

(2008) 07 P&H CK 0028

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Lachhman Singh and
Another

APPELLANT

Vs

State of Punjab and
Others

RESPONDENT

Date of Decision: July 22, 2008

Acts Referred:

- Land Acquisition Act, 1894 - Section 16, 4, 5A, 6, 9

Citation: (2008) 152 PLR 589 : (2008) 4 RCR(Civil) 357

Hon'ble Judges: M.M. Kumar, J; A.N. Jindal, J

Bench: Division Bench

Final Decision: Allowed

Judgement

M.M. Kumar, J.

The petitioners who are co-sharers in the acquired land have approached this Court with a prayer for quashing order dated 8.11.2007 (Annexure P-5) passed by the Land Acquisition Collector, Punjab Urban Development Authority, Bhatinda, respondent No. 3. The petitioners have claimed disbursement of compensation to them.

2. Brief undisputed facts may first be noticed. The petitioners are co-owners of the land comprised in khasra Nos. 2199(2-11), 2200(3-10), 2201(3-13), 2202(8-3), 2220(56-1) totally 73 bighas 18 biswas land situated at Bhagu road, Bathinda and in Khasra Nos. 2203(3-4), 2204(2-0), 2205(4-11) totaling 9 bighas 15 biswas. After issuance of notification u/s 4 of the Land Acquisition Act, 1894 (for brevity "the Act"), hearing of objection u/s 5A of the Act and issuance of declaration u/s 6 thereof award was announced on 6.3.2007 by the Land Acquisition Collector granting compensation of rupees thirty lacs per acre for the land acquired alongwith solatium. The Land Acquisition Collector also awarded compensation for structures, houses etc. The petitioners requested for release of their compensation which was

not paid. Eventually on 10.8.2007 they made representation to the Estate Officer and Addl. Chief Administrator PUDA (Annexure P-3). The petitioners were orally told by the respondents about the pendency of C.W.P. No. 8155 of 2006 which was filed by other owners and the orders passed by the Hon"ble High Court on 26.5.2006 staying the dispossession of the petitioners in that petition. As the respondents denied the compensation to the petitioners on the pretext of pendency of C.W.P. No. 8155 of 2006, they filed CM. No. 14892 of 2007 in C.W.P. No. 8155 of 2006 seeking a direction to the respondents to release the awarded amount of compensation. They also moved an application for impleading them party in the petition. On 11.9.2007, the petitioners were allowed to withdraw the application with liberty to file appropriate petition. Petitioners then filed C.W.P. No. 14861 of 2007 seeking release of awarded amount of compensation qua their land. The said petition was disposed of on 24.9.2007 with a direction to the Land Acquisition Collector, PUDA to consider the representation of the petitioners dated 10.8.2007. Petitioners again approached the respondents for release of compensation alongwith a copy of the order dated 24.9.2007. On receipt of the request of the petitioners, respondent No. 3 referred the matter to the Sub Divisional Magistrate, Bhatinda seeking status report of possession etc. The same was then referred to Tehsildar Bhatinda. Accordingly Halqa Patwari submitted report dated 2.11.2007 (Annexure PA). Respondent No. 3 instead of releasing the compensation passed an order on 8.11.2007 (Annexure P-5) denying the release of compensation on the pretext that petitioners have a joint khata and they can get their joint khata partitioned by the competent authority for further action regarding payment of compensation. It was specifically submitted by the petitioners that their physical possession is independent and unquestioned by other share holders in the joint khata. The petitioners also offered possession to PUDA after due verification by the revenue agency.

3. In the written statement the stand taken is that the claim of the petitioners has been rejected by the Land Acquisition Collector on the ground that their land is joint with other land owners who had challenged the acquisition proceedings in C.W.P. No. 8155 of 2006. In that regard the relevant portion of the order is extracted below reads thus:

...During the course of hearing, the petitioners disclosed that though die area which have been acquired for phases 4 and 5, Bhatinda is held jointly with other Khewatdar but still their physical possession of the area is independent and unquestioned by other share holders entered in this khatta. They can hand over the possession of this area to PUDA by getting it verified on the spot by the Revenue Agency. On the submission of the petitioners, they were also told that as per provisions made under the Land Acquisition Act, 1894, Section 16 the compensation of their acquired land can only be paid to them as soon as the physical possession of acquired land is taken by the PUDA. Hence in compliance with the orders of Hon"ble High Court dated 24.9.2007 which was received in this office on 15.10.2007 Annexure P-3 application dated 10.8.2007 was considered and the petitioners were

advised to get their possession verified by the S.D.M. Bhatinda and hand it over to the PUDA for taking further action for the payment of due compensation to them, S.D.M. Bhatinda was requested vide his office letter No. 3774 dated 31.10.2007 to submit report accordingly, S.D.M. Bhatinda has sent report alongwith Khasra Girdawari that out of the joint khata, the petitioners are in possession of area independently in the same khasra Nos. owned by other co-sharers. The report of S.D.M. Bhatinda only show the independent possession of area measuring 37 bighas 4 biswas but does not show their partitioned khatta. Hence the petitioners were told to get their joint khata partitioned by the Competent Authority for further action regarding payment of compensation....

