2019 INSC 1046

NON REPORTABLE

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7317 OF 2019
(Arising out of SLP (Civil) No.3213 of 2016)

Krishan Chander & Anr. ….Appellant(s)

Versus

State of Haryana & Ors. …. Respondent(s)

J U D G M E N T

A.S. Bopanna,J.

Leave granted.

2. The appellants are before this Court assailing the order dated 21.10.2015 passed by the High Court for the States of Punjab and Haryana in CWP No.22656/2015. The said writ Petition was disposed of along with the writ petition bearing CWP.No.22652 and 22653 of 2015 through a common order. Through the said order the case sought to be made out by the appellants seeking

release of the land from the process of acquisition is not considered favourably. The writ petitions are accordingly dismissed by the High Court.

3. The brief facts are that the lands bearing Khasra No.19/2, 9 measuring 16 kanal situated in Village Para, District Rohtak, to which the appellants' claim that their father was the owner, among other lands of several other land owners was acquired for development of Sector 36, Rohtak by issuing the Notification dated 15.12.2006 issued under Section 4 of the Land Acquisition Act, 1894 ('L.A. Act' for short). The final declaration under Section 6 was issued on 14.12.2007. The appellants contend that the land has not been utilised for the purpose for which it was acquired and in respect of several other lands acquired for the same purpose, it has been deleted from the process of acquisition and as such the lands belonging to the appellants also be deleted. In that regard the appellants, at the first instance, had approached the High Court through CWP.No.5836 of 2014. The said writ petition was disposed of through the

order dated 27.03.2014 whereby the High Court on taking note of the contentions had issued direction to the respondents to verify the claim of the appellants and on objective consideration of the whole matter if the authorities are of the view that there is no likelihood of utilisation of the appellants' land for any public purpose, consider the desirability of releasing the same subject to the condition that the compensation if any received be refunded. Pursuant thereto the representation dated 20.02.2014 which had already been made by the appellants was taken note and an order dated 10.11.2014 was passed by the Secretary-cum-Director General, Urban Estates Department Haryana, rejected the claim of the appellants. Against such rejection, the appellants were before the High Court in the present round of litigation assailing the order dated 10.11.2014 which has led to the instant appeal. The respondents through the counter affidavit filed herein on behalf of the respondent No.2 have opposed the instant appeal.

4. Heard Shri J.B. Mudgil, learned counsel for the appellants, Shri B.K. Satija learned counsel for the respondents and perused the appeal papers.

5. As noticed the claim put forth on behalf of the appellants is that the land bearing Khewat No.599/553 Khatoni No.671, Killa No.19/2 (8-0) and 9(8-0) total measuring 16-0 situated within the Revenue Estate of Mouza Para, Hadbast No.67, Tehsil and District Rohtak though sought to be acquired under the Notification dated 15.12.2006 and 14.12.2007 for forming the Sector 36 layout, the said land has not been utilised. In that regard seeking release of unutilised and unused land the appellants had made the representation dated 20.02.2014. Since the request made through the representation is rejected through the order dated 10.11.2014 the writ petition bearing C.W.P. No.22656/2015 was filed which is dismissed. A perusal of the order dated 21.10.2015 passed by the High Court would disclose that the High Court, having taken note that the impugned order discloses that while considering

the representation the State Government has found that the land was vacant at the time of publication of Notification under Section 4 of the Act and it is still lying vacant, the release in view of the Policy dated 26.10.2007, modified on 24.01.2011 is not tenable since the said policy pertains to release of land over which the residential buildings have been constructed. Taking note of the same the High Court has dismissed the petition without any further consideration.

