

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

Date of Decision: 01.04.2015

CWP No.19374 of 2007

Rajpal Yadav & others

...Petitioners

Versus

The State of Haryana & others

...Respondents

Present: Mr. Rupinder Khosla, Senior Advocate, with
Mr. Aman Sharma, Advocate, for the petitioners.

Mr. Lokesh Sinhal, Addl. AG, Haryana,
for respondent Nos.1, 3 & 4.

Mr. Amar Vivek, Advocate,
for respondent No.2.

Mr. C.B.Goel, Advocate,
for respondent Nos.6 & 7.

Mr. R.S.Rai, Senior Advocate, with
Mr. Harsh Bangar, Advocate, for respondent No.13-M/s DLF Ltd.

CWP No.3004 of 2008

Smt. Krishna Devi & others

...Petitioners

Versus

The State of Haryana & others

...Respondents

Present: Mr. Shailendra Jain, Senior Advocate, with
Ms. Manu Chaudhary, Advocate, for the petitioners.

Mr. Lokesh Sinhal, Addl. AG, Haryana,
for respondent Nos.1 & 2.

Mr. Amar Vivek, Advocate,
for respondent No.3.

Mr. R.S.Rai, Senior Advocate, with
Mr. Harsh Bangar, Advocate, for respondent No.4 – M/s DLF Ltd.

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL

HEMANT GUPTA, J.

This order shall dispose of aforementioned two writ petitions i.e. CWP No.19374 of 2007 and CWP No.3004 of 2008, challenging acquisition of land situated in Village Dundahera, Tehsil & District Gurgaon, which was intended to be acquired vide notifications dated 03.10.2006 and 01.10.2007 issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short 'the Act') respectively. However, for the facility of reference, the facts are taken from CWP No.19374 of 2007.

Vide aforesaid notifications, apart from the land measuring 13.15 acres situated in Village Dundahera, land measuring 293.45 acres and 25.09 acres situated in Village Nathupur and Village Sikenderpur Ghosi respectively was also intended to be acquired. The 8 kanals of the land owned by the petitioners is said to be included in the notification dated 03.10.2006 under Section 4 of the Act. The petitioners filed objections under Section 5-A of the Act. The petitioners pleaded that their land abuts NH-8, DLF, Phase-III, Shankar Chowk, Gurgaon and is near to Green Belt. The petitioners claimed to have constructed a residential house and also installed a nursery for commercial plantation and landscaping. The petitioners alleged to have spent crores of rupees in construction and plantation of various trees from time to time. The petitioners also submitted a representation on 29.01.2007 to the Hon'ble Chief Minister, Haryana to release the land on the following humanitarian grounds:

- “1. We have constructed one residential house on this land and residing since last more than 25 years.
2. Our all other land have already been acquired by HUDA.
3. We are 04 brothers staying as joint family having 18 members in family on date.

4. We have one small commercial Nursery on this land for our survival.
5. We grow feeds for our domestic animals (Cows and Buffalos) on this land.
6. This land is ancestral and coparcenaries.”

Subsequently, vide notification dated 01.10.2007 issued under Section 6 of the Act, land measuring 13.15 acres, 15.82 acres & 175.96 acres situated in Villages Dundahera, Sikenderpur Ghosi and Nathupur respectively was declared to be acquired for a public purpose namely ‘for the development and utilization of land for Residential, Commercial and Institutional, Sectors 24 & 25-A, Gurgaon’.

In a short reply filed earlier on behalf of respondent No.2, it has been pointed out that the award qua the land in question has not been announced. The respondents referred to the report of the Joint Inspection Committee (Annexure R/1) to the effect that the land pockets marked as A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, having thick construction, are recommended to be excluded from Section 6 notification.

In written statement dated 07.09.2008 filed on behalf of respondent Nos.1 & 3, it has been averred that in pursuance of the notice issued by the Land Acquisition Collector, petitioner Rajpal Yadav personally appeared on behalf of all the petitioners. He was given full opportunity of personal hearing to the objections. The objections filed by the landowners were heard and considered as per the provisions of the Act. It has been also mentioned that there were two rooms and kitchen total measuring 40’ x 12’ and there was tin shed comprising of three rooms with veranda total measuring 45’ x 15’ and nursery on the land in dispute. Reliance was placed upon a judgment of Hon’ble Supreme Court reported as Yadu Nandan Garg Vs. State of Rajasthan & others (1996) 1 SCC 334 and some other judgments of this Court

to the effect that no discrimination has been made against the petitioners, therefore, the process of acquisition cannot be interfered with.

