsel for the petitioner also agitated that no compensation in respect of the acquired land has been paid to the petitioners till date. While issuing notice of motion, the Division Bench also directed the learned State counsel to file affidavit of a responsible officer with regard to the fact whether compensation has been released to the petitioners and if not, how quickly the same could be done.

8. On 10.3.2008, the Land Acquisition Collector-respondent No. 4 filed an affidavit to the effect that award in the present acquisition proceedings was

announced way back on 21.2.1992 and possession of the land was given to the Estate Officer Panipat on the same day. Thus, no land belonging to the petitioners was released from the acquisition. In para 3 it has been specially pointed out that at the time of award the petitioners were offered compensation but they have not accepted the same and the same can be taken on any working day from the office of the Land Acquisition Collector, Sector-I, Rohtak.

9. After hearing learned Counsel for the parties at a considerable length and perusing the paper book with their able assistance, we are of the considered view that there is no merit in the instant petition and the same is liable to be dismissed. The principal question which arises for determination in this petition is whether there is any scope for issuing direction to the respondents to de-notify the land/factory from acquisition after the award has been announced and possession has been taken. The aforementioned question is not *res Integra*. Hon"ble the Supreme Court has considered the aforementioned question in the case of *Rajasthan Housing Board and Others Vs. Shri Kishan and Others*, . Apart from answering various other questions in connected matter, the question raised before their Lordships" was answered in Writ Petition (C) No. 290 of 1989. After noticing the correspondence between the Urban Development and Housing Department of Rajasthan Government and Rajasthan Housing Board, their Lordships" proceeded to answer the question in para 26 of the judgment, which reads thus:

26. We are of the further opinion that in any event the Government could not have withdrawn from the acquisition u/s 48 of the Act inasmuch as the Government had taken possession of the land. Once the possession of the land is taken it is not open to the Government to withdraw from the acquisition. The very letter dated February 24, 1990 relied upon by the counsel for the petitioner recites that "before restoring the possession to the society the amount of development charges will have to be returned back...". This shows clearly that possession was taken over by the Housing Board. Indeed the very tenor of the letter is, asking the Housing Board as to what development work they had carried out on the land and how much expenditure they had incurred thereon, which could not have been done unless the Board was in possession of the land. The Housing Board was asked to send the full particulars of the expenditure and not to carry on any further development works on that land. Reading the letter as a whole, it cannot but be said that the possession of the land was taken by the Government and was also delivered to the Housing Board. Since the possession of the land was taken, there could be no question of withdrawing from the acquisition u/s 48 of the Land Acquisition Act, 1894.

10. Again in the case of *Mandir Shree Sitaramji alias Shree Sitaram Bhandar Vs. Land Acquisition Collector and Others*, , the provisions of Section 48 of the Act fell for consideration of Hon"ble the Supreme Court and in passing remarks, it was observed that once possession is taken the Government cannot withdraw from acquisition u/s 48 and the contention raised in that regard was rejected.

11. Another opportunity to consider the same very question arose before Hon"ble the Supreme Court in the case of P.K. Kalburqi v. State of Karnataka (2005)12 S.C.C. 489. The specific question raised was whether the Government was justified in releasing a portion of land from acquisition. A cognate question was also decided, namely, what is the meaning of taking possession. In other words, whether it is actual or symbolic possession. Answering the first question, it was held that once the possession is taken then there is no room for the Government to release the land from acquisition by de-notifying the same. In respect of the second question, it was observed that if the land is plain then symbolic possession itself would be sufficient by making entry in the revenue record.

12. Moreover, in the case of Gurkirpal Singh Vs. Financial Commissioner (Revenue) and Secretary, Government of Punjab, Department of Revenue and Others, , decided on 9.5.2008 the question as to whether the acquired land could be de-notified after the award and proceedings for taking possession u/s 16 of the Act, also came up for consideration before a Division Bench of this Court of which one of use (M.M. Kumar, J.) was a member. The challenge in the said petition was to a notification dated 23.2.2007 whereby the earlier notifications issued u/s 4 and 6 of the Act were de-notified by the State Government. The Division Bench after referring to the provisions of Section 48 of the Act discussed a catena of judgments in detail and came to the conclusion that once the possession has been taken there is no possibility of the respondent State to de-notify the acquisition. After placing reliance on the judgments of Hon"ble the Supreme Court in the case of Balmokand Khatri Educational and Industrial Trust, Amritsar Vs. State of Punjab and others, and Balwant Narayan Bhagde Vs. M.D. Bhagwat and Others, , the Division Bench also rejected the argument that physical possession of the land remained with the petitioner and it has been held that usual mode of taking possession by the Government is by making entry in the Rapat Roznamcha immediately after announcement of award.

