

CWP-6637-2022 (O&M)

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2023:PHHC:105728-DB



IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 6637 of 2022 (O&M)

Date of decision: 11.08.2023

GURDARSHAN SINGH GILL

-PETITIONER

VERSUS

UNION OF INDIA AND OTHERS

-RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present : Mr. Ashwani Kumar Chopra, Sr. Advocate assisted by
Mr. Vidul Kapoor, Advocate and
Mr. Prateek Sodhi, Advocate
for the petitioner.

Mr. R.S. Madaan, Advocate with
Mr. Mahender Joshi, Advocate and
Ms. Nanvi Gupta, Advocate
for the respondent No.2-NHAI.

Mr. Maninder Singh, DAG, Punjab.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner claims relief for quashing of the impugned Annexure P-26, whereby, his representation became dismissed by the authority concerned. In addition, the petitioners also claims relief for declaring the acquisition proceedings to become abandoned qua the petition lands, by virtue of extension of municipal limits, vide notification dated 22.12.2006 (Annexure P-5). The last relief, which is asked for in the instant writ petition, is that, the respondent(s) concerned be prohibited from taking illegal possession of the lands owned by the petitioner, which were not notified under Section 3-A of the National Highways Act, 1956 (hereinafter referred to as the 'Act of 1956').



2. This Court, through a verdict made on the instant writ petition, on 22.05.2023, thus passed the hereinafter extracted directions:-

“1. The learned counsel for the respondent-NHAI, on instructions imparted to her, submits that respondent No. 2 is ready and willing to acquire the remaining un-acquired land of the petitioner, as comprised in Khasra No. 824//245.

2. In view of the above statement made, at the bar, by the learned counsel for respondent No. 2, the writ petition is disposed of, but with a liberty to the petitioner to before the compensation determining authority, thus raise objections with respect to the dimension(s), and, measurement(s) of the land, as comprised in Khasra No. 824//245.

3. Further, in view of the above, the notification for acquisition will be issued within a week from today and thereafter compensation in accordance with law, in respect of the acquired lands, shall be most expeditiously determined. In addition, the petitioner is directed to forthwith hand over the physical possession of those parcels of lands in respect whereof, a notification for acquisition was issued, and, symbolic possession of such lands became assumed by co-respondent No. 2, besides compensation as determined under the Land Acquisition Act, 1894, became deposited in the treasury concerned.

4. Furthermore, the physical possession of those lands, of the petitioner, as became acquired by the State Public Works Department concerned, and which became transferred to co-respondent No. 2, thus be also forthwith delivered by the petitioner to co-respondent No. 2.

5. At the time of handing over of such possession(s), the halka patwari and the halka Kanugoo concerned, shall remain present at the spot. Such handing over shall take place in presence of the petitioner, and, the authorized representatives of co-respondent No. 2. Both the Halka Patwari and the Halka Kanugoo



concerned, shall intimate a date, to the petitioner as well as to the authorized representative(s) of co-respondent No.2, about their visiting the site concerned. On such fixed date, the revenue officers (Supra), shall carry alongwith them to the spot concerned, the momi, and with the help of the said momi, they shall carry out measurement(s) of lands, as, carried in khasra No. 824//245, and also the measurement(s) of those lands of the petitioner, which became acquired by the Public Works Department concerned, and which subsequently became transferred to co-respondent No. 2.

6. After the above measurement(s) are completed, the revenue officers (Supra), shall draw a tatima of such measured lands, and, shall provide a copy thereof to the petitioner, and, to the authorized representative(s) of co-respondent No. 2.

7. Furthermore, the revenue officers (Supra), shall on copies, of original tatima(s), thus record the signed statements of the petitioner as well as of the authorized representative(s) of co-respondent No. 2, revealing that, possession of such lands described in the tatima(s), thus have been delivered by the petitioner to the authorized representative(s) of co-respondent No.2. The boundary pillars be also erected at such sites.