In a separate written statement dated 04.08.2009 filed on behalf of respondent No.1, reference is made to CWP No.1662 of 2008 titled 'Rakesh Kumar Yadav & others Vs. State of Haryana & others' dismissed on 29.08.2008, wherein challenge was to the same notifications. It has been pleaded that the petitioners were given full opportunity of personal hearing and that Rajpal Yadav voluntarily gave the statement that objections filed earlier be read as the objections during personal hearing as well. After considering the objections, the Land Acquisition Collector sent its report. It has been mentioned that the Joint Inspection Committee also visited and recommended land to be excluded from the acquisition and also submitted its report to the Government.

In the written statement filed on behalf of respondent No.13 i.e. M/s DLF Limited, the extent of land owned by the petitioners i.e. 8 kanals, subject matter of acquisition, was disputed. It was also pointed out that a perusal of photographs (Annexure R-13/3) reveals that Rapid Metro Rail passes through the land in question. It is also pointed out that in development plan of Gurgaon, the land in question forms part of green belt alongwith NH-8 and the same is required for construction of roads, underpasses and other utilities by the Government under their 'Upgradation of HUDA Roads Project' to ease out the heavy traffic inflow in the area. The land in question does not form part of the licensed area of any colony or otherwise. Reference was made to a Division Bench judgment of this Court rendered in CWP No.3256 of 2011 titled 'National Media Centre Cooperative House Building Society Limited Media Campus, Gurgaon Vs. State of Haryana & others' on 01.07.2014, wherein vesting of green belt in State Government has been upheld.

In a separate affidavit dated 12.09.2014, Rajpal Yadav, one of the petitioners, alleged that entire exercise of acquisition of land in question is being undertaken for the benefit of DLF in collusion with the officials of the Government of Haryana as well as HUDA. It was also alleged that DLF has encroached upon a part of the existing road by shifting its wall, which has already been made explicit by photographs, which are part of the pleadings. The acquisition is being undertaken only to enhance the commercial value of the DLF land so as to provide them frontage and access and connectivity to its various properties and not for alleviating any traffic congestion etc. The petitioners also relied upon an order passed by the National Green Tribunal, New Delhi on 01.04.2014 to the effect that only 26 trees can be cut in the area, therefore, the land of the petitioners cannot be put to any use by HUDA/DLF, there being a restraint order against them from cutting more trees.

In an application for vacation of stay filed on behalf of respondent No.2, it was pleaded that land measuring 2 Kanals 15 Marlas belonging to the petitioners is required for up-gradation of HUDA Road Project from NH-8 to Sector 55/56 and that this land is a part of the green belt. 'Green Belt' is defined under Section 2 (k) of the Haryana Development and Regulation of Urban Areas Act, 1974 to mean strips of land along sector/arterial road shown in the development plan, primarily meant for the widening of the sector/arterial road in future or for laying essential services. Reliance was also placed upon the Development Plan – 22021 notified on 05.02.2007, wherein it is contemplated that green belt shown along the sector/arterial roads shall be primarily meant for the widening of the sector/arterial road in future. However, till such time the widening does not take place, the said area may be utilized for nursery/plantations, fuel filling stations, communication lines, utility services etc. It has been pointed out that though the petitioners are

owners of only 2 Kanals 15 Marlas, but they have encroached upon one acre of land.

In reply to the said application, the petitioners have relied upon certain photographs i.e. photograph (Annexure A-V) showing an open area behind the nursery of the petitioners; photograph (Annexure A-VI) showing service road prepared by the DLF and photograph (Annexure A-VII) showing 50 feet service road in front of the plantation nursery of the petitioners.

During the course of arguments, our attention has been drawn to an order dated 03.02.2014, wherein the Division Bench observed as under:

“Reply to the application filed by respondent No.2, for vacation of stay, filed in Court, is taken on record.

It appears that the petitioner(s) land is prima facie needed for construction of the green belt and the service road abutting the National Highway and their apprehension of releasing the same in favour of DLF or any other private builders and/or in future utilization of this land for the purpose other than the green belt and the service road can be adequately safeguarded by issuing an appropriate direction.

Counsel for the petitioner(s) seek time to complete instructions and place on record certain documents.

List again on 24.03.2014.

Office to retain a photocopy of this order on the files of other connected cases.”

Thereafter, another application was filed by respondent No.2 to segregate the present writ petition from other writ petitions in view of the urgency of the project. The respondents have also produced a lay out plan of HUDA Sector Road Up-gradation Project as Annexure A-2 as well as the photographs (Annexure A-3 colly) to impress upon that the land is urgently required for construction of road and underpass.