13. We repeatedly asked Mr. S.D. Sharma, learned senior Counsel as to how a direction for release of land acquired in 1992 could be issued after the award has been announced and possession of the land is taken, he has not been able to cite and contrary law or give answer to our query.

14. In the backdrop of the settled law laid down by Hon"ble the Supreme Court in the aforesaid judgments, we may now proceed to examine the view of the Division Bench of this Court expressed in the case of Mahalakshmi Spinners Ltd. v. State of Haryana 7 C.W.P. No. 5070 of 2007, decided on 4.5.2007, Annexure P-6. The basis of judgment is that once the land owned by S.D. Processors Pvt. Ltd. has been released from acquisition on January 30, 2007 by the higher authorities then there was no reason to acquire the land of Mahalakshmi Spinning Mills who had filed that petition. The Division Bench did not go into any other details. With utmost respect to the Division Bench such a view could not be taken because land has vested in the respondent State free from all

encumbrances after its possession was taken on 21.2.1992. The Land Acquisition Collector has given an affidavit that award was announced and possession was taken on 21.2.1992 itself. There would be wholesome violation of Section 48 of the Act stands if after announcement of award and taking of possession, the land is de-notified and is released from acquisition. This precise question has been considered by Hon''ble the Supreme Court in the case of Rajasthan Housing Board (supra), Mandir Shree Sita Ramji (supra) and P.K. Kalburqi (supra). On the bare perusal of Section 48 of the Act, principles and precedents such a view with respect could not be taken and the judgment has to be regarded as per incuriam. In other words, the Division Bench judgment cannot be considered as binding precedent because the decision as is evident has been rendered without reference to Section 48 and the principles laid down in the aforesaid three judgments. For principles governing the doctrine of per incuriam reliance may be placed on the judgments of Hon''ble the Supreme Court in the cases of Babu Parasu Kaikadi (Dead) by Lrs. Vs. Babu (Dead) through Lrs., ; A.R. Antulay Vs. R.S. Nayak and Another, ; Union of India (UOI) and Another Vs. Manik Lal Banerjee, ; State of Bihar Vs. Kalika Kuer @ Kalika Singh and Others, .

15. Apart from the above principles there are various other reasons which impel us to reject the claim of the petitioners. Firstly, the petitioners have not been successful to prove that they had actually raised construction of their factory prior to issuance of notification u/s 4 of the Act, dated 23.2.1989. The petitioners have only placed on record certain bills of purchase of cement bags and labour charges for the period from 12.4.1988 to 26.12.1988 (P-12 to P-23). In para 3 of the petition, the petitioners have claimed that their factory started functioning prior to 31.12.1988. Even if the bills placed on record are considered to be genuine, it is unimaginable that when construction work was being carried out in the month of December, 1988, how the factory could be said to be functional. Moreover, a perusal of remarks column No. 7 of the list of release cases in Sector 13-17, Panipat (P-4) on which heavy reliance has been placed by the petitioners, shows that it has been categorically noted that construction was made after notification u/s 4 of the Act. The contents of column 7 of the aforementioned list are extracted as under for the facility of reference:

Building B/A Class Handloom Export quality production earning a huge foreign exchange About 70 families of the worker living in the factory. B/wall 8 ft. Open space is used for dying the yarn Const. After Section 4 As per record.

16. Even otherwise the writ petition is hopelessly time barred and the same has been filed after a long gap of announcement of award dated 21.2.1992. It is well settled that no writ petition would be competent after passing of award because possession of land was taken and it is deemed to be vested in the State Government. In that regard reliance may be placed on the judgments of Hon''ble the Supreme Court rendered in the cases of Star Wire (India) Ltd. Vs. State of Haryana and Others, ; The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others, ; C. Padma and Others Vs. Dy. Secretary to the Govt. of

T.N. and Others, and Swaika Properties Pvt. Ltd. and Another Vs. State of Rajasthan and Others, .

17. In view of above, the writ petition fails and the same is dismissed.