8. It is expected that the entire exercise be completed on the spot and in the afore manner thus within one week from today.

9. Disposed of accordingly.”

3. Nonetheless, the present petitioner accessed the Hon’ble Apex Court, and, the Hon’ble Apex Court, through a decision made on Civil Appeal No.4015 of 2023, thus on 01.06.2023, made the hereinafter extracted directions upon this Court:-

“3. The impugned order is, accordingly, set aside. We order a remand, with a request to the High Court to decide the contentious issues raised by the parties on merits as early as possible and preferably within two months from date, subject to

its convenience.”

4. Apparently, the espousal, as, made before the Hon'ble Apex Court, that this Court had not decided the plea relating to the acquisition proceedings thus being declared to become lapsed, rather visibly was a prima facie misplaced contention, as is apparent on a reading of the hereinabove extracted relief(s) prayed in the writ petition, relief(s) whereof do but plainly echo, that the above espousal became never asked for, nor could be granted. Therefore, it appears that the above made submission before the Hon'ble Apex Court, was reiteratedly hence prima facie a completely misfounded submission.

5. The National Highways Authority of India (hereinafter referred to as 'NHAI' for short) made acquisition of certain parcels of land, for building (widening/four-laning etc.), maintenance, management and operation of National Highway No.22 (Ambala-Chandigarh Highway), and, National Highway No.21 (Amblala-Zirakpur section).

6. The petitioner's land(s) respectively fall in Khasra No.1190/41, and, in Khasra No.1192/42. In respect of the above tracts of land, the authority concerned did uncontrovertedly make an award on 25.05.2007. Insofar as the above acquisition, as, made of the above tracts of land, the factum of no earliest demur rather being raised by the petitioner against the acquisition of the above tracts of land, is but evident, on a perusal of Annexure P-26, wherein, there is only a mention with respect to the NHAI thus attempting to usurp and disturb the peaceful and lawful possession of the petitioner, over those tracts of land, which became never acquired by the NHAI. As such, but obviously, given the above limited scope of the apposite representation, which

resulted in the making of the impugned Annexure P-26, thus stems a conclusion, that the above tracts of land, thus becoming lawfully acquired. As but a natural corollary thereof, the retention of possession by the petitioner, over such acquired lands, is completely unlawful, and/or, he is a trespasser thereon. The reason being that on lawful acquisition being made of the above tracts of land, there is complete divestment of right, title and interest of the petitioner, over such acquired lands, and rather, there is a concomitant vestment of right, title and interest in the acquiring authority concerned, over those tracts of land, which became validly acquired. In sequel, this Court had made directions for the relevant demarcations being done, by the competent revenue authority(ies) concerned, and, which demarcations are stated at the bar, by the learned counsel for the NHAI, to become conducted. Therefore, the possession as held by the petitioner, of his validly acquired lands, as become comprised in Khasra Nos.1190/41 and 1192/42, if in terms of the said demarcation, thus is not delivered to the authority concerned, thereupon the said possession of Khasra Numbers (supra) be ensured to be forthwith delivered to the authority concerned.

7. The subsisting dispute amongst the legal combatants, before this Court, is but obviously confined to the unacquired lands of the petitioner, as fall within the domain of Khasra No.824/245. Though the said land measuring 3 Biswas, became entered in the revenue records, in the name of the NHAI, despite the said lands becoming not acquired, but yet, since a request is made by the respondent concerned to the competent authority, to correct the revenue records, for thereby the process of acquisition thereof becoming facilitated. In consequence, the said mutation of ownership, as becomes recorded in favour



of the respondent(s) concerned, and, as relates to the dimensions of the disputed khasra number (supra), is but required to be undone, as thereupon only, for reasons assigned hereinafter, the respondent(s) concerned rather can proceed to launch the process of making lawful acquisitions thereof.

