

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 12637 of 2009

Date of Decision: 4.8.2015

Rohtash and others

....Petitioners.

Versus

State of Haryana and others

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE SHEKHER DHAWAN.**

PRESENT: Mr. Sachin Mittal, Advocate for the petitioners.

Ms. Palika Monga, Deputy Advocate General, Haryana.

AJAY KUMAR MITTAL, J.

1. By way of instant petition filed under Articles 226/227 of the Constitution of India, the petitioners have prayed for issuance of a writ in the nature of certiorari for de-notifying the notifications dated 3.10.2006 (Annexure P-5) issued under Section 4 of the Land Acquisition Act, 1894 (in short "the Act") and dated 1.10.2007 (Annexure P-7) under Section 6 of the Act to the extent of acquisition of their land and houses in khasra No. 290 situated within the revenue estate of village Nathupur, Tehsil and District Gurgaon.

2. Briefly, the relevant facts as narrated in the petition may be noticed. The petitioners are co-sharers in possession earlier through their predecessor and then in their own right of land measuring 6 bigha 17 biswas situated in village Nathupur, Tehsil and District Gurgaon and

have constructed their houses in khasra No. 290. Respondent No.3 issued a notification dated 3.10.2006 (Annexure P-5) under Section 4 of the Act followed by notification dated 1.10.2007 (Annexure P-7) under Section 6 of the Act for acquisition of the houses of the petitioners. The petitioners filed objections under Section 5-A of the Act on 31.10.2006 (Annexure P-6). The respondents vide notification dated 1.6.2008 (Annexure P-8) issued under Section 48 of the Act, released the land measuring 21.71 acres. The respondents have acquired the houses of the petitioners against the policy dated 22.7.2007 (Annexure P-9). In pursuance to the application moved by the petitioners under the Right to Information Act, 2005, they have received a letter dated 24.2.2009 (Annexure P-10) and the report (Annexure P-10/A) submitted by the respondents on the objections filed by them under Section 5-A of the Act. The adjoining land of others adjoining to the land of the petitioners falling in khasra Nos. 289, 291, 294 and 301 has been released from the acquisition as shown in green colour in the site plan (Annexure P-11). In the present case, the residential houses of the petitioners are in a cluster and thickly populated area and on all sides there is a construction and, therefore, the same deserved to be released from the acquisition. Earlier the petitioners have filed CWP No. 18035 of 2008 which was dismissed as withdrawn by this Court vide order dated 14.11.2008 (Annexure P-18) with liberty to the petitioners to file a fresh writ petition on the same cause of action. Hence, the present writ petition. The said writ petition was contested by the respondents by filing a written statement. It was pleaded therein that the Government decided not to include the construction along with proportionate vacant land, total measuring 2-4-0 of khasra No. 290 situated within the revenue estate of village Nathupur,

Tehsil and District Gurgaon while issuing declaration under Section 6 of the Act. Rest of the land of khasra No.290 of the petitioners has already been acquired vide award dated 30.9.2009 and the possession of the same could not be handed over to the respondents due to stay of dispossession of the petitioners by this Court. The land of khasra Nos. 298, 299 and 300 was included in the declaration under Section 6 of the Act but the award was not announced in view of the letter dated 29.9.2009 received from the Director, Urban Estates Department, Haryana. The other averments were controverted and a prayer for dismissal of the writ petition was made.

3. Learned counsel for the petitioners submitted that after acquisition of 12 marlas of land of the petitioners, there remains no access to the land of the petitioners.

4. After hearing learned counsel for the parties, we do not find any merit in the writ petition. The Government after examining the report had decided to release the construction along with proportionate vacant land measuring 2 kanal 4 marlas out of khasra No. 290 and only 12 marlas of land was acquired vide award dated 30.9.2009. In so far as access to the land of the petitioners is concerned, they can seek their remedies in accordance with law.

5. Further, it clearly falls within the domain of the State to decide whether the land which is being acquired for public purpose would suit the said public purpose. It is only when the action of the State is actuated by malafides that the same would be amenable to judicial review. A Division Bench of this Court in **Sampuran Singh and others v. Union Territory, Chandigarh and others 2007(1) PLR 349** had held as under:-

“11. We are in full agreement with the learned counsel for the respondents. The State can always exercise its absolute power to acquire land, provided a public purpose exists and it is not necessary that it should succumb to the wishes or willingness of the owner or person interested in the land. The only exception can be when mala fide is shown and then the Courts are bound to protect the individuals from being the victims of such arbitrariness.”

6. Learned counsel for the petitioners was not able to point out any illegality in the acquisition proceedings which may warrant interference of this Court. Accordingly, the writ petition is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

August 4, 2015
gbs

(SHEKHER DHAWAN)
JUDGE