4. Mr. Arun Bansal, learned Counsel for the petitioners has submitted that the petitioner is prepared to give up physical possession within two weeks and compensation for die acquired land may be disbursed to them. According to the learned Counsel the challenge by the other co-owners to the acquisition proceedings would not constitute a bar to the disbursement of compensation to the petitioners in respect of their share belonging to the petitioners because they accepted the acquisition of their land. In support of his argument, learned Counsel has placed reliance on para 8 of judgment of Hon"ble the Supreme Court in the case of [Ashwani Kumar Dhingra Vs. State of Punjab](#) .

5. Ms. Madhu Dayal, Learned Deputy Advocate General and Mr. L.S. Virk, learned Counsel for the respondents Nos. 2 and 3 have argued that once the petitioner is a joint owner alongwith others it would be improper to disburse compensation to the petitioners in the absence of partition of land. According to them in the event the writ petition i.e. C.W.P. No. 8155 of 2006 is allowed and the acquisition is set aside then a dispute would arise which part of the land is released from the acquisition in favour of the writ petitioner in C.W.P. No. 8155 of 2006.

6. We have thoughtfully considered the submissions made by the learned Counsel for the parties and have perused the paper book with their able assistance. It is undisputed that a part of land of petitioners comprising in Khasra Nos. 2199(2-11), 2200(3-10), 2208(8-3), 2220 (56-1) totaling 73 bighas 18 biswas situated at Bhagu Road, Bhatinda and in khasra Nos. 2203(3-4), 2204(2-0), 2205(4-11) totaling 9 bighas 15 biswas has been acquired by the respondents. The petitioners have also been issued notices u/s 9 of the Act on 5.5.2006 (Annexures P-1 and P-2). Even die award has been announced granting compensation @ Rs. 30 lacs, per acre alongwith 30% solatium on the awarded amount.

7. The Collector has also awarded compensation in respect of structures/houses, tube wells, hand pumps and trees. It has also been conceded that the petitioners have offered possession of their share in die land which has not been accepted on the pretext of interim directions issued in C.W.P. No. 8155 of 2006. In so far as the petitioners are concerned they have accepted the acquisition and the award subject to their right of enhancement.

8. The only question which requires determination is whether the respondents could refuse to disburse compensation to the petitioners merely on the ground that other co-owners have challenged the acquisition of their land where their dispossession has been stayed. We find that the aforementioned question has to be answered in the negative because the controversy has been put to rest by Hon'ble the Supreme Court in Ashwani Kumar Dhingra's case (supra). In para 8 of the judgment it has been made clear that one co-owner may challenge the acquisition whereas the other may accept the compensation which has to be paid to him. The aforementioned observations read thus:

...One co-owner may challenge the acquisition whereas the other co-owner may be satisfied with the acquisition and ask for compensation and even for enhancement of compensation; other brother may challenge the acquisition proceedings in his own right merely because one brother accepts compensation, other brother is not estopped from challenging acquisition. Similarly, where one co-owner challenges acquisition his rights will not be affected merely because other co-owner had accepted acquisition and the compensation.

(Emphasis supplied)

9. When the facts of the present case are examined in the light of the observations made by Hon'ble the Supreme Court in Ashwani Kumar Dhingra's case (supra) no doubt is left that the respondents are not entitled to withhold compensation in respect of share of the land belonging to the petitioners by deferring it to the date the decision in C.W.P. No. 8155 of 2006 is passed. Therefore, compensation to the petitioners has to be awarded to the extent of their share in the joint land.

10. The argument of the learned State Counsel with regard to partition of the share of the petitioner from the other co-owners has failed to impress us because in the event the C.W.P. No. 8155 of 2006 filed by other co-owners is allowed then the land to the extent of their share can be given to them and the respondents would become co-owner of the land in place of the petitioners.

11. Moreover, the possession of the petitioner is independent and in law they are entitled to protect their possession as has been held by a Five Judges Bench of this Court in the case of [Ram Chander Vs. Bhim Singh and Others](#), R.S.A. No. 815 of 1994 decided on May 23, 2008. In para 22 of the judgment the bench observed as under:

18. It is, therefore, apparent that a co-owner has an interest in the entire property and also in every parcel of the joint land. When a co-sharer alienates his share or a part thereof in the joint holding what he brings forth for sale is what he owns i.e. a joint undivided interest in the joint property. A sale therefore of land from a specific khasra/killi number, forming part of a specific rectangle number, but being a part of a joint khewat, would, in view of the nature of the rights conferred upon a

co-sharer, be deemed to be the sale of a share from the joint khewat and such a vendee would be deemed to be a co-owner/co-sharer in the entire joint khewat, irrespective of the artificial division of the joint land into different rectangles, khasra and killa numbers. It would also be necessary to mention here that where a co-owner in possession of specific portion of the joint holding and recorded as such in the revenue record transfers any right, title or interest from the portion in his specific possession his vendee would be entitled to protect the portion so transferred without, however, asserting exclusive ownership to the portion so transferred and possession till such time as the joint estate is partitioned.

(Emphasis added)

12. Therefore, the right of the petitioners for disbursement of compensation cannot be postponed especially when the petitioners are offering independent possession in respect of the share owned by them.

13. In view of the above, writ petition succeeds. The petitioners shall handover physical possession of the land to the extent of their share to the respondents within a period of one month. The respondents shall within a further period of one month disburse compensation to them in lieu of their share in the land.