

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.1026 of 2010 (O&M)
Date of Order: 20.10.2015

Sugan Chand and another

.....Petitioners

Versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

Present: Shri Sumeet Mahajan, Senior Advocate, with
Shri Hitesh Ghai, Advocate, for the petitioners.

Ms. Palika Moga, Deputy Advocate General, Haryana.

Shri Kamal Sehgal, Advocate, for HSIIDC.

Shri Harsh Kinra, Advocate, for respondent Nos. 14 and 15.

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

Hemant Gupta, J.

This order shall dispose of the writ petitions enumerated at the footnote of the present order as the same raise common questions of law and facts. However, for the facility of reference, facts are taken from CWP No. 1026 of 2010.

The challenge in the present writ petition is to the notifications dated 15.12.2008 and 18.12.2009 under Sections 4 and 6 of the Land Acquisition Act, 1894, respectively in respect of the land measuring 578 acres 1 kanal situated in various villages - Alipur, Toka, Khangsera, Naggal, Sukhdarshanpu and Khatauli, Tehsil and District Panchkula.

The petitioners are owners of the land situated in village Khangsera, Tehsil and District Panchkula. The land in question is being used for farming activities by the petitioners for their livelihood

from 25-30 buffaloes and cows. The petitioners are residing in the houses the land of which is also said to be part of acquisition in pursuance of the notification published under Section 4 of the Land Acquisition Act, 1894. The petitioners filed objections to the acquisition. The Land Acquisition Collector submitted his report to the Financial Commissioner on 18.9.2009, relevant extracts whereof read as under:-

“I inspected the spot on 24.08.2009 and have reached the conclusion that the proposed land sought to be acquired is quite fertile for purpose of agriculture and that there are also residential houses, schools, rice mill, cold store, places of worships, gardens, cremation ground as well as Hadda Rori (place for disposal of dead animals). Accordingly, I recommend the aforesaid land to be exempted from the proposed acquisition and object to the acquisition of the disputed land. During the course of hearing it came to light that the banjar land of Beer Ghaggar is quite suitable for industrial use and I agree with the same. I also inspected that land and the same is quite adjacent to the disputed land proposed to be acquired. The industrial estate of Punjab is also located nearby. If the Beer land is acquired by the Government for industrial expansion the same would also give a fillip to the industries in the State and in this way the fertile land would also be saved from acquisition and the displacement of farmers would also be avoided. The objections received in the case under the provisions of Section 5A of the Land Acquisition Act along with comments on the same are submitted in the prescribed proforma and the land proposed to be acquired regarding which objection Nos. 7, 10, 14, 16, 29, 31, 32, 34 to 37, 43, 44, 46, 49, 54 to 56, 58 to 66 in village Khangsera is recommended to be exempted from the aforesaid acquisition regarding which necessary decision is to be made at the State Government level.”

The village Beer Ghagar was later substituted as “Beer Firojari” vide order dated 29.10.2009 (Annexure R.3). The acquisition of land is challenged on the ground that the land is fertile and it will

uproot the farmers, who are dependent upon it for their livelihood. The petitioners relied upon above said report of the Land Acquisition Collector dated 18.09.2009 recommending therein that the land in question should not be acquired, but suggested alternative Banjar land.

We do not find any merit in the arguments raised. The record of the acquisition including the record of grant of personal hearing was called for, to find out as to how the objections filed by the petitioners were considered. The same has been produced by the learned State Counsel. A perusal thereof would show that 105 objections were received against the proposed acquisition. The Principal Secretary to Government of Haryana recorded his note on 16.12.2009 that the land on which orchard is existing should be retained as a green area. Such orchards were said to be in existence in two blocks measuring 40-50 acres subject to actual confirmation and were released from acquisition subject to the condition that the land owners will not raise any construction over the area of orchards and will maintain as such.

A perusal of the communication dated 21.10.2009 (Annexure R.4/1) by Respondent No.4 to the Land Acquisition Collector, Panchkula, shows that village Beer Firojari falls within the restricted zone of the Punjab New Capital (Periphery) Control Act, 1952 (for short 'the 1952 Act'). A perusal of the site plan (Annexure P.11) relied upon by the petitioners themselves shows that the revenue estate of village Beer Firojari falls within the controlled area of periphery of Chandigarh. Therefore, there cannot be any construction without the permission of the Director under Section 5 of the 1952 Act in respect of the land situated within the controlled area. Therefore, the recommendations of the Land Acquisition Collector that the land in question is fertile and should not be acquired since

alternative land is available, is not made out as the alternate land suggested by the Land Acquisition Collector could not be used for raising any construction.

Another argument raised by the learned counsel for the petitioners is that the land shown in the orange and parrot green colour in the site plan (Annexure P.11), has been reserved for the residential purposes in the development plan published under Section 5 of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (for short 'the 1963 Act'), but in fact, such land has been purchased by the private colonizers. It is alleged that the development plan has been tailor made to safeguard the interests of the colonizers.

