IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-9798-2007
Reserved on: 17.12.2024
Date of Decision : January 21, 2025

PUDA

...Petitioner

V/S

SHER SINGH (DECEASED) THROUGH LRs AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present : Mr. Rupinder Singh Khosla, Advocate and
Mr. Yogender Verma, Advocate
for the petitioner.

Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Gursher Singh Dhilon, Advocate
for respondent No.1.

Mr. Maninderjit Singh Bedi, Addl. A.G., Punjab.

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SURESHWAR THAKUR, J.

1. The instant writ petition has been filed claiming thereins the hereinafter extracted reliefs:

> (i) For issuance of an appropriate writ, order or direction, especially a writ in the nature of Certiorari quashing the order dated 06.02.2007 (Annexure P-5) passed by respondent No.2 in the revision petition filed by respondent No.1 under Section 45(8) of the Punjab Regional and Town Planning and Development Act, 1995 against the order dated 11.09.2006 (Annexure P-4) passed by the Additional Chief Administrator, PUDA vide which the application of respondent No.1 praying

for re-allotment/adjustment of his house had been dismissed by passing a speaking order.

(ii) For issuance of a writ in the nature of certiorari quashing the order dated 13.06.2007 (Annexure P-6) passed by respondent No.2 dismissing in limine the review petition filed by the petitioner.

2. Vide Award No.481, land situated in the Revenue Estate of Village Sohana, Hadbast No.35, Khewat No.721, 720 Khasra No.72//17 Min, 14/1 Min, near the abadi deh of Village Lakhnaur, was acquired by the Land Acquisition Collector for developing new Sectors No.76 to 80, as an extension of the then existing Mohali. Respondent No. 1 had filed objections under Section 5-A of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act of 1894') and, same were heard and forwarded to the Secretary Housing and Urban Development. The objections filed by Respondent No.1 rather became rejected by Secretary, Housing and Urban Development, vide letter No.112/01 and the land stood acquired.

3. The acquired land was in the joint khata, owned by five share-holders as brothers i.e. Smt. Harbachan Kaur wife of Gurdev Singh, Sher Singh, Sarwan Singh, Ranjit Singh and Jasbir Singh, as such respondent No. 1, had 1/5th share in the property. All the four share-holders other than respondent No.1, collected their share of determined compensation amount, whereas, the compensation amount of Rs.9,47,295/-, thus falling to the share of Respondent No.1, is lying deposited with the learned Reference Court.

4. Respondent No.1 filed Civil Writ Petition No.5606 of 2003 praying for quashing the Notification issued under Section 4 of the Act of 1894, besides for the making of a direction upon the Respondents therein, to adjust/re-allot land/residential house to him. Vide order dated 13.11.2003,

this Hon'ble High Court, reserved liberty to Respondent No.1 to make an application within 3 weeks and the orders thereons were to be passed within 6 weeks after considering the case in terms of para 7 of the reply.

5. Pursuant to order dated 13.11.2003, No. 1 submitted the apposite application. After considering the apposite application, thus in terms of the policy dated 26.09.2001, thereupon ACA (Mohali), thus vide order dated 25.03.2004, rejected the claim of Respondent No.1, primarily on the ground that since in terms of the planning vis-a-vis Sector 76, thus the house of Respondent No.1 falls on the 115' wide road whereupons there was no amenability for releasing the house of the present respondent No.1 from acquisition. Moreover, it is also detailed that since the subject lands are co-owned by other co-sharers and when the other co-sharers had already received compensation, therebys also the house of the present petitioner cannot be released, relevant portion whereof becomes extracted hereinafter.

> *"According to the Oustee policy, the petitioner can apply in the office of Estate Officer, PUDA, PUDA Bhawan, Sector – 62, Mohali for allotment of a plot. As per the policy, on receipt of his application within the stipulated time, can be considered for the allotment of plot."*

6. Respondent No.1 filed an appeal against the order dated 25.03.2004 before the Secretary Housing and Urban Development, who after observing that the application of Respondent No.1, had been considered only in terms of PUDA's policy appertaining to allotment of pots to the oustees, instead of considering the same in terms of policy dated 26.09.2001, therebys vide his order dated 05.10.2004, the Secretary Housing and Urban Development, set aside the order dated 25.03.2004 and remanded the case to Additional Chief Administrator, Mohali, to consider the case in accordance

with the directions contained in the order dated 13.11.2003 and pass a speaking order within 2 months after hearing Respondent No. 1.

7. Respondent No. 1 was heard in person by the Additional Chief Administrator on 30.08.2006. He argued that as the houses falling in Akal Ashram colony and occurring on the left side of Mohali-Landran road rather have been adjusted, thereupon his house should also be adjusted in the same manner. He further argued that the External Development Charges may be charged @ Rs.2 lacs per acre as has been done in the case of Radha Swami Satsang Beas.

8. Learned ACA, Mohali, after getting a report from the Land Acquisition Collector and District Town Planner and after seeking the comments from Chief Engineer, GMADA, and SLO (HQ) GMADA, in addition hearing to hearing Respondent No.1 in person, rejected the claim of Respondent No.1 by passing a speaking order on grounds mentioned therein.

