

## Yashbir Singh and Another Vs State of Haryana and Others

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** May 1, 2013

**Hon'ble Judges:** Gurmeet Singh Sandhawalia, J; Ajay Kumar Mittal, J

**Bench:** Division Bench

**Advocate:** Shailendra Jain, for the Appellant; Palika Monga, DAG, Haryana, Mr. Kamal Sehgal, Advocate for the Respondent No. 3 and Mr. Akashdeep Singh, Advocate for the Respondent No. 4, for the Respondent

### Judgement

Ajay Kumar Mittal, J.

In this petition filed under Articles 226/227 of the Constitution of India, the petitioners have challenged order dated

28.5.2010, Annexure P. 18 passed by respondent No. 1 in compliance to the order passed by this Court in CWP No. 1917 of 2006 dated

29.10.2007, Annexure P. 16, whereby the representation filed by them for release of their land falling in Khasra No. 103/12/1 measuring 2 kanals

16 marlas situated in the revenue estate of Village Harsaru, Tehsil and District Gurgaon, has been rejected. Briefly, the facts necessary for

adjudication of the controversy involved, as narrated in the petition, may be noticed. The petitioners are joint owners in possession of land

measuring 2 kanals 16 marlas situated in the revenue estate of Village Harsaru, Tehsil and District Gurgaon over which they have constructed their

respective residential houses by spending their savings. The said houses of the petitioners are situated quite close to the extended abadi of Village

Harsaru and are also depicted in the Khasra Girdawan even since 1996. There are houses of their collaterals towards the southern side and a

Human Trust where Gurukul is running. The residential houses of the petitioners alongwith other land became the subject matter of acquisition vide

notification dated 29.1.2003, Annexure P. 7 issued u/s 4 of the Land Acquisition Act, 1894 (in short, "the Act"). The petitioners filed their

objections u/s 5A of the Act on 5.3.2003, Annexures P. 8 and P. 9. Without hearing the petitioners in terms of Section 5A(2) of the Act,

notification u/s 6 was issued on 28.1.2004, Annexure P. 10 by the State Government. Notices u/s 9 of the Act were issued on 6.1.2006,

Annexure P. 12 asking the petitioners to appear before respondent No. 2 on 24.1.2006. The said notices were in violation of Section 9 of the Act

as no 15 days" clear notice was given to the petitioners. On 27.1.2006, Annexure P. 14, award u/s 11 of the Act was announced qua the land

underneath the houses of the petitioners. Clause 5 of the said award provided that since no valuation report had been received from the concerned

department, supplementary award regarding superstructures shall be pronounced later on. On 27.2.2007, Annexure P. 15, supplementary award

was pronounced regarding superstructures. The petitioners are still in actual physical possession of the said residential houses. No procedure as

provided under Order 21 Rule 35 CPC was followed to take possession of the houses of the petitioners. Even otherwise, the possession could not

be taken as there was stay of dispossession in favour of the petitioners as on 27.2.2007 granted by this Court in CWP No. 1917 of 2006 vide

order dated 9.2.2006. The said writ petition was disposed of with liberty to the petitioners to file a representation to the respondent-authorities.

Vide impugned order dated 28.5.2010, Annexure P. 18, respondent No. 1 refused to release the land by holding that the Government had no

power u/s 48 of the Act as the process of acquisition stood completed. According to the petitioners, in the case of Raj Singh etc., the said

authority vide order dated 10.10.2008, Annexure P. 20 released the land despite the fact that acquisition process had already been completed in

the said case. Even this Court in CWP No. 18610 of 2005, Annexure P. 21 while dealing with similar issue directed the respondents to issue

release order in favour of the petitioners. Aggrieved by the action of the respondent-authorities in not issuing release order in favour of the

petitioners in respect of their land, they are before this court through the present writ petition.

2. Learned counsel for the petitioners submitted that there exists a residential house which has been constructed on the land in dispute measuring 2

kanals 16 marlas prior to issuance of notification u/s 4 of the Act. It was urged that the petitioners continue to be in physical possession of the said

land since 1996 and "A" class construction at site is existing. The land appurtenant to the aforesaid land measuring 5 kanals 4 marlas and Khasra

No. 19 have already been released. According to the learned counsel for the petitioners, unless the land vests absolutely in the State u/s 16 of the

Act, the State was not legally authorised to execute conveyance deed in favour of respondent No. 4. Reliance was placed upon following

observations of the Apex Court in Prahlad Singh and Others Vs. Union of India (UOI) and Others, (3) Recent Apex Judgments (R.A.J.) 71 :

(2011) 5 SCC 386:-

13.....Section 16 lays down that once the Collector has made an award u/s 11, he can take possession of the acquired land. Simultaneously, the

section declares that upon taking possession by the Collector, the acquired land shall vest absolutely in the Government free from all

encumbrances. In terms of the plain language of this section, vesting of the acquired land in the Government takes place as soon as possession is

taken by the Collector after passing an award u/s 11. To put it differently, the vesting of land u/s 16 of the Act presupposes actual taking of

possession and till that is done, legal presumption of vesting enshrined in Section 16 cannot be raised in favour of the acquiring authority....