8. The learned counsel appearing for the petitioner, has vehemently argued, that the above stated contentious khasra number, does not necessitate its acquisition. In making the said submission, he has placed reliance, upon, a verdict drawn by this Court on 22.07.2010, upon CWP-2548-2010, titled “Didar Singh V/s Union of India and others”, wherein, in respect of a notification common thereto and to the instant petition, this Court had proceeded to direct the authorities concerned, to de-notify the lands, as mentioned in the writ petition (supra).

9. Moreover, reliance is also placed, by the learned counsel for the petitioner, upon, a verdict rendered by this Court, on 20.04.2011, upon CWP-19923-2010, titled “Kawal Roop Singh Barar V/s The Union of India and others”, wherein, in respect of a notification common to the petition (supra) and to the instant petition, this Court had passed directions for de-notification of the lands of the petitioner(s) therein. The said directions were availed, on the ground, that the lands therein were not required for the widening of Ambala-Chandigarh road.

10. However, for the reasons to be assigned hereinafter, the reliance, as placed upon the above decisions, by the learned counsel for the petitioner, thus to claim parity with the petitioner(s) therein, rather is a completely misfounded reliance thereons.

11. Principally for the reason, that in both the writ petitions (supra),



the affirmative decisions, as became made thereons qua the landowners concerned, became planked upon the imperative factum, that the lands of the estate-holders therein, were far-stretched from the project endeavoured to be undertaken by the NHAI, and/or, thus were not abutting the national highway concerned. Therefore, but obviously, directions were passed, given the above un-necessity, or, un-essentiality, or, unviability of such stretches of lands, thus remotely distanced from the national highway concerned, that they be released from acquisition.

12. For applying the mandate of verdicts (supra), it becomes incumbent upon the petitioner to demonstrate, that the lands comprised in the contentious khasra number, are occurring at a stretch, which is remotely distant from the national highway concerned, and/or, are not abutting the national highway concerned, nor they are in any way essential for operationalizing hence the project endeavoured to be completed by the NHAI. Candidly speaking, the above evidence is grossly amiss. Contrarily, forthright evidence hence becomes placed on record by the respondent(s) concerned, which but highlights the factum, that the retention by the petitioner, of the lands comprised in the contentious khasra number, is obstructing the completion of the project, at the instance of the NHAI. The said fact is substantiated by a copy of photographs, which have been placed on record, thus for the perusal of this Court.

13. Furthermore, it is but evident on a reading of paragraphs 5 and 6 of the preliminary objections, as contained in the reply furnished to the writ petition, by the respondent(s) concerned, that the expert body concerned, has identified more than 30 number of black spots, on the Ambala-Zirakpur



section, and, amongst the said 30 number of black spots, on the said section of the national highway concerned, 5 black spots are earmarked to occur within the domain of the disputed khasra number. Furthermore, it is also highlighted therein, that owing to non handing over of possession of the areas of lands comprised in the disputed khasra number, there is a huge problem of traffic jams and congestion occurring near Singhpura Chowk. In the above regard, photographs are appended as Annexure R-2/12, at Page Nos.315-320 of the paper book.

14. Furthermore, on perusal of the photographs placed on record, it is graphically clear, that the process of construction of flyovers, is at an advanced stage, and, out of 8 pillars, 7 pillars have already been constructed, and, there is an impediment to the construction of the remaining one pillar, but only owing to the non-execution of work of the service lane, non-execution whereof, has arisen owing to non handing over of the acquired lands by the petitioner. Therefore, the retention of possession by the petitioner, of the lawfully acquired lands, rather is unlawful, and, therefore the said possession is required to be delivered by the petitioner to the respondent(s) concerned, thus in terms of the demarcation report, which has been stated at the bar, by the learned counsel for the NHAI, to be completed in pursuance to directions made by this Court.

15. As above stated, and, as evident from the photographs placed on record, the issue of traffic jams or traffic snarls occurring at the relevant section of the national highway concerned, is but obviously owing to the contentious unacquired khasra number, thus remaining unacquired, whereas, its acquisition is but essential for de-clogging the congestion on the section



concerned. Resultantly, in respect of the contentious khasra number, thus precedence has to be assigned to public interest, than to the individual interest of the petitioner.