A perusal of the lay out plan Annexure A-2 shows that the land owned by the present petitioners and Smt. Krishna Devi is adjoining NH-8

Delhi-Jaipur and falls within road alignment for underpass/flyover ramp. Still further, during the course of arguments, Mr. R.S.Rai, learned Senior Advocate representing M/s DLF Limited, has produced a photograph (Mark-C-3) obtained from Google Earth to explain that the construction of road has been completed up to the land of the petitioners, thereafter, there is a Metro Station on a road which goes towards Jaipur. It is explained during the course of arguments that the road would pass through the Metro Station and provide connectivity for joining NH-8 through Ramp. Another photograph (Mark C-4) shows that underneath the metro line, there is construction of the petitioners by the name of Saya Estate. It further shows that a temp road has been provided by diverting road on account of the property of the petitioners. Photograph (Mark C-1), produced by the petitioners, shows that the road has been constructed on both sides of the land of the petitioner except leaving the land of the petitioners.

With this factual background, the stage is now come to examine the arguments raised by the learned counsel for the parties.

Learned counsel for the petitioners has vehemently argued that out of land measuring 331.69 acres notified in Section 4 notification, substantial part of the land has been released, therefore, the purpose of acquisition cannot be carried out on the remaining land. Thus, in view of the judgment of the Division Bench of this Court reported as Amita Banta & another Vs. State of Haryana & others 2010 (1) RCR (Civil) 412, the acquisition proceedings ceases to be sustainable. It is argued that the Land Acquisition Collector has not conducted any enquiry except recording the statement of one of the co-owners, whereas recommendation of the Joint Inspection Committee was not accepted without recording any reason. Therefore, the right of the petitioners

for consideration of objections filed under Section 5-A of the Act has been seriously prejudiced.

Having heard learned counsel for the parties at length, we do not find any merit in the arguments raised. Though a perusal of the written statement filed on behalf of respondent No.1 on 04.08.2009 does show that the Joint Inspection Committee has recommended release of land of the petitioners, but a perusal of the original record produced by Mr. Sinhal and also the report attached with the short affidavit dated 04.08.2009 shows that only the land pockets having thick construction i.e. land pockets marked as A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, have been released from acquisition. A perusal of the record further shows that constructions recommend for release were either in the Village Sikenderpur Ghosi and Village Nathupur, but none in the Village Dundahera. Therefore, the report of the Joint Inspection Committee has to be read alongwith the documents attached with the report. As per the said report, the entire land of Village Dundahera i.e. 13.15 acres was recommended for acquisition. Thereafter, the notification under Section 6 of the Act was issued as per the recommendations of the Joint Inspection Committee. Since there is no difference of opinion with the report of the Land Acquisition Collector and/or Joint Inspection Committee, it cannot be said that the decision making process on the objections filed by the petitioners under Section 5-A of the Act suffers from any procedural or legal infirmity.

Learned counsel for the petitioners referred to certain release of land, as mentioned in Para 6 of the writ petition, but such release of land is of the land-owners, who have raised construction and were running industries. In the present case, the land is required for construction of road and/or ancillary services. Therefore, the release of land, where construction is raised and the land, which is required for building of road, stands on different footings. This

question has been examined by the Hon'ble Supreme Court in Jagdish Chand Vs. State of Haryana (2005) 10 SCC 162, wherein it has been 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 to the following effect:

“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.”

Therefore, the petitioners cannot take any support on the basis of release of land of other land-owners. Similarly, the reliance of the petitioners on the order of the National Green Tribunal, wherein both the petitioners were also the applicants is of no help. The National Green Tribunal examined five issues including whether the land falling in the widening of the side/sectoral road is a forest land. In respect of such issue, the Tribunal held that the land does not fall in the forest land and the provisions of the Forest Conservation Act, 1980 are not attracted. However, in respect of second issue regarding permission for cutting off trees, it was observed that 26 trees coming on the way of alignment/widening of the road cannot be saved and are required to be cut. The permission was granted while issuing directions for compensatory afforestation. The statement was made on behalf of the State Government that not more than 26 trees will be cut in the area in question (in front of National Media Center) after re-orientation of alignment of sectoral road. The directions were issued accordingly. It is, in fact thereafter, a Division Bench of this Court of which one of us (Hemant Gupta, J.) was Member, dismissed the writ petition filed by the National Media Centre Cooperative Housing Building Society Limited and letters patent appeal filed by the members of the said society on 01.07.2014, whereby use of green belt by the State or its transferees was upheld.

