

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

Date of decision:27.8.2015

1. CWP No.15139 of 2010(O&M)

Neera Sapra and othersPetitioners

VERSUS

State of Haryana and othersRespondents

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. A.S. Talwar, Advocate and
Mr. Tushar Sharma, Advocate for the petitioners.

Ms. Palika Monga, DAG, Haryana, for respondents.

2. CWP No.4499 of 2010(O&M)

Darshan Lal Mehndiratta and othersPetitioners

VERSUS

State of Haryana and othersRespondents

Present: Mr. Vikas Singh, Advocate for the petitioners.

Ms. Palika Monga, DAG, Haryana, for 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?

HEMANT GUPTA, J.(Oral)

This order shall dispose of CWP No.15139 of 2010 filed by
the land-owners owning land measuring 93 kanals 6 marlas situated in

Hadbast No.470, village Mamidi, District Yamuna Nagar and CWP No.4499 of 2010 filed by the residents of the locality.

For the facility of reference, the facts are being taken from CWP No.15139 of 2010 wherein the land was intended to be acquired for the purposes of augmentation of sewerage treatment plant vide notification under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') issued on 20.07.2009 for the public purpose followed by a notification under Section 6 of the Act on 16.07.2010. The land-owners submitted their objections as contemplated under Section 5-A of the Act.

Earlier, there was controversy as to whether the land-owners have submitted objections or that such objections have been considered or not but such aspect stands clarified in an affidavit filed by Sh. Madan Lal, Executive Engineer, Public Health Engineering Division No.1, Yamuna Nagar on 20.12.2011. It has been averred that the objections of the land-owners were heard on 15.04.2010. Both the parties were summoned at the site on 22.04.2010 and after hearing both the parties and in view of the spot inspection, District Revenue Officer made recommendation to the Principal Secretary, Public Health, to acquire land in question on 07.05.2010. It is thereafter, notification under Section 6 of the Act was published. It has been also pointed out that the land in question is more suitable for the purposes of augmentation of sewerage treatment plant when it is stated to the following effect:-

“(i).....In the reply of the department, it has clearly been mentioned that the facility of approach road to the acquired land already exist and is suitable. Secondly it is not possible to divert the exiting sewer line having a depth of approximately 26 feet, if this land to be acquired is not handed over to the department. This land is adjacent to the land of

existing STP 25 MLD. In case the department shift the augmentation scheme existing STP to another land then it will be difficult to divert the existing sewer line and huge amount of expenditure will be incurred by diverting the sewer line, to construct the separate approach road and use of augmentation with the existing structure will not be suitable.

(ii). That the land which is under acquisition is adjacent to the existed Sewer Plant (STP) 25 MLD. In case present capacity of the plant is not increased as per present requirements, then it would spread various diseases in the area which will be very dangerous to the life of human beings and it will also pollute Western Yamuna Canal. There is immediate need to expand the existing STP 25 MLD to 40 MLD capacity. The land which has been shown public utility land in Master Plan of Yamuna Nagar is situated other side of the Nalah. Thus, pipe line cannot be laid down in the Nalah, which is a big nala, it is about 25 to 80 feet wide. In the rainy season, dangerous flow comes in this nala and it can destroy the valuable machinery of STP and other financial loss would be caused to the Govt.”

Learned counsel for the petitioners, in this background, has vehemently argued that as per the report of the Consultant i.e. CH2MHILL (Annexure P-47), land measuring 6.5 acres is the land required for existing waste water treatment plant to augment the existing 25 Million Litre per Day (for short ‘MLD’) capacity of waste water treatment plant to 40 MLD on a land the near radaur of Yamuna Nagar. It is thus, contended that acquisition of 12 acres of land, when as per the Consultant 6.5 acres, is illogical and arbitrary.

In response to the said argument, Ms. Monga has referred to additional affidavit filed by Sh. Prem Singh, Executive Engineer on 14.06.2013 wherein it has been stated that the present project, Yamuna Action Plan-II (YAP), targets the completion of master planning, feasibility studies and detail project report for the YAP-I towns with an ultimate design horizon of the year 2040. The YAP-III project will be the

next stage of implementation involving the development and implementation of the waste water infrastructure for the above towns. It was said in the affidavit to the following effect:-

“3. That the department after going through the detail facts and the requirement of the land for the expansion of Waste Water Treatment Plan existing Capacity of 25 MLD to 40 MLD for the year 2040 and also for future expansion and taking into consideration the detail project report, additional land required for the project is 12 Acre, which is reflected at page 22 & page No.193 of Final Detail Project Report approved by the State Govt. & submitted to Govt. of India. The page 22 and page 193 are annexed with this affidavit as Annexure A-1 & A-2.