Support was also drawn from the judgment of the Supreme Court in Raghbir Singh Sehrawat Vs. State of Haryana and Others, and Patasi Devi

Vs. State of Haryana and Others, . It was, thus, contended that it is the actual physical possession and not symbolic possession on paper taken by

the State which would vest the property in the Government free from all encumbrances. As the actual physical possession of the land in dispute had

not been taken, therefore, no valid title or third party rights in favour of respondent No. 4 shall be deemed to have been created.

3. Learned counsel for the petitioners prayed for release of land in view of the following findings recorded by the appropriate authority in the order

impugned:-

10. Having gone through the representation submitted by the applicant-petitioners, documents submitted on their behalf during the personal

hearing, documents submitted by Reliance Haryana SEZ Ltd., the report submitted by the HSIDC and the facts narrated by the Additional

Director/Industries, it is clear that:-

i) The applicant-petitioners had constructed their residential house on the subject land (2 kanal 16 marlas) much prior to the issue of Section 4

notification;

ii) The petitioners continue to be in physical possession of Khasra Nos. 103//12/1 [2-16] since 1996 and there exists a residential house with "A"

Class construction at site.

iii) The remaining adjoining land of Khasra No. 103//12, i.e. 5 kanals 4 marlas and Khasra No. 19 have already been released.

iv) There is an existing passage to the village abadi and as such if this land is released, there is no problem regarding provision of access to the site;

v) The applicant-petitioners had filed objections u/s 5A but did not avail of the opportunity of appearing before the officers" committee constituted

for the purpose;

vi) The location of the subject land is such, even though it can be integrated with the SEZ land, it would not in any manner adversely impact the

integrated planning of the area, if released.

vii) Even though the applicant-petitioners continue to be in physical possession of the subject land and the house thereon, the paper possession of

the subject land had been handed over to the HSIDC. The HSIDC had also further conveyed the land in favour of the Reliance Haryana SEZ

Limited, thereby creating third party rights.

It was contended that having recorded the aforesaid findings, it was incumbent upon the appropriate authority to have released the land u/s 48 of

the Act. Reference was made to various decisions of the Apex Court in *Murari and Others Vs. Union of India (UOI) and Others*, *M/s. Larsen*

and *Toubr Ltd. Vs. State of Gujarat and Others*, *Shanti Sports Club and Another Vs. Union of India (UOI) and Others*, Recent Apex

Judgments (RAJ.) 210 : (2009) 15 SCC 705, *Rajinder Singh Bhatti and Others Vs. State of Haryana and Others*, Delhi Airtel Services Pvt. Ltd.

and *Another Vs. State of U.P. and Another*, and Full Bench decision of this Court in *Ram Murti Sarin and Others Vs. State of Haryana and*

*Others*,

4. On the other hand, learned State counsel supported the order passed by the respondent-authorities.

5. After giving thoughtful consideration to the respective submissions made by learned counsel for the parties, we find merit in the writ petition.

6. Section 16 of the Act lays down that once the Collector has made an award u/s 11, he is entitled to take possession of the acquired land. On

taking actual physical possession, the acquired land vests absolutely in the Government free from all encumbrances. Admittedly, in the present

case, physical possession of the land had not been taken by the State. Thus, without vesting of the property in the State Government, the

conveyance deed would not confer legal and valid title in favour of respondent No. 4.

7. Examining the issue relating to release of land, it would be apposite to notice the findings recorded by the concerned authority. It was recorded

that there was construction of a residential house on Khasra No. 103/12/1 measuring 2 kanals 16 marlas which was raised prior to the issuance of

notification u/s 4 of the Act. It was also noticed that there was an existing passage to the village abadi and in case the land in dispute was released,

there was no problem regarding provision of access to the site. It was further noticed that the location of the said land was such that even if it was

integrated with the SEZ land, it was not to adversely affect or impact the integrated planning of the area in the event of its release. Possession of the

petitioners on the land in dispute was not disputed whereas it was held to be paper possession which had been delivered to the Haryana State

Industrial Development Corporation Limited (HSIDC). It was also observed that balance of convenience was in favour of the petitioners and there

was merit in releasing the disputed land. However, it was held that the same cannot be released by invoking the provisions of Section 48 of the Act

and the petitioners could approach the High Court as the acquisition process stands completed and third party rights had been created in favour of

M/s. Reliance Haryana SEZ Limited.

