



REPORTABLE

CIVIL APPEAL NO. 8968 OF 2013

VERSUS

J U D G M E N T

1. Challenge in this appeal is to the order passed by the High Court of Punjab and Haryana whereby the writ petition of the appellant, calling in question the order dated 17.08.2010 passed by the respondent/State rejecting his representation for release of his land from acquisition, has been dismissed.

2. Briefly stated, the facts of the matter are that the appellant is the owner in possession of the land and constructed area measuring 386 sq. yards and 3078 sq. yards at Sultanpur, Sonipat, Haryana having purchased the same from the owner of M/s. Haryana Kamoplast Industries, Sonipat vide sale deed dated 04.08.1986.

2.1 On 09.11.1992, the State of Haryana issued notification under Section 4 of the Land Acquisition Act, 1894¹ for acquisition of land for the development and utilization of land for residential and commercial area along with sector road at Sonipat. Amongst other villages, the land situated in appellant's village-Sultanpur was also the subject matter of acquisition. The total area being 329.70 acres as per Section 6 Notification issued on 06.11.1993, the appellant's land was also included in the Notification so issued. The appellant claims to have submitted objections under Section 5-A of the Act. The Land Acquisition Collector passed an Award No. 10 on 05.11.1995 mentioning that the possession of the land acquired had already been taken vide Rapat Rozanamcha No. 229 dated 05.11.1995 and the same vests with the Government.

¹ "the Act"

2.2. The appellant's 1st writ petition challenging the land acquisition proceedings was dismissed by the High Court and his 2nd writ petition filed in the year 2008 was dismissed as withdrawn as his representation was pending. The present is the third writ petition filed by the appellant seeking release of the land as also seeking quashing of the order dated 17.08.2010 whereby his request for release of the land was rejected by the State Government.

2.3. The High Court dismissed the writ petition mainly on the ground that the possession is deemed to have been taken and continuing with physical possession would not confer any right whatsoever upon the appellant.

SUBMISSIONS BY THE APPELLANT

3. Mr. Nidhesh Gupta, learned senior counsel appearing on behalf of the appellant strenuously urged that in respect of the same Notification of the same village the State has released the land, and on the other hand, land of the appellant has not been released although the same is similarly situated, as such, the appellant has been singled out in a discriminatory manner. Learned senior counsel would refer to and rely upon various orders passed by the State Government directing release of the land both at the pre-award and post-award stage. It is further submitted that there

is a running factory on the subject land since 1970 i.e. even before the issuance of Notification under Section 4 of the Act, therefore, his case for release of the land squarely falls within the parameters set forth in the State Government's policy dated 26.10.2007. Learned senior counsel would also urge that the order dated 17.08.2010 rejecting appellant's representation is unsustainable as the same has been passed without assigning any reason. Learned senior counsel has placed reliance on **"Sube Singh vs. State of Haryana"**², **"Hari Ram Vs. State of Haryana"**³, **"Sham Lal vs State of Punjab"**⁴, **"Haryana State Industrial Development Corporation vs. Shakuntla"**⁵, **"Raghubir Singh Sehrawat vs. State of Haryana"**⁶, **"Patasi Devi vs. State of Haryana"**⁷, **"Usha Stud & Agricultural Farms (P) Ltd. vs. State of Haryana"**⁸, **"Women's Education Trust vs. State of Haryana"**⁹, **"Siemens Engg. & Mfg. Co. of India Ltd. vs. Union of India"**¹⁰ & **"State of Punjab vs. Bandeep Singh"**.¹¹