We do not find that the order of the National Green Tribunal is anyway prohibits the respondents from taking up the 'Upgradation of HUDA Roads Project'. However, the respondents shall remain bound by the order of the National Green Tribunal so as not to cut more than 26 trees and if more than 26 trees are required to be cut, they shall seek permission from the National Green Tribunal. Therefore, for the purpose of present writ petition, we do not find that the order passed by the National Green Tribunal is anyway

bars the State or its agencies from taking up the 'Upgradation of HUDA Roads Project'.

This court on 03.02.2014 has opined about the merits of the contentions raised, when the petitioners have sought time to place on record additional documents. After the interim order dated 03.02.2014, the petitioners have not placed on record any other document except the photographs during the course of arguments, which in fact shows construction of road on both sides of land of the petitioners. The wall on the service road has been raised by M/s DLF Limited illegally or not, is not the subject matter of adjudication in the present case. If, the wall has been unauthorizedly raised, the State or its agencies and instrumentalities are bound to ensure that no such illegality is committed. But since M/s DLF Limited has been given contract for executing the Rapid Metro Rail project, prima facie, appears that the service roads etc. are being developed by HUDA as a part of such project through DLF.

Another argument raised by Mr. Khosla is that underpass is planned to be constructed by M/s DLF Limited connects its land situated on both sides of National Highway. Factually, we find that the underpass is not connecting both sides of National Highway, but is connecting Delhi-Jaipur National Highway on one side through Metro Station.

Apart from the above, the writ petitions challenging the same notifications stand dismissed such as Rakesh Kumar Yadav's case (supra) and CWP No.2985 of 2009 titled 'Mahabir & others Vs. State of Haryana & others' decided on 16.09.2013. Still further, the Hon'ble Supreme Court in State of Haryana Vs. M/s Vinod Oil & General Mills & another 2014 (11) JT 341 has held that the State is to adjudge and to determine whether there exists public purpose or not though the decision of the State is not beyond judicial scrutiny.

Referring to Sooraram Pratap Reddy & others Vs. District Collector, Ranga

Reddy Dist. & others (2008) 9 SCC 552, it has been held that while exercising writ jurisdiction, the Court cannot substitute its own judgment for the judgment of the Government as to what constitutes public purpose. It has been held to the following effect:

“11. Prima facie, State is the first Judge to determine whether there exists public purpose or not. But the decision of the State is not beyond judicial scrutiny. The Courts have the jurisdiction and it is their duty to determine the matter whenever a question is raised whether a requisition order is or is not for a public purpose. In Sooraram Pratap Reedy & others Vs. Distt. Collector, Ranga Reddy Dist. & others (2008) 9 SCC 552, it was held as under:

“It is primarily for the State to decide whether there exists public purpose or not. Undoubtedly, the decision of the State is not beyond judicial scrutiny. In appropriate cases, where such power is exercised mala fide or for collateral purposes or the purported action is dehors the Act, irrational or otherwise unreasonable or the so-called purpose is no public purpose at all and fraud on statute is apparent, a writ-court can undoubtedly interfere. But except in such cases, the declaration of the Government is not subject to judicial review. In other words, a writ court, while exercising powers under Articles 32, 226 or 136 of the Constitution, cannot substitute its own judgment for the judgment of the Government as to what constitutes public purpose.””

In view of the above discussion, since the land in question is intended to be acquired for a public purpose i.e. of road, therefore, we do not find any merit in both the writ petitions. Consequently, both the writ petitions are dismissed.

However, before parting to the judgment, we may notice that though the land is not being acquired for the benefit of M/s DLF Limited, as the land is in fact ancillary road to National Highway and serves larger public interest, but even if the same is intended to be acquired for the benefit of

HUDA, the policy framed by the State Government on 07.08.1991 and modified on 05/09.06.2006 permits the State Government to acquire land wherever small pockets are left out within a licensed area or on the fringes of the colony. Such decision reads as under:

“Development of Pockets: It was decided that approach should be based on sectoral development. Wherever small pockets are left out with a licensed area or on the fringes of the colony, which the colonizer is not able to acquire through negotiation such pockets may be acquired by Haryana Urban Development Authority in the interest of planned and harmonious development. In case, HUDA is in a position and willing to undertake development on its own then these pockets should be developed by HUDA otherwise in the interest of compact development of the colony, the pockets should be allowed to be developed by the colonizer. However, such area will not be more than 10% of the licensed area.”

This is only to clarify that the land is not being acquired for the benefit of M/s DLF Limited, but even if it is required, it cannot be said to be unjustified.

(HEMANT GUPTA)
JUDGE

01.04.2015
Vimal

(LISA GILL)
JUDGE