

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

CWP No.11623 of 2007

Date of decision:12.8.2015

Smt. Parkash Kumari Jain

....Petitioner

VERSUS

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Sumeet Goel, Advocate for the petitioner.

Mr. Sudeep Mahajan, Additional Advocate General, Punjab
for respondents No.1 to 3.

Ms. Vandana Sharma, Advocate
for respondent No.4. *****

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') dated 21.09.2006 and the declaration dated 25.05.2007 published under Section 6 of the Act.

The petitioner has challenged the acquisition proceedings, inter alia, on the ground that he has raised a residential house over the land which is subject matter of acquisition, which as per the policy of the State Government should not have been acquired. This Court granted an interim order staying dispossession of the petitioner on 27.08.2007.

Ms. Monga has referred to site plan (Annexure R-3/1) which if read along with Annexure P-16 produced by the petitioner shows that

major portion of house No.632/30 of the petitioner falls in the road alignment.

Keeping in view the judgment of Hon'ble Supreme Court in Sube Singh & others v. State of Haryana & others, (2001) 7 SCC 545 and Jagdish Chand Vs. State of Haryana, (2005) 10 SCC 162, we find that the construction portion if it falls on the road alignment can be acquired.

In Jagdish Chand's case (supra), the Court held that the direction to exempt structure from acquisition will not come in the way of authorities if required for the purpose of road and hospital and other civic amenities. It has been held:

“8. In view of what is stated above, we do not find any good reason as to why directions as given in the case of Sube Singh v. State of Haryana, (2001) 7 SCC 545 should not be given in these cases as well, subject to certain restrictions to take care of the planned development of the area. Accordingly, the impugned judgments are set aside and the appeals are allowed in the following terms:

1. The Secretary, Urban Estates Department, State of Haryana is directed to consider the objections of the appellants only so far it relates to exclusion of the land to the extent occupied by the structure and appropriate open area around the structure for the beneficial enjoyment of the appellants. However, this direction shall not come in the way of the authorities in removing the structures, if required for the purposes of road, hospital and other civic amenities.
2. The Secretary, Urban Estates Department shall decide not only the existence of the structures prior to Section 4(1) notification or subsequent to, he shall also decide the extent of structure which existed prior to Section 4(1) notification.
3. It is also open to the authorities to make adjustment or readjustment of plots for the purpose of planned development and in case it becomes necessary to give a little additional area from the plots to the appellants, the appellants shall be bound to take that additional area and also be bound to pay cost of such area as is chargeable to other allottees. The appellants shall also be bound to pay the developmental charges as is charged from

other allottees. It is open to the parties to place documents or material in support of their contentions.

9. We expect that as far as possible, the respondents shall try to retain the structures, unless it becomes difficult for them to have a planned development without removing them in view of what is stated above.”

In view of the said fact, we do not find any merit in the present writ petition as the land/house is required for the purpose of road.

Dismissed.

(HEMANT GUPTA)
JUDGE

AUGUST 12, 2015
‘D. Gulati’

(SHEKHER DHAWAN)
JUDGE