Before Surya Kant & R. P. Nagrath, JJ.

YASHBIR SINGH AND ANOTHER—*Petitioner*

versus

STATE OF HARYANA AND OTHER—*Respondents*

CWP No. 18446 of 2011

May 01, 2013

Land Acquisition Act, 1894 - Ss. 4, 5A, 6, 9, 11, 16, 48 - Constitution of India, 1950 - Art. 226/227 - Code of Civil Procedure, 1908 - O. XXI Rl. 35 - Petitioners joint owners in possession of land over which residential houses have been constructed - Land acquired - Objections filed but without hearing them notice under Section 6 issued - Notices under Section 9 issued - Petitioners claim that

15 days clear notice not issued which was a violation of Section 9 - Award under Section 11 qua land beneath the houses - Supplementary award pronounced qua superstructure - Physical possession still with Petitioners - Question is whether land could be released after completion of acquisition process and whether State can execute conveyance deed unless the land vests in it absolutely? Held that without vesting of actual physical possession in the State Government, conveyance deed cannot be executed - Petition allowed.

Held, that Section 16 of the Act lays down that once the Collector has made an award under Section 11, he is entitled to take possession. 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 of the acquired land.

(Para 7)

Further held, that 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 under Section 48(1) of the Act is required to be published in the Official Gazette.

(Para 13)

Petition Allowed.

Shailendra Jain, Advocate, *for the petitioners.*

Palika Monga, DAG, Haryana.

Kamal Sehgal, Advocate for respondent No.3.

Akashdeep Singh, Advocate for respondent No.4.

AJAY KUMAR MITTAL, J.

(1) 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.

(2) 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 Girdawari 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 under section 4 of the Land Acquisition Act, 1894 (in short, "the Act"). The petitioners filed their objections under Section 5-A 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 under Section 6 was issued on 28.1.2004, Annexure P.10 by the State Government. Notices under Section 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 under Section 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 under section 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.

(3) 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 under Section 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 under Section 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*** versus ***Union of India and others (1)*** :

> "13.....Section 16 lays down that once the Collector has made an award under Section 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 under Section 11. To put it differently, the vesting of land under Section 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...."

(6) (2011) 5 SCC 386

Support was also drawn from the judgment of the Supreme Court in ***Raghbir Singh Sehrawat*** versus ***State of Haryana and others (2)*** and ***Patasi Devi*** versus ***State of Haryana and others (3).*** 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.

(4) 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:-
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> (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;
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> (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.
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> (iii)The remaining adjoining land of Khasra No.103//12, i.e. 5 kanals 4 marlas and Khasra No.19 have already been released.
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> (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;
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> (v) The applicant – petitioners had filed objections under Section 5-A but did not avail of the opportunity of appearing before the officers' committee constituted for the purpose;

(2) (2012) 1 SCC 792

(3) 2012(9) SCC 503.

(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 under Section 48 of the Act. Reference was made to various decisions of the Apex Court in ***Murari and others*** versus ***Union of India and others (4), M/s Larsen and Toubro Limited etc.*** versus ***State of Gujarat and others (5), Shanti Sports Club and another*** versus ***Union of India and others (6), Rajinder Singh Bhatti and others*** versus ***State of Haryana and others (7), Delhi Airtech Services (P) Limited*** versus ***State of UP (8)***, and Full Bench decision of this Court in ***Ram Murti Sarin and others*** versus ***State of Haryana and others***, CWP No.18567 of 2012 decided on 1.2.2013.

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

(6) After giving thoughtful consideration to the respective submis ions made by learned counsel for the parties, we find merit in CWP No.18446 of 2011 7 the writ petition.

(7) Section 16 of the Act lays down that once the Collector has made an award under Section 11, he is entitled to take possession of the acquired land. On taking actual physical possession, the acquired land vests

(4) (1997) 1 SCC 15
(5) (1998) 4 SCC 387
(6) (2009) 15 SCC 705
(7) (2009) 11 SCC 480
(8) (2011) 9 SCC 354

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.

(8) 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 under Section 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.

(9) 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.
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> (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 fulfilment of two conditions, namely; (i) the case is not provided under Section 36 of the Act and (ii) where the possession of any land has not been taken. Under Sub CWP No.18446 of 2011 9 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.

(10) In ***Larsen & Toubro Limited's*** case (supra), the Supreme Court considered the question whether the power under Section 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.
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> 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 under Section 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...."

(11) In ***Rajinder Singh Bhatti***'s case (supra), the Supreme Court while considering the requirement of publication of notification in respect of withdrawal of acquisition under Section 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 under Section 4(1) and declaration under Section 6 by exercising power under Section 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.

(12) 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 under Section 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 fo 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 under Section 48(1) of theAct to withdraw from the acquisition of the land can also be inferred from the judgments of this Court in Municipal Committee, Bhatinda v. LandAcquisition Collector and others (1993) 3 SCC 24 (para 8), U.P. State Sugar Corporation Ltd. v. State of U.P. and others (1995) Supp 3 SCC 538 (para 3), State of Maharashtra and another v. Umashankar Rajabhau and others (1996) 1 SCC 299 (para 3) and State ofT.N. and others v. L. Krishnan and others (1996) 7 SCC 450 (para 7)."

(13) 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 under Section 48(1) of the Act is required to be published in the Official Gazette.

(14)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.

M. Jain