SUBMISSIONS BY STATE OF HARYANA

² (2001) 7 SCC 545

³ (2010) 3 SCC 621

⁴ (2013) 14 SCC 393

⁵ (2010) 12 SCC 448

⁶ (2012) 1 SCC 792

⁷ (2012) 9 SCC 503

⁸ (2013) 4 SCC 210

⁹ (2013) 8 SCC 99

¹⁰ (1976) 2 SCC 981

¹¹ (2016) 1 SCC 724

4. Mr. K.M. Nataraj, learned Additional Solicitor General appearing on behalf of the State of Haryana has argued that the writ petition suffers from huge delay and laches; possession of the land having already been taken, its release is not legally permissible and that even if any other land has been wrongly released, the same would not confer any legal right upon the appellant for release of his land as his case is not covered under the policy. It is also argued that in response to notice under Section 9 of the Act, the appellant submitted his claim for grant of compensation @ of Rs. 5,000/- per sq. yard without praying for release of the land. It is also submitted that in the first writ petition the appellant did not make any prayer for release of the land and the second writ petition was dismissed as withdrawn. Therefore, the present writ petition was not maintainable being barred under the principles of *res judicata*. Countering the appellant's submission of discrimination, Mr. Nataraj has distinguished the release orders made in favour of other landowners.

STATE POLICIES FOR RELEASE OF LAND FROM ACQUISITION:

5. (i) Policy dated 26.06.1991

Para 4 of this policy which was prevalent at the relevant time provided that the existing factories should not be acquired and

should be released from the acquisition proceedings and constructed area of 'A' and 'B' Grade should be left out of acquisition. Para 6 provided that the area which is liable to be left out or acquired should be decided at the time of the decision on the report under Section 5-A of the Act.

(ii) Policy dated 26.10.2007

This policy provided that any factory or commercial establishment which existed prior to Section 4 Notification will be considered for release with further stipulation that the Government may also consider release of land in the interest of integrated and planned development where the owners have approached the Hon'ble Court with further proviso that the Government may release land on the grounds other than stated above under Section 48(1) of the Act under exceptionally justifiable circumstances for the reasons to be recorded in writing. In the opening part of this policy, it is mentioned that no request will be considered after one year of the award and only those requests will be considered by the Government where objections under Section 5-A were filed.

(iii) Policy dated 24.01.2011

This policy contained similar provisions like the earlier policy dated 26.10.2007. However, this policy was issued after passing of

the order dated 17.08.2010, therefore, the appellant's case would not fall under this policy.

6. The respondent/State is resisting the appellant's case for release of land on the ground that the appellant having not preferred any objection under Section 5-A of the Act and his request being delayed, he is not entitled for release of land. Objection to release appellant's land is also on the ground that the appellant does not have a valid Change of Land Use¹² certificate which is a fundamental prerequisite for the release of land. Further objection is on the ground that the land falls within a designated green belt and substantial government expenditure has already been incurred on development.

ANALYSIS – WHETHER THE APPELLANT POSSESSES A VALID CLU.

7. We shall first deal with the core issue as to whether the appellant possesses a valid CLU for running the factory which he claims to be running since 1970. The Department of Town & Country Planning, Government of Haryana declared, vide Notification no. 2366-2TCP-64/24048 dated 23.09.1964, area around Municipal Town Sonipat as controlled area under Section 4(1) (a) of the Punjab Scheduled Roads & Controlled Areas Restrictions of

¹² 'CLU'

Unregulated Development Act, 1963. By virtue of the said provisions and Notification any land falling in the area is required to obtain CLU for development. The appellant's land falls within this controlled area, yet the appellant did not obtain any CLU. In the material papers available on record, including the pleadings, the appellant has not submitted any CLU granted in his favour or in favour of his predecessor. For establishing a factory or any other commercial development being valid, a CLU is a prerequisite, in the absence of which, running a factory on the said land cannot be validated so as to include his case within the sweep of the policy dated 26.06.1991 or 26.10.2007

8. It is the specific stand of the respondent/State in its counter affidavit that the appellant has not obtained a CLU to which the appellant has not submitted any rejoinder. It is thus manifest that the requirement for CLU being a statutory mandate, release of land, in the absence of CLU is not permissible.