6. At the outset, it is necessary to take note that the writ petition was dismissed at the threshold without directing notice to the respondents and considering the grievance of the appellants in the backdrop of the contention urged. In a normal circumstance we do not find that there would be any impediment to dispose of at the threshold. However, in the present facts we notice that the order dated 10.11.2014 which was impugned before the High Court was an order which was passed pursuant to the direction issued in earlier order dated 27.03.2014 passed by the High Court in CWP

No.5836/2014. In the said writ petition the High Court had taken note of the grievance that had been put forth by the appellants that the respondents had acquired the land much more than what was needed for the notified public purpose and after utilisation of such land for the said public purpose, a substantial part of the acquired land is lying unutilised. It was also taken note that the appellants had averred that they are still in possession of the land as is evident from the entries in the Revenue record and the photographs. Having taken note of the case put forth, the Court had also observed that the High Court has already taken a view in another matter that the acquisition of land in excess to what is needed for a bonafide public purpose is also detrimental to public interest as it would be an unwarranted burden on the State Exchequer. Having observed so, the High Court had indicated that the question as to whether or not the appellant's unutilised land is still needed for a bonafide public purpose has to be essentially determined by the authorities only. It is in that light a direction had been issued for consideration of the representation.

7. In that background a perusal of the order dated 10.11.2014 impugned in the present writ petition bearing CWP.No.22656/2015 would disclose that the competent authority has noted that as per the fresh site survey, the land of the appellants is lying vacant. It is further observed that as per the layout plan of Sector 36 which is approved, the appellants' land has been planned for institutional plot, green belt and parking area. In that circumstance, it is stated that the C.A., HUDA has recommended not to release any land in favour of the appellants. In that circumstance when presently the said order had been assailed in the writ petition challenging its correctness, that too when such order had been passed pursuant to the direction issued earlier by the High Court, a deeper examination was required by the High Court after calling for objections from the respondents.

8. It is no doubt true that presently in the instant appeal before this Court the respondents have filed their objection statement and have sought to contend that the

land is required for the purpose of the layout; that the land in question being vacant land and since the appellants had not filed the objections under Section 5-A of the L.A. Act the consideration for deletion under the Policy does not arise. Relying on objection statement the learned counsel for the respondents has vehemently contended that the possession of the land has been taken under 'Rapat Roznamcha' on 09.12.2009. Reference to the same is made indicating that out of the 88.24 acres of which possession was taken the land bearing No.19/2 of the appellants also forms a part. To contend that the possession being taken by drawing a Panchnama is the approved mode of taking possession, the learned counsel has relied upon on the decisions in the case of ***Sita Ram Bhandar Society, New Delhi vs. Lieutenant Governor, Government of NCT, Delhi & Ors.*** (2009) 10 SCC 501; in the case of ***M. Venkatesh vs. Commissioner, Bangalore Development Authority*** (2015) 17 SCC 1 and in the case of ***Indore Development Authority vs. Shailendra*** (2018) 3 SCC 412.

9. The learned counsel for the respondents has further relied on the decision in the case of ***V. Chandra Sekaran and Anr. vs. Administrative Officer & Ors.*** 2012 (12) SCC 133 to contend that the land once acquired cannot be restored even if not used. At this stage itself it is necessary to be noticed that the said decision was in the circumstance where a subsequent purchaser had approached the Court and further in the instant case a policy is adopted by the respondents for release of land and appellant is seeking consideration on parity which is a matter for consideration one way or the other.

10. The learned counsel for the appellants, on the other hand, contended that the Panchnama drawn for taking possession was not at the spot and in that regard has relied on the decision in the case of ***Banda Development Authority, Banda vs. Moti Lal Agarwal and Ors***. 2011 (5) SCC 394. In that background though the fact of taking possession would become relevant in a circumstance to de-notify the land in terms of Section 48

of the L.A. Act, the other aspects of the matter would also arise herein, in view of the nature of consideration made by the High Court in the earlier round and in that background the correctness of the impugned order passed by the competent authority dated 10.11.2014 was to be noted in the present round of litigation. In so far as the contention urged by the learned counsel for the respondents that the appellants had entered into a collaboration agreement with M/s Sharad Farm and Holdings (P) Ltd. on 23.04.2007 after issuance of Notification under Section 4 of the L.A. Act and has received a sum of Rs.28,20,000/- from them, the same would have arisen for consideration and denial of relief at the threshold only if the said M/s Sharad Farm and Holding (P) Ltd based on such collaboration agreement had approached the Court seeking for deletion of the land. In the instant proceedings the appellants being the owners of the notified land are seeking deletion and the validity of such agreement would be an inter-se issue.

