

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

CWP No.13611 of 2009(O&M)

Date of decision:27.8.2015

Kali Ram and others

....Petitioners

VERSUS

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE RAJ RAHUL GARG

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. V.K. Jindal, Senior Advocate with
Mr. Amardeep Sheoran, Advocate for the petitioners.

Ms. Palika Monga, DAG, Haryana for respondents No.1 to 4.

Mr. Ashish Chopra, Advocate for respondent No.5.

HEMANT GUPTA, J.

The challenge in the present writ petition is to the notifications dated 15.12.2006 and 14.12.2007 issued under Section 4 and 6 of the Land Acquisition Act, 1894 (for short 'the Act'), respectively. The challenge is also to the communication dated 18.06.2009 whereby the application of the petitioners for release of land was rejected. The petitioner has also challenged the communication dated 02.06.2009 whereby permission to change of land use was declined.

The petitioners are owners of land measuring 33 kanals 6 marlas comprising in khasra Nos.4 // 1, 2, 3/ 2, 9, 10, 5 // 5 / 2 situated in the revenue estate of village Pada, Tehsil and District Rohtak. The said

land was intended to be acquired for public purpose i.e. for residential Sector 36 Rohtak. The petitioners filed objections that they are seeking change of land use for “nursery and recreation” which is a conforming use in a residential zone but the State proceeded to issue a declaration under Section 6 of the Act. It has been pointed out that after the publication of declaration under Section 6 of the Act, award has been announced on 11.12.2009. The petitioners also applied for release of land on 31.03.2008 (Annexure P-3) which request was rejected on 18.06.2009 (Annexure P-11).

The petitioners applied for change of land use on 28.03.2008 (Annexure P-6) under Section 8 of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (for short ‘1963 Act’). The said application was rejected giving the following three reasons:-

- 1) The Notifications under Section 4 and 6, for acquisition of the land applied for, have been issued.
- 2) 24 Meter proposed road passed through the site under application, in which, land of the applicant measuring 3244.19 square Meter falls.
- 3) The proposed site should have access available from at least 30 feet wide Revenue Rasta, whereas the site has access available from an 11 feet wide Revenue Rasta, which divides the site in two parts.

In another communication dated 31.03.2008 (Annexure P-9), Senior Town Planner has communicated to the Director, Town and Country Planning, that out of the area of 33 kanals 6 marlas; 2050.37 square meters is coming in the green belt and 3244.19 square meters in proposed 24 meters wide intra-sector road.

The petitioners were again informed on 02.06.2009 the following reasons for not accepting the request for change of land use:-

“Main Reasons:

1. The applicant land has already been notified under Section 4 and 6 of Land Acquisition Act, 1894, hence title of land is not clear in your favour as required under Rule 26A of Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Rules, 1965.
2. The proposed site is approachable from 11 ft. revenue rasta only whereas minimum 30 ft. wide public road/ rasta is required for grant of change of land use permission.

Other Reasons

3. Proposed 24 mtrs. Wide internal sector road is passing through the site and 3244.19 sq. mtrs area of applied land falls within alignment of this sector road.”

Learned counsel for the petitioners has vehemently argued that the petitioners have no objection to permit 24 meter wide sector road to be laid from the land owned by the petitioners. It is contended that since nursery and recreational purpose is a permissible use in the residential zone, therefore, in respect of the remaining land, the respondents are bound to grant change of land use. He refers to site plan (Annexure P-7) to point out that an area of 11550.34 square meters can still be made available to the petitioners for use as nursery and recreational purposes. It is contended that on the one hand, land-owners such as the petitioners are being declined the benefit of change of land use but on the other hand, the developers are being permitted to apply for licences even when the licences were applied before the publication of notification under Section 4 of the Act. He refers to the policy dated 19.12.2006, though such policy

was not produced on record. Learned counsel for the petitioners also submitted that the petitioners have sought change of land use in terms of clause 5 of the policy dated 26.10.2007, which reads as under:-

“5) Any land in respect of which an application under Section 3 of the Haryana Development and Regulation of Urban Areas Act, 1975, has been made by the owners prior to the award for converting the land into a colony, may also be considered for release subject to the condition that the ownership of the land should be prior to the notification under Section 4 of the Act.”

We have heard learned counsel for the parties and find no merit in the present writ petition. Admittedly, the land owned by the petitioners is lying vacant. The petitioners claim that they intend to use the same for “nursery and recreational” purposes. They applied for change of land use in terms of Section 8 of 1963 Act. The petitioner cannot take benefit of para 5 of policy dated 26.10.2007 in as much as the said policy is for development of a land for a colony in terms of the Haryana Development and Regulation of Urban Areas Act, 1975.

The argument of learned counsel for the petitioners that colonizers are being given preferential treatment is not tenable. The grant of change of land use as sought by the petitioners is under a different Act for a different purpose whereas the licence to develop a colony is to be granted under the Haryana Development and Regulation of Urban Areas Act, 1975 for the purposes of either group housing or a commercial or residential plotted area. These two different policies are not comparable and therefore, the petitioners cannot allege discrimination on the basis of a policy applicable for grant of licence to develop a colony.

Learned counsel for the respondents has pointed out that not only 24 meter wide road is proposed through the land of the petitioners but there is 12 meter service road which also passes through the land of the petitioners. Still further, permission under Section 8 of the 1963 Act can be granted to a person who is owner of the land. Once the State Government has published a notification under Section 4 of the Act followed by a declaration under Section 6 of the Act that the land is required for development of a residential area, the land-owners cannot said to have clear title to seek change of land use.

Still further, as per the lay-out plan, the land is part of residential area, an area reserved for residential purpose. Therefore, keeping in view the fact that two roads pass through the land of the petitioners, we find that there is no reason to interfere in the acquisition process. The reasoning given to decline the change of land use is for good and plausible reasons, which are different that to seek licence to develop a colony.

Consequently, the present writ petition is dismissed.

(HEMANT GUPTA)
JUDGE

AUGUST 27, 2015
‘D. Gulati’

(RAJ RAHUL GARG)
JUDGE