9. Respondent No.1 preferred a Revision Petition, under Section 45(8) of the Punjab Regional and Town Planning and Development Act, 1995 (hereinafter referred to as 'the Act of 1995'), thus against the order dated 11.09.2006, as became passed by the ACA, Mohali, hence before the Principal Secretary Housing and Urban Development.

10. The Principal Secretary, Housing and Urban Department, vide order dated 06.02.2007 (Annexure P-5) allowed the Revision Petition and directed the Chief Administrator, GMADA to re-allot the house to the petitioner on "as is where is basis" subject to the payment of EDC charges and subject to other conditions specified in the Public Notice dated 26.09.2001, relevant paragraph whereof becomes extracted hereinafter.

> *"Since the said consideration has not taken place at the level of PUDA, I am of the confirmed opinion that a material irregularly patent to the fact of record, in the impugned order dated 25.3.2004 has accrued. As such, I have no hesitation in accepting the revision petition, setting aside the impugned order dated 25.3.2004 and remanding the case back to Additional Chief Administrator, PUDA, Mohali to consider the application of the petitioner strictly in accordance with the directions contained in order dated 13.11.2003 passed by the Hon'ble Punjab and Haryana High Court in Civil Writ Petition No. 5606 of 2003. The Additional Chief Administrator, PUDA, Mohali shall pass a speaking order within two months after affording the petitioner a reasonable opportunity of being heard. With these remarks this revision petition is disposed of as partly accepted. The petitioner is directed to appear before the Additional Chief Administrator, PUDA, Mohali on 18.10.2004."*

11. Since the Revision Petition was conditionally allowed, as such the petitioner herein filed a review petition to bring to the kind notice of respondent No.2, some very vital and important facts, as detailed in paragraph 14 and in paragraph 15 of the writ petition, which however could not be brought to his notice at the time of hearing of the Revision Petition. However, respondent No.2 dismissed in limine, the Review Petition filed by the present petitioner, which has led the present petitioner to institute the instant writ petition before this Court.

Submissions of the learned counsel for the petitioner

12. The learned counsel for the petitioner has submitted that during the hearing of a bunch of Civil Writ Petitions along with CWP No.9923 of 2004, by this Court, an Affidavit dated 13.04.2007 was filed on behalf of the petitioner herein, informing this Court that certain persons who had got stay orders in their favour, qua the acquisition of their lands, were creating obstacles in the laying of the pipeline for the Sewerage Plant for catering to

the needs of Sectors 76 to 80. After perusal of the affidavit, this Court was pleased to vacate the stay in all those cases which were coming/ likely to come in the way of laying of the said Sewerage Pipeline. The counsels for all such petitioners thereins, over whose lands, the said Sewerage Pipeline was to pass, had given an undertaking that none of the petitioners shall oppose the laying of the Sewerage Line, through their lands, and that regarding acquisition of the rest of their lands, the matter would be argued on the adjourned date. After recording the undertaking given by the counsels concerned, the entire bunch of Writ Petitions was adjourned to 08.08.2007.

13. It is contended on behalf of the present petitioner, that in case the impugned order dated 06.02.2007 (Annexure P-5) passed by Respondent No. 2 and also the passing of the dismissal order dated 13.06.2007 (Annexure P-6) on the Review Petition, thus becomes validated, thereupons but compliance would become rendered to the order dated 06.02.2007, as passed by Respondent No.2, wherebys the house of respondent No.1 is directed to be adjusted/ re-allotted, wherebys it would adversely affect the planning of the entire area, besides it would settle an ill precedent. Moreover, therebys it would not be possible to complete the laying of the Sewerage Line within the period specified in the affidavit dated 01.02.2007, as, become preferred by ACA, Mohali on behalf of GMADA, in this Court in CWP No. 9923 of 2004 titled as '***Sampuran Singh versus State of Punjab***'.

14. For the reasons to be assigned hereinafter the invocation of remedy contemplated in Section 45(8) of the Act of 1995, thus was a mis-recoursed remedy.

15. Through the exercising of the power of eminent domain, the respondent concerned, thus issued the instant acquisition notification. The said notification become issued under Section 4 of the Act of 1894, and became succeeded by a declaration becoming made under Section 6 of the Act of 1894. Moreover, and subsequently an award in terms of Section 11 of the Act of 1894 became passed. In addition, when the compensation amount determined thereunders has been received by all co-owners excepting respondent No.1.

16. Consequently, when therebys all co-owners excepting respondent No.1, but acquiesce to the making of a valid award in respect of the subject lands. Resultantly, therebys the respondent No.1 also becomes estopped to agitate against the makings of valid acquisition of the acquired lands/structures thus as raised thereovers. In case the said estoppel is not created, therebys when the award for (supra) reason rather acquires conclusivity against the other co-owners, wherebys despite the subject house being co-owned. Resultantly, yet the effect of conclusivity becoming garnered qua the instant award, as passed vis-a-vis the co-owners but would become negated. Significantly as upon accepting the respondent No.1's plea rather the other co-owners vis-a-vis the subject house would also be untenably permitted to claim their respective shares thereins.