11. Though the respondents have further contended that the Policy for deletion provide for consideration only if objections under Section 5-A is filed and it is contended that no such objection was filed by the appellants, the representation dated 20.02.2014 (Annexure P.1) filed by the appellants indicates that the appellants have stated therein that the applicants have filed objections under Section 5-A of the L.A. Act to the proposed acquisition. Though at this stage we are not in a position to determine the correctness of the contrary rival contentions that is also one of the aspects which required consideration by the High Court to come to a conclusion as to whether the benefit of the policy is available. Further the Notification for acquisition was issued far back as on 15.12.2006. The consideration pursuant to the earlier order dated 27.03.2014 passed in CWP No. 5836/2014 was made by the competent authority on 10.11.2014. Even as on that day, admittedly the lands belonging to the appellants is kept vacant though the competent authority states that in the layout plan of Sector 36 the lands of the appellants is kept for institutional plot, green belt and parking area.

The appellants on the other hand by relying on the layout plan of sector 36 produced before this Court seek to contend that the lands surrounding the lands of the appellants has been released.

12. In the backdrop of such contentions and keeping in view that the writ petition filed before the High Court was in a certiorari proceeding, it was necessary for the High Court to secure the records and consider as to whether the possession had been validly taken and handed over to HUDA as claimed. Further whether in the layout plan as referred in the order dated 11.10.2014 impugned in the writ petition, the very item of land belonging to the appellants was reserved for the institutional plot, green belt and parking areas as claimed and as to whether the surrounding area had been developed by HUDA by forming the residential plots was also to be considered, though not in the nature of an appeal, but to satisfy itself on perusal of relevant records. The further contention on behalf of the appellants is that in respect of the very same layout this Court in the case

of ***Patasi Devi Vs. State of Haryana & Ors.*** (2012) 9 SCC 503 has directed that the land involved therein be released. It is no doubt seen that in the said case the appellant who was the owner of the land which was acquired had constructed a house and in that light there being no document to indicate that the possession was taken over by putting a lock, it was held that the possession was not taken. Though that be the position it is also indicated that the case of the appellant therein was required to be considered in the same manner as was done in the case of M/s Sharad Farm and Holdings (P) Ltd. Apart from the said decision which relates to the very same layout, the learned counsel for the appellants has also relied on the decision in the case of ***Hari Ram & Anr. vs. State of Haryana & Ors***. (2010) 3 SCC 621 wherein with reference to the Policy dated 26.10.2007 it is indicated that the similar land owners should receive a similar consideration when representation is made for deletion.

13. Having taken note of all the above aspects, the fact of the possession actually having been taken would require determination at the outset based on examination of records. Secondly the aspects as pointed out relating to the deletion of similar lands and as to whether the land acquired from the appellants is lying vacant and if so whether the appellant is similarly placed as that of the other land owners whose case was considered under the Policy for deletion are aspects which are to be examined by the High Court by notifying the respondents and permitting them to file their objection statement and also after securing the records and verifying the same. Since such exercise was not undertaken by the High Court, though was required in the present facts and circumstances it would be appropriate to set aside the order and restore the writ petition to the file of the High Court for consideration in accordance with law. Any of the observations contained herein are limited to the disposal of this appeal and the High Court shall dispose of the writ petition by a considered order on its own merits. All contentions in that regard are left open.

14. Accordingly, the order dated 21.10.2015 passed in CWP No. 22656/2015 is set aside and the petition bearing CWP No. 22656/2015 is restored on board of the High Court for the States of Punjab & Haryana at Chandigarh for consideration afresh after affording sufficient opportunity to both parties and disposal in accordance with law.

15. The appeal is allowed in part with no order as to cost. All pending applications shall stand disposed of.

.....J.
(R. BANUMATHI)

.....J.
(A.S. BOPANNA)

New Delhi,
September 17, 2019