Though the allegations are that of mala-fide exercise of the statutory powers but none of the parties, who have exercised mala-fide have been impleaded. The colonizers have been impleaded who are the beneficiaries. If there are allegations of mala-fide exercise of statutory powers, the same cannot be examined unless the person against whom the allegations are leveled are impleaded as the respondents.

Still further, the development plans are published under the 1963 Act. The draft development plan (Annexure R.1) was published on 29.10.2007, whereas the final development plan 2021 was published on 11.01.2013 (Annexure A-1 page 204) of the Panchkula Extention-2. The land shown in orange and deep parrot colour in Annexure P.11 is reserved for residential purposes. As per the final development plan, the Industrial Estate is parallel to the National Highway-7. On the right side of such existing Industrial Estate, the land is proposed to be used for the Industrial Purpose. Therefore, the purpose of acquisition i.e. of development of Industrial

Section 5(7) of the Act. Therefore, we do not find any merit in the argument that the land has been reserved for the residential purpose, with a view to confer advantage to the colonizers. The land for industrial purposes is sought to be acquired to provide continuity of the Industrial Area.

As per the report of the Land Acquisition Collector, the land of the petitioners is vacant except a tubewell. Since the land is vacant, the same can be subject matter of acquisition for a stated public purpose.

Learned counsel for the petitioners has vehemently argued that the final development plan published on 11.01.2013 under the 1963 Act is illegal as it did not precede with a draft development plan inviting objections, from the persons interested. Such argument is based upon an order passed by this Court on 15.05.2012, the relevant extracts whereof read as under:-

“.....Learned counsel for the petitioners has pointed out from the communication dated 11.02.2010 (Annexure P.19) that the Government has taken a decision on 14.07.2009 to revise all the Development Plans including development plan of the area in question. The Draft Development Plan will again be published under Section 5(4) of the Punjab Scheduled Roads and Controlled Area Restriction of Unregulated Development Act, 1963 for inviting objections/suggestions from the general public. Learned counsel for the petitioners has further pointed out that thereafter Draft Development Plan has not been published.

It is, thus, sought to be contended that as to whether land sought to be acquired will be served for industrial purpose is yet to be decided. Therefore, the land should not be acquired for industrial use when uncultivable land is available just across the road.

Mr. Sehgal seeks some time to find as to when draft development plan will be published.

List on 31.07.2012.”

A perusal of the said order and the records shows that the notification under Section 4 of the Land Acquisition Act, 1894 was issued on 15.12.2008 after the publication of draft development plan. The draft development plan as required under Section 5 of the 1963 Act was published on 29.10.2007. It was on 11.02.2010 (Annexure P.19), one of the land owners in village Khangsera was informed of a decision of the Government on 14.07.2009 to revise all development plans including the draft development plan 2021, District Panchkula. The applicant was informed that the draft development plan will again be published under Section 5 of the Act for inviting objections and suggestions from the general public. The relevant extracts from the said communication would read as under:-

“Your above referred application has been examined. Your objection received on the published Draft Development Plan – 2021 AD for the controlled area around HSIDC, Industrial Estate, Alipur, District Panchkula was examined in this office. Meanwhile, the Government has taken a decision on 14.07.2009 to revise all the Development Plans. The above mentioned Development Plan is under revision and the proposal is in the office of DTP, Panchkula as on date. The Draft Development Plan will again be published under Section 5(4) of Act 41 of 1963 for inviting objections/suggestions from the general public. You may file the fresh objections/suggestions whenever the fresh notification is issued.”

It is on the basis of such communication it is argued that the draft development plan stood withdrawn when such communication was issued. Therefore, the final development plan published on 11.01.2013 has not preceded with the draft development plan inviting objections from the persons interested as required in terms of 1963 Act.

We do not find any merit in the said argument of the learned counsel for the petitioners. The above communication is in response to a communication under Right to Information Act, 2005. The decision of the State Government conveyed on 14.7.2009 is to revise all development plans. It does not imply that the draft development plan published on 29.10.2007 stood withdrawn. The final development plan was published subsequently on 11.01.2013 after considering suggestions from the general public in terms of Section 5(7) of the 1963 Act. The communication that the draft development plan will again be published is not by the State Government but by the Information Officer. Therefore, a draft development plan published under the 1963 Act could be withdrawn only by a person, who has issued the same.

Firstly, it is not a decision of the State Government to withdraw the draft development plan nor such communication by an Information Officer leads to withdrawal of the draft development plan. The powers under the 1963 Act can be exercised by the authorities specified under the 1963 Act. There is no communication on behalf of any of the authorities specified under the 1963 Act or the State Government to withdraw the development plan already published or to issue a fresh development plan. Therefore, the State Government was within its jurisdiction to publish final development plan in pursuance of the draft development plan already published.