PLEA OF DISCRIMINATION

9. The appellant's claim release of land on the plea of discrimination upon submission that the lands belonging to Devraj Dewan, Northern India Carbonates Pvt. Ltd., Gatta Factory, Ashok Kumar Sawing Machine and Deewan Palace have been released from

acquisitions. However, the appellant has been singled out for unfavourable treatment though his case is similarly situated.

10. Material on record reveals that the award was passed on 05.11.1995 and Rapat Roznamcha No. 229 dated 15.11.1995 was prepared much later than the order of release dated 08.04.1994 in favour of Devraj Dewan. The said Devraj Dewan submitted his application for CLU and the State Government took a decision on 31.05.1992 to process the matter for grant of CLU and was eventually granted before Section 4 Notification, the appellant cannot claim discrimination vis-à-vis Devraj Dewan. Similar is the case with Northern India Carbonates Pvt. Ltd and moreover such land held by Northern India Carbonates Pvt. Ltd which was part of road/green belt was not released. In respect of other released lands it is mentioned by the respondent/State in its counter affidavit/written submissions that the same are not part of the same Notification. It is, thus, apparent that the appellant's case stands on a different footing inasmuch as the appellant has not obtained a valid CLU. Thus, the appellant's plea of discrimination is liable to be rejected.

EXPENDITURE ALREADY INCURRED BY THE STATE GOVERNMENT IN DEVELOPMENT OF THE ACQUIRED AREA

11. In its additional affidavit, the respondent/State of Haryana has categorically stated that the concerned department of the State Government has already incurred huge amount on account of development of the Sectors falling under the Notification and total expenditure of Rs. 2661.88 lakhs have been incurred towards the construction of sector roads, water supply networks, sewerage and stormwater drainage systems. Sector-3, which is part of the Notification, is commercial sector and the land has been earmarked for public utilities i.e. Fire Station, Petrol Pump, Police Station, Telephone Exchange, Auto Market etc. and even 21 commercial plots of large scale have also been allotted to multiplex developments and are being developed, and one Leisure Vally Park has already been planned. Thus, release of the subject land will affect the entire planning of the land acquired under the Notification. It is also clear from the record that the land in question is abutting the institutional Plot No. 2, 18-meter-wide road and 30-meter green belt, hence, release of the land would affect the green belt/road.

ISSUE OF DELAY, LACHES AND RES JUDICATA

12. On the issue of delay and laches, suffice it would be to mention that the State has been considering the request for release

of land and change of land use as late as in the year 2020-21 whereas the appellant has been pursuing his case for release at least from the year 2007-08 onwards. Thus, the appellant's request does not suffer from delay and laches. Insofar as plea of applicability of principles of *res judicata* is concerned, the first writ petition was not for release of land. The second writ petition was withdrawn because the appellant's representation was pending, and the present writ petition has been preferred, after his representation was rejected, impugning the rejection order dated 17.08.2010. Thus, the appellant's request for release of land has never been considered on merits by the High Court in any of the writ petitions. Thus, the appellant's prayer for release of land cannot be thrown out on principles of *res judicata*, however it is not acceptable on merits.

13. For the above stated reasons, we are not inclined to accept the appellant's prayer for release of land on the ground of discrimination. However, since the appellant claims to be in continuous physical possession of the land wherein a factory is in operation and the department has not satisfactorily controverted this aspect of the matter, on the special facts of this case, in exercise of our power under Article 142, we deem it appropriate to direct that the compensation payable to the appellant should be calculated under the Right to Fair Compensation and Transparency

in Land Acquisition, Rehabilitation and Resettlement Act, 2013 as on the date of commencement of the said Act. This order is made on the peculiar facts of the case and is not to be treated as a precedent to be relied upon in other cases. It is ordered accordingly.

Resultantly, the appeal is disposed of in the above stated terms.

No order as to costs.

.....J.
(B.R. GAVAI)

.....J.
(PRASHANT KUMAR MISHRA)

.....J.
(K.V. VISWANATHAN)

**NEW DELHI;
APRIL 01, 2025**