

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.12025 of 1998(O&M)

Date of decision:20.4.2015

Bhim Singh

....Petitioner

VERSUS

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. J.S. Hooda, Advocate for the petitioner.

Mr. Vishal Garg, Additional Advocate General, Haryana.

HEMANT GUPTA, J.(Oral)

The challenge in the present writ petition is to the notification under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') published on 05.05.1997 and notification under Section 6 of the Act published on 04.05.1998.

The petitioner was owner of 9 bigha 7 biswa of land but has sold 1 bigha out of Khasra No.546 measuring 6 bigha 3 biswa to M/s Meghdoot Pvt. Ltd.. The remaining land, as per the petitioner, became subject matter of acquisition vide the aforesaid notification under Section 4 of the Act. However, while publishing notification under Section 6 of the Act, 94 acres of land was not made part of the declaration.

The grievance of the petitioner is in respect of land measuring 2 bigha 6 biswa falling in Khasra No.546 on the ground

that the said area has a constructed portion and therefore, in terms of the policy of the State Government, the construction raised prior to publishing of notification under Section 4 of the Act should not have been acquired but still the land of the petitioner has been acquired.

In written statement, the stand of the respondent is that the area over which construction was raised was excluded from acquisition while publishing notification under Section 6 of the Act. Khasra No.546/2 measuring 2 bigha 6 biswa 8 biswasi was therefore, declared under Section 6 of the Act as required for the public purpose.

In an additional affidavit dated 11.03.2015 filed by the respondents, it is pointed out that total 6 bigha and 6 biswasi (approximately 3.75 acres) land was notified under Section 4 of the Act, out of which 2 bigha 1 biswa and 10 biswasi land was left out after hearing the objections under Section 5-A of the Act including land over which the residential houses were constructed. Notification under Section 6 was issued with respect to the remaining land measuring 3 bigha 18 biswa and 16 biswasi (2.46 acres) leaving 1 bigha and 3 biswa (3477.6 square yards) of land for the reason that there were residential houses of the land owner. It was pointed out that in terms of the survey report conducted now only land measuring 2206.32 square yards should have been excluded from the declaration assuming that all the three residential houses indicated in the fresh survey report were in existence at the time of issuance of notification under Section 4 of the Act. It was thus pointed out that an exchange proposal has been worked out to accommodate both the residential houses constructed in Khasra No.546/2. Thus, an area measuring

719.66 along with equivalent open space is proposed to be exchanged with equivalent area available in released Khasra No.549. Such proposal has been approved by the Government on 16.11.2014. Thus, the respondents have sought permission of this to implement the exchange proposal. In the affidavit, it has also been mentioned that the petitioners can also be invited to give their suggestions on the spot with respect to the piece of land proposed to be exchanged so that it is suitable for both i.e. the petitioner and Haryana Urban Development Authority to enter into an agreement of exchange.

Learned counsel for the petitioner accepts the proposal given in the affidavit dated 11.03.2015.

In view thereof, the present writ petition is disposed of with direction to the respondents to release the total area measuring 1439.32 square yards including open area in lieu of land comprising in Khasra No.549. It shall be open to the petitioner to choose the open area adjoining his construction for the purpose of release as per the affidavit dated 11.03.2015 within two weeks from today.

The present writ petition, thus, stands disposed of accordingly.

(HEMANT GUPTA)
JUDGE

APRIL 20, 2015
‘D. Gulati’

(LISA GILL)
JUDGE