Another argument raised is that the draft development plan was not published within three months, as required under Section 5(1) of the 1963 Act. Such provision of publication of the draft development plan is directory provision inasmuch as there is no consequence provided for non publication of a draft development plan within a period of three months to read the provisions as mandatory.

To treat a provision as mandatory, one of the test is that there should

be consequences of not doing an act within the time prescribed. Reference may be made to a Division Bench judgment of this Court reported as Stelco Strips Ltd. v. State of Punjab & others (2008)ILR Punjab and Haryana 670, wherein while considering the provisions of 14B(7)(ii) and (iii) of the Punjab General Sales Tax Act, 1948, it was held that failure to do an act within a prescribed limit stipulated will not result into abatement of proceedings. It was held as under:-

“24.Once there is a provision for release of the goods and the vehicle, the conclusion of enquiry proceedings within 15 days is to impose a duty on the enquiry officer to complete the proceedings expeditiously but it does not follow that any departure from it shall taint the proceedings with fatal blemish. The provision is more by way of procedure to achieve the object of speedy disposal of such disputes. It is an expression of desirability in strong terms. But it falls short of creating any kind of substantive right in favour of the petitioner so as resulting into adjudicating proceedings pertaining to evasion of tax as abated.

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26. Therefore, we are of the opinion that the provisions of Section 14B(7)(ii) and (iii) of the State Act are directory in nature and consequently failure to decide such proceedings within the time prescribed will not result into abatement of proceedings."

Even otherwise, the acquisition of the land under the Land Acquisition Act, 1894 can be irrespective of the master plan or the development plan published under another statute. Such issue was examined by the Hon'ble Supreme Court in Bhagat Singh etc. v. State of U.P. and others, 1998 Supp (3) SCR 404, wherein it was held that the acquisition cannot held to be invalid merely because the land proposed to be acquired is for a purpose other than the one permitted by the Master Plan or Zonal Plan applicable to that locality. It was further held that the acquisition will be valid if it is for a public

purpose even if it is not for the type of user permitted by the Master Plan or Zonal Plan in force at the time the acquisition is made. The Court held to the following effect:-

“22. As pointed out in the above judgments, there is no need that the land proposed to be acquired by the Government for a particular public purpose should be for the same purpose or use mentioned in the Master Plan or Zonal Plan for the said area. Nor will the acquisition be invalid merely because the land proposed to be acquired is for a purpose other than the one permitted by the Master Plan or Zonal Plan applicable to that locality. Acquisition will be valid if it is for a public purpose even if it is not for the type of user permitted by the Master Plan or Zonal Plan in force at the time the acquisition is made. It will be for the beneficiary of the acquisition to move the competent authority under the Development Act and obtain the sanction of the said authority for suitable modification of the Master Plan so as to permit the use of the land for the public purpose for which the land is acquired. In fact, it may be difficult for the beneficiary of the acquisition to move the competent authority under the Development Act seeking permission to change of land use even before the land is acquired or before possession is given to the beneficiary. On the principle stated in *Aflatoon vs. Lt. Governor of Delhi*, (1975) 4 SCC 285, it is clear that acquisition for a public purpose and obtaining permission from the competent authority under the Development Act concerned for change of land use are different from one another and the former is not dependent upon the latter.”

In *Aflatoon v. Lt. Governor of Delhi*, (1975) 4 SCC 285, the Constitution Bench observed as under:-

“23.....In other words, the fact that actual development is permissible in an area other than a development area with the approval or sanction of the local authority did not preclude the Central Government from acquiring the land for planned development under the Act. Section 12 is concerned only with the planned development. It has nothing to do with acquisition of property; acquisition generally precedes development.

For planned development in an area, other than a development area, it is only necessary to obtain the sanction or approval of the local authority as provided in Section 12(3). The Central Government could acquire any property under the Act and develop it after obtaining the approval of the local authority”.

Thus, we do not find any merit in the argument raised challenging the final development plan published under the 1963 Act, as well.

In view of the above we do not find any merit in the present writ petitions. The same are accordingly dismissed.

(Hemant Gupta)
Judge

(Raj Rahul Garg)
Judge

20.10.2015
ds

Sr. No.	Case No.	Title
1.	CWP No. 1035 of 2010	Tulinder Singh & others v. State of Haryana and others
2.	CWP No. 1047 of 2010	Popa Chandel v. State of Haryana and others
3.	CWP No. 1122 of 2010	Bau Virender Singh and others v. State of Haryana and others
4.	CWP No. 2173 of 2010	Balbir Singh and others v. State of Haryana and others
5.	CWP No. 13857 of 2011	Curio Chemical (P) Ltd. v. State of Haryana and others
6.	CWP No. 18540 of 2011	Narinder Singh and others v. State of Haryana and others
7.	CWP No. 19942 of 2011	Anurag Gupta v. State of Haryana and others