

(2012) 03 P&H CK 0055

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 4923 of 2011

Shyama Bansal

APPELLANT

Vs

Shri Mata Mansa Devi Shrine
Board, Panchkula

RESPONDENT

Date of Decision: March 2, 2012

Acts Referred:

- Land Acquisition Act, 1894 - Section 4, 6

Citation: (2012) 3 RCR(Civil) 458

Hon'ble Judges: Hemant Gupta, J; G.S. Sardhawalia, J

Bench: Division Bench

Advocate: Mahavir Sandhu, for the Appellant; Partap Singh, for the Respondent

Final Decision: Dismissed

Judgement

Hemant Gupta, J.

The petitioner has sought quashing of the communications dated 23.11.2007, 05.02.2008 and 15.05.2008 (Annexures P-9, P-11 & P-12 respectively) said to be illegal, unjust, unfair and erroneous. The petitioner claims to be resident of House No. 39 to 41, Maha Maya Colony, Village Bhainsa Tibba near Mats Mansa Devi Mandir, Tehsil and District Panchkula. It is pointed out that in the year 1985-86, 20-25 persons purchased one marla, two marl as and three marlas plots from the farmers of Village Bhainsa Tibba and constructed their residential houses. The petitioner has purchased three marlas plot from three different persons i.e. one marla from Shri Mohan Lal vide registered sale deed dated 29.04.1992; another one marla plot from Shri Joginder Singh vide registered sale deed dated 06.05.1992 and one marla plot from Shri Babu Ram vide registered sale deed dated 06.05.1992. On 02.06.1999, the State Government published a notification u/s 4 of the Land Acquisition Act, 1894 (for short "the Act") intending to acquire the land of village Bhainsa Tibba including the land of the petitioner. The objections were filed, but notification u/s 6 of the Act was issued on 29.05.2000. The petitioner along with

other aggrieved persons filed a writ petition bearing CWP No. 7972 of 2000 before this Court challenging the said acquisition. The said writ petition was disposed of on 08.01.2002 on the basis of the statement made by the learned Advocate General, Haryana. The following order was passed :

The learned Advocate General states that all the petitioners, who own residential houses will be given plots of almost similar sizes as acquired from them within the vicinity of the acquired land.

The learned A.G. also states that no tenant or commercial establishment will be accommodated in this manner and all such cases for allotment would be rejected.

The learned A.G. Further states that the allotment would be made on the basis of a draw of lots/size wise to be held shortly. The writ petition stands disposed of in terms of the statement of the learned Advocate General.

In pursuance of the such order, one marla plot was allotted to the petitioner vide letter dated 23.11.2007 (Annexure P-9). The petitioner submitted a representation seeking 3 marlas of plot in view of the fact that she has purchased 3 marlas of plot vide separate sale deeds. The said claim of the petitioner was declined on 05.02.2008 vide Annexure P-11. The petitioner submitted another representation on 11.02.2008, which was again declined on 15.05.2008. It was also observed that the possession will be offered shortly after satisfaction of the compliance of terms and conditions. On 24.07.2008 vide letter Annexure P-14, the petitioner was offered possession and on 22.10.2008 vide Annexure P-15, the petitioner has taken the possession of 1 marla of plot.

2. The petitioner along with other persons had also filed CWP No. 19631 of 2008 before this Court 17.11.2008 claiming allotment of plots within the vicinity of the acquired land, which is accessible to the main road; suitable for human habitation and to provide basic amenities. The said writ petition was disposed of vide order dated 20.01.2011. The said order reads asunder :

It is conceded by the counsel for the petitioners that necessary facilities at the sites now allotted to the petitioners have been provided and the petitioners can construct their houses for the purpose of shifting. The counsel for the petitioners now restricts his prayer limited to the extent that some time may be granted to the petitioners to construct the houses as otherwise they will be left on the roads.

With the concurrence of parties, six months time is granted to the petitioners to construct their houses and shift to the newly constructed houses. The respondents would be at liberty to evict the petitioners in case they do not vacate the same within a period of six months from today.

The writ petition is accordingly disposed of.

Though the said writ petition was filed after the claim of 3 marlas of plot was declined vide communication dated 05.02.2008 and in fact, after the possession of 1 marla of plot was taken by the petitioner without any objection on 22.10.2008, but the petitioner has not made any grievance in the said writ petition that she is entitled to a plot measuring 3 marlas.

3. We find that once, the petitioner has not made grievance in the earlier writ petition filed against the present respondents, the present writ petition is barred on the principles of Order 2 Rule 2 of the CPC and by an act of estoppel. The petitioner has relied upon an order passed by the learned Single Bench of this Court in Sheda Devi and Another Vs. Shri Mata Mansa Devi Shrine Board, Panchkula, titled "Shella Devi and another v. Shri Mata Mansa Devi Shrine Board, Panchkula" decided on 16.02.2011 claiming plot of three marla size. The reliance of the petitioner on the said order is totally misconceived. In the said case, the allotment of 2 marlas of plot to the said petitioner was cancelled without any notice and without affording any opportunity of hearing. The writ petition was allowed for the reason that no reason has been provided to cancel the plots, therefore, the said cancellation was set aside and the writ petition was allowed. We find that present is a case for allotment of a plot and not cancellation without complying with the principals of natural justice. The reason for not allotting 3 marlas of plot is disclosed, as in terms of rehabilitation policy, the petitioner is entitled to only 1 marla of plot. The purchase of three marlas before the acquisition does not entitle her to claim three plots. The policy is to rehabilitate and not to provide plots to the persons, affected by acquisition. The process of rehabilitation is to accommodate the persons displaced by acquisition and not to give them equivalent land.

In view of the above, we find that neither in law nor in equity, the petitioner has any justified claim for claiming a plot measuring 3 marlas. Consequently, the present writ petition is dismissed.