16. It appears that the petitioner is projecting, that the NHAI is constructing the national highway concerned, in a zigzag manner, therefore apparently he is erecting a submission that there is no necessity of the disputed khasra number becoming subjected to lawful acquisition. However, a perusal of the sanctioned plan, as carried in Annexure R2/11 and which has been prepared by a team of experts, after taking into consideration all the relevant factors, rather makes amplificatory speakings, that the construction of the service lane concerned, thus has to occur, upon, the contentious khasra number, and, is not to be done in a zigzag manner. Since the sanctioned plan relating to the disputed khasra number has been prepared by a team of experts. Resultantly the petitioner cannot dispute the veracity or the correctness of the said sanctioned plan, merely through his arguing, that the relevant work is to be executed in a zigzag manner, nor can he argue, that thereby the area of lands comprised in the contentious khasra number, may not be subjected to any lawful acquisition.

17. The reason for making the above conclusion stems, from the verdicts recorded respectively by the Hon'ble Apex Court and by this Court, respectively in case titled "*Union of India V/s Dr. Kushala Shetty*", *Civil Appeal Nos.2866-2880 of 2011*, Decided on: 21.02.2011, and, in case titled "*Kimat Rai and sons (HUF) through its Karta Sh. Kimat Rai Sikri V/s National Highways Authority of India and another*", *CWP-8514-2017*, Decided on: 19.04.2018. The Hon'ble Apex Court, in paragraph 24 of its

judgment rendered in the case (supra), paragraph whereof becomes extracted hereinafter, has expostulated therein that the projects involving constructions of new highways and relating to widening and development of the existing highways, are thus vital for the development of infrastructure of the country, and, are entrusted to experts in the field of highways. It has also been propounded therein, that the courts of law are ill-equipped to decide upon the viability and feasibility of the particular project, and/or, whether the particular alignment would subserve the larger public interest. Therefore, it was concluded, that the scope of judicial review in respect of evaluating or scrutinizing the view of experts cannot thus become exercised, nor thereby there can be nullification of the acquisition process.

“24. Here, it will be apposite to mention that NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of National Highways. The projects involving construction of new highways and widening and development of the existing highways, which are vital for development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge and expertise in the field of highway development and maintenance. NHAI prepares and implements projects relating to development and maintenance of National Highways after thorough study by experts in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The Courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest. In such matters, the scope of judicial review is very limited. The Court can nullify the acquisition of land and, in rarest of rare cases, the particular project, if it is found to be ex-

facie contrary to the mandate of law or tainted due to mala fides. In the case in hand, neither any violation of mandate of the 1956 Act has been established nor the charge of malice in fact has been proved. Therefore, the order under challenge cannot be sustained.”

18. Likewise, this Court in paragraph 10 of its judgment rendered in the case (supra), paragraph whereof stands extracted hereinafter, it has been held, that precedence has to be assigned to public interest, than to individual interest. Furthermore, it has also been propounded therein, that the construction of roads in a busy locality is of utmost necessity, and, the acquisition of land and property for the said construction deserves to be viewed, keeping in view the wider public interest and national interest.

“10. So far as construction of building on the plot in question is concerned, be that as it may, if the building is obstructing the widening of the National Highway, we have no reason to doubt that such building must also pave way as an individual's interest is always outweighed by the larger public interest involved in the construction of National Highway. There is no gainsaying that the construction of Bypass in such busy locality is utmost necessary and the acquisition of land/property for the construction of bypass or widening of National Highway, deserves to be viewed keeping in view the wider public interest and national interest.”