The matter was duly discussed in the committee constituted for the purpose of acquisition of land. Thus the requirement of the land is genuine and necessary for sewerage treatment plant to be constructed. The department has already supplied all the documents to the petitioner in this regard. The requirement of additional land for treatment plant as per augmentation proposed in the detail project report is 12 Acres because additional Secondary clarifiers, Sludge drying beds, Sludge pump station, Splitter box, Sludge storage, Recycle pump station, Aeration/ Blower Building, Trickling Filters, Food sump, in-plant pump station, Modified pond inlets and outlets, Chlorine and sodium bisulfate, chlorine contract tank are required to be constructed for Aug. of Sewerage Treatment Plant from 25 MLD to 40 MLD reflected in the map annexure. The requirement of acquiring land is bonafide as the same was discussed thoroughly in the meetings before acquisition of land. The acquisition of the land is in the welfare of inhabitants of the resident of Yamuna Nagar city and the public at large keeping in view of the expansion of Abadi and for the betterment and management of the sewerage disposal after proper treatment.”

The affidavit further goes on to say that the alternative land suggested by the petitioners is also *chahi*, and is on the other side of Nallah, which is less than 4 acres of land. The same belongs to Punjab Wakf Board, where grave yard of Muslim community of village Garhi Gujran and IDGAH exists and also thick population and residential houses

of village Garhi Gujran are existing. It is stated that the alternative land suggested by the petitioners is not suitable for the purpose.

Though, the argument of learned counsel for the petitioners that the Consultant has recommended acquisition of 6.5 acres but it is the department, i.e. the acquisitioning authority, who has to take a view as to what extent of the land is required for acquisition. The detailed averments have been made in the affidavit to justify acquisition of 12 acres of land. As a matter of fact, the plan (Annexure A-5) appended by the petitioners shows that acquisition of land will be compact block of land, it being adjacent to existing 25 MLD sewerage treatment plant. The decision making process to acquire 12 acres of land instead of 6.5 acres cannot be said to be irrational and arbitrary which may warrant interference in exercise of the power of judicial review in the writ jurisdiction under Article 226 of the Constitution.

The other argument raised by learned counsel for the petitioners is that the District Revenue Officer is not authorized to act as a Land Acquisition Collector. It is contended that the notification dated 20.11.2008 is conditional to the effect that such officer has qualified the departmental examination and worked for a period of six months as Assistant Collector. The relevant extract from the notification dated 20.11.2008 is reproduced as under:-

“No.50/17/08-5S(1)- Under the provisions of clause (C) of Section 3 of the Land Acquisition Act, 1894, the Governor of Haryana hereby appoints all the Sub Divisional Officers (C) District Revenue Officers and Land Acquisition Officers in Haryana who have passed the department examination and have attained the experience of working for

a period of six months as Assistant Collector Ist Grade and Land Acquisition Collectors within their respective jurisdiction.”

Ms. Monga, learned Deputy Advocate General, Haryana states that the District Revenue Officer has qualified the departmental examination which is in fact a condition for promotion as District Revenue Officer from the post of Tehsildar and that a Tehsildar has to work as Assistant Collector Ist Grade as well.

In view of the above, we find that the District Revenue Officer, who has considered the objections, is an authorized officer in terms of Notification dated 20.11.2008 to consider the objections filed by the petitioners.

In view thereof, we find that acquisition of the land for augmentation of sewerage treatment plant is to protect Yamuna from pollution. A clean river is in national interest. Consequently, we do not find any merit in the present writ petition.

Coming to the writ petition filed by the inhabitants of the adjoining colony i.e. CWP No.4499 of 2010, the sole argument of learned counsel for the petitioners is that Master Plan showing that the existing sewerage treatment plant has been set up in the area reserved for such purpose but the land in question has not been reserved for such purpose. We do not find that such contention is supported by a perusal of the Master Plan which is available as Annexure A-5. Still further, the requirements are not static. Keeping in view the larger public interest, we do not find that acquisition of land is illegal.

At this stage, leaned counsel for the petitioners submitted that the petitioners are entitled to compensation in accordance with the provisions of Section 24(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short '2013 Act'). Ms. Monga states that since the award has not been announced in view of the interim orders of the Court, therefore, in terms of the provisions of the 2013 Act, the land-owners shall be granted compensation.

With the said observation, both the writ petitions are dismissed.

(HEMANT GUPTA)
JUDGE

AUGUST 27, 2015
'D. Gulati'

(RAJ RAHUL GARG)
JUDGE