17. Conspicuously the award in respect of the subject lands become pronounced in the year 2001. Moreover, when an apposite reference petition has been raised thereagainst, thus by the aggrieved land-losers concerned, thereupons if the said reference petition, if allowed, but, if is to be lawfully allowed, therebys when the recoursable remedy qua the present respondent No.1, thus is the statutory remedy as engrafted in Section 28(A) of the Act of

1894, than his filing the instant remedy. Consequently, with the above remedy becoming open to be recoursed by present respondent No.1 but therebys makes the instant remedy to be a mis-invoked remedy.

18. Apparently, the subject lands are co-owned by five share-holders, wherebys the canon appertaining to the unity of title and community of possession rather inhering in all the co-owners, thus is applicable to the subject house. If the said principle becomes eroded, through granting relief to the present respondent No.1, therebys without any lawful dismemberment of the joint lands taking place, rather there would be an impermissible endowment of right, title and interest over the subject lands/house to the present respondent No.1. Emphasizingly also, when for all the (supra) acquiescences rather the other co-owners become estopped besides also therebys the present respondent No.1 also becomes estopped to claim any right, title and interest over the subject lands/house.

19. Since respondent No.1 has not challenged the launching of acquisition proceedings, thus on the ground that the said launched acquisition (supra), became lapsed, as envisaged under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the Act of 2013'), therebys too, the instantly launched acquisition proceedings are deemed to be lawfully launched, besides therebys there is no permissibility to the present respondent No.1, rather make any effective espousal, for causing nullification of the said lawfully launched acquisition proceedings.

20. Though the said writ petition (CWP-5606-2003) became decided on 13.11.2003. However, a reading of the operative part of the decision made thereons, operative part whereof becomes extracted

hereinafter, rather unveils that though the respondent No.1 made an unsuccessful challenge to the acquisition proceedings, but yet directions were made to the respondent concerned to, if the petitioner moves an application within three weeks from the date concerned, qua the same being considered in the wake of the relevant policy Annexure R-1, and also an appropriate lawful orders becoming passed thereons, but as expeditiously as possible and preferably within six weeks from the date of making of such application.

> *"In view of the statement made by the learned counsel for the parties, we direct that if the petitioner moves an application within three weeks from today, the same shall be considered in the wake of policy Annexure R-1 and appropriate orders in accordance with law shall be passed therein as expeditiously as possible and preferably within six weeks from the date of making of such application"*

21. Pursuant to the said liberty becoming granted to respondent No.1, he made a representation which however became rejected through Annexure P-2. Though the remedy available respondent No.1 rather was to challenge the rejection order (Annexure P-2) through his filing a writ petition. However, he did not avail the said remedy. The consequence of respondent No.1 omitting to avail the said remedy, is that, the order rejecting his claim, thus acquires binding and conclusive effect.

22. Now since the present respondent No.1, than his raising the said remedy has availed the remedy under Section 45(8) of the Act of 1995, therebys thus the availment of the said remedy for the reasons assigned hereinafter, rather is a mis-availed remedy.

a) After conclusion of acquisition proceedings in respect of the subject lands, and, also when for reasons (supra) rather conclusivity becomes acquired by the order of rejection as made on the respondent No.1's application, thereupon the effect of (supra) conclusivity becoming acquired through the passing of the speaking order (Annexure P-2), thus by the competent authority, wherebys the relief of re-allotment/ re-adjustment, to the present respondent No.1, but becomes declined. Consequently, the respondent No.1 became estopped to recourse the remedy under the present statute, which obviously is a statute rather contra distinct to the special applicable statute inasmuch as, the Act of 1894, whereunders acquisition proceedings were launched and also became conclusively and effectively concluded, besides thereunders alone any plea for re-allotment/re-adjustment, thus could be claimed.

23. If this Court yet agrees to the availment of the instant remedy by respondent No.1, therebys it would open a host of impermissible legal avenues to the land-losers concerned, who after receiving binding and conclusive awards, thus rendered in terms of the relevant statute relating to the employments of the doctrine of *eminent domain* by the State, thus would escape the rigors of the (supra) employments vis-a-vis their respective lands. The said would result in this Court proceeding to rid of efficacy, thus the binding and conclusive awards as become passed by the authorities, as contemplated in the said statute i.e. the Act of 1894.

24. Therefore, the (supra) is to be avoided. In aftermath, the statute whereunders an appropriate remedy, thus was to become canvassed, was the

writ remedy for therebys his successfully challenging the passing of the rejection order (supra) i.e. Annexure P-2. Since the said permissible remedy remains unavailed, therebys the recoursings of an impermissible remedy at the instance of present respondent No.1, is a mis-availed remedy at the instance of respondent No.1.

25. This Court finds merit in the instant writ petition and with the observation(s) aforesaid, the same is allowed. Impugned order dated 06.02.2007 (Annexure P-5), is quashed and set aside.

(SURESHWAR THAKUR)
JUDGE

21.01.2025 **(SUDEEPTI SHARMA)**
JUDGE

Ithlesh

Whether speaking/reasoned:- Yes/No
Whether reportable: Yes/No