8. It would now be apt to analyse the scope of Section 48 of the Act which deals with the circumstances in which the State Government can

withdraw from the acquisition. It reads thus:-

48. Completion of acquisition not compulsory, but compensation to be awarded when not completed.-

(1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which

possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage

suffered by the owner in consequence of the notice or of any proceedings there under, and shall pay such amount to the person interested, together

with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provision of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

Section 48(1) of the Act empowers the State Government to withdraw from the acquisition of the land on fulfillment of two conditions, namely; (i)

the case is not provided u/s 36 of the Act and (ii) where the possession of any land has not been taken. Under Sub section (2) of Section 48 of the

Act, the rights of the owner of the land are protected in as much as the land owner is entitled for the compensation on account of any damage

suffered in consequence of the acquisition proceedings. Sub section (3) of Section 48 of the Act provides regarding quantum of compensation to

be determined in such circumstances.

9. In Larsen & Toubro Limited's case (supra), the Supreme Court considered the question whether the power u/s 48(1) of the Act can be

exercised by the Government without notifying the factum of withdrawal to the beneficiary of the acquisition. It was laid down as under:-

30.....When Sections 4 and 6 notifications are issued, much has been done towards the acquisition process and that process cannot be reversed

merely by rescinding those notifications. Rather it is Section 48 under which, after withdrawal from acquisition is made, compensation due for any

damage suffered by the owner during the course of acquisition proceedings is determined and given to him. It is, therefore, implicit that withdrawal

from acquisition has to be notified.

31. Principles of law are, therefore, well settled. A notification in the Official Gazette is required to be issued if the State Government decides to

withdraw from the acquisition u/s 48 of the Act of any land of which possession has not been taken. An owner need not be given any notice of the

intention of the State Government to withdraw from the acquisition and the State Government is at liberty to do so. Rights of the owner are well

protected by sub-section (2) of Section 48 of the Act and if he suffered any damage in consequence of the acquisition proceedings, he is to be

compensated and sub-section (3) of Section 48 provides as to how such compensation is to be determined. There is, therefore, no difficulty when

it is the owner whose land is withdrawn from acquisition is concerned....

10. In Rajinder Singh Bhatti's case (supra), the Supreme Court while considering the requirement of publication of notification in respect of

withdrawal of acquisition u/s 48 of the Act had observed as under:-

31. It is true that Section 48 does not in express terms require the decision of the government for withdrawal of acquisition to be published in the

official gazette. In Abdul Majeed, this Court has held that there should be publication of the withdrawal of the notification published u/s 4(1) and

declaration u/s 6 by exercising power u/s 48(1). Even on first principles, such requirement appears to be implicit. The Act provides for the

publication of notification and declaration under Sections 4 and 6 of the Act in official gazette. Obviously the withdrawal from land acquisition

proceedings by taking resort to Section 48(1) of the Act also must be in the like manner. As a matter of fact, this aspect is no more res integra.

The Hon"ble Supreme Court concluded that decision of the Government for withdrawal from acquisition has to be published in the Official

Gazette.

11. The Hon"ble Apex Court in Shanti Sports Club's case (supra) had noticed as under:-

38. xx xx xx xx xx.....As a necessary concomitant, it must be held that the exercise of power by the government u/s 48(1) of the Act must be made

known to the public at large so that those interested in accomplishment of the public purpose for which the land is acquired or the concerned

company may question such withdrawal by making representation to the higher authorities or by seeking courts intervention. If the decision of the

Government to withdraw from the acquisition of land is kept secret and is not published in the official gazette, there is every likelihood that

unscrupulous land owners, their agents and wheeler-dealers may pull strings in the power corridors and clandestinely get the land released from

acquisition and thereby defeat the public purpose for which the land is acquired. Similarly, the company on whose behalf the land is acquired may

suffer incalculable harm by unpublished decision of the Government to withdraw from the acquisition.

39. The requirement of issuing a notification for exercise of power u/s 48(1) of the Act to withdraw from the acquisition of the land can also be

inferred from the judgments of this Court in Municipal Committee, Bhatinda Vs. Land Acquisition Collector and Others, U.P. State Sugar Corpn.

Ltd. Vs. State of U.P. and Others, , State of Maharashtra and Another Vs. Umashankar Rajabhau and Others, and State of T.N. and Others Vs.

L. Krishnan and Others,

12. In view of the above, as respondents No. 1 to 3 had not taken actual possession of the land in dispute, the State is empowered to release the

land in question. Further, the release of land u/s 48(1) of the Act is required to be published in the Official Gazette. Accordingly, it is held that the

appropriate authority was not right after recording the findings in favour of the petitioners for not issuing release notification in terms of Section 48

of the Act. As a result, the writ petition is allowed and the order dated 28.5.2010, Annexure P. 18 impugned herein is set aside to the extent that

the State Government shall issue requisite notification in terms of Section 48 of the Act for release of the land within two months from the date of

receipt of a certified copy of the order.