19. Given the above expostulation(s) of law, as contained in verdicts (supra), besides with imminent evidence surging forth, thus in display, that the contentious khasra number, is but required for subserving the public purpose concerned. Importantly also, with the sanctioned plan (Annexure R2/11), also lucidly earmarking therein, that the contentious khasra number is a part of the sanctioned plan. Moreover, when visible and candid evidence, is forthcoming

thus from a perusal of photographs, that traffic snarls or congestions hence occur on the section of the national highway concerned, where the contentious khasra number is located. As but a natural corollary thereof, this Court accepts the argument of the learned counsel for the respondent(s) concerned, that thereby the contentious khasra number is required to be put to lawful acquisition.

20. Now, insofar as, the challenge made to the launching of the acquisition proceedings, in respect whereof, an award became pronounced in the year 2007, and, which challenge is centered upon the factum of the project being declared to be abandoned, thus merely on the ground of extension of municipal limits, thus is a challenge which requires its becoming rejected. The reason being, that there is no bar in the Act of 1956 to carry out acquisition proceedings, even qua those stretches of land, in respect whereof, the apposite municipal limits have been extended to. It appears that, in the garb of the said raised grievance in the writ petition, that the petitioner has misapprehended before the Hon'ble Apex Court, qua his lands comprised in the award, being declared to thus lapse.

21. Apparently, the invocation of the lapsing doctrine, as embodied in a judgment made by the Hon'ble Apex Court, in case titled "*Indore Development Authority v. Manoharlal*", 2020 AIR (Supreme Court) 1496, is restricted to a situation, where there is a pinpointed challenge to the earlier launched acquisition proceedings, under the Land Acquisition Act, 1894, thus on the parameters contained therein. However, though the said parameters have not been either averred in the writ petition, nor on their touchstone, the attraction of the lapsing doctrine, as propounded in case (supra), thus to the

petitioner's estate has been claimed, nor any relief for the acquisition proceedings drawn under the Act of 1894, becoming declared to become lapsed, has been espoused. Therefore, reiteratedly, it appears that a miscontention was made before the Hon'ble Apex Court by the learned counsel for the appellant, that the plea of lapsing, as contained in Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, was averred and was also claimed in the instant writ petition, and, the same remained unadjudicated upon.

22. For all the reasons mentioned hereinabove, this Court finds no merit in the instant writ petition and is constrained to dismiss it. Accordingly, the writ petition is dismissed, and, the award (supra) as well as Annexure P-26 are upheld.

23. Moreover, given the highlighted necessity for acquisition being made of the disputed khasra number, thus the respondent(s) concerned is directed to, after getting apposite corrections made in the revenue records concerned, thus in terms of the demarcations made of the acquired lands, hence forthwith launch acquisition proceedings in respect of those tracts of land, as become comprised in the disputed khasra number (supra). Furthermore, a peremptory direction is also made upon the petitioner to, in terms of the demarcation proceedings, thus promptly hand-over the physical possession of the acquired lands to the respondent(s) concerned.

24. Before parting, it is necessary to highlight the gross apathy and insensitivity of the petitioner to the demands of public interest, thus necessitating the acquisition of his lands being made. Despite there being

tangible evidence, that the relevant section(s) of the national highway concerned, has brought rue to the general public, as there exist(s) regular traffic snarls and congestions, yet the petitioner obstructing either the handing over of possession to the respondent(s) concerned, even of those parcels of land, in respect whereof lawful acquisitions were made, but also his untenably resisting the makings of lawful acquisitions of the contentious khasra number (supra), whose acquisition would but ease traffic snarls and congestions, at the relevant section(s) of the national highway concerned. The above lack of apathy of the petitioner to the larger public interest, rather his focusing on his individualistic interest, is required to be deprecated. Therefore, the petition is dismissed with costs of Rs.1,00,000/- to be forthwith deposited in the Poor Patient Fund of the P.G.I.M.E.R., Chandigarh. However, this Court refrains from assessing mesne profits against the petitioner for his retaining, besides, utilizing the lawfully acquired lands.

25. All pending application(s), if any, also stand disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

11.08.2023
devinder

Whether speaking/reasoned ? Yes/No
Whether reportable ? Yes/No