

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

CWP No.2367 of 2009(O&M)

Date of decision:24.8.2015

Rambir Singh and others

....Petitioners

VERSUS

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present: Mr. Kulbhushan Sharma, Advocate for the petitioners.

Ms. Palika Monga, DAG, Haryana for respondent No.1, 2 and 4.

Mr. Amar Vivek, Advocate and
Mr. Servedaman Rathore, Advocate for respondent No.3.

Mr. N.S. Swaitch, Advocate for respondent No.4.

HEMANT GUPTA, J.(Oral)

The petitioners are owners in possession of different parcels of land situated in village Fajilpur Jharsa, Tehsil and District Gurgaon, which land became subject matter of acquisition vide notification dated 25.11.2008 under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') read with under Section 17(1) of the Act for construction of 150 meters wide road of Sector 72 to National Highway No.8 Gurgaon. Subsequently notification under Section 6 of the Act was published on 07.01.2009 followed by Award dated 24.11.2009.

The grievance of the petitioners is that they have constructed houses over the land intended to be acquired prior to publication of the notification under Section 4 of the Act, therefore, such area cannot be acquired. The petitioners have appended a site plan (Annexure P-30) suggesting an alternate road in red colour to save the houses of the petitioners from demolition.

In the written statement originally filed by Chief Town Planner, Haryana, dated 27.04.2010, it was inter alia averred that the land is acquired for a public purpose namely for the development and utilization of land for 90 meter wide Southern Peripheral Road along with 30 meter green belt on both sides (i.e.150 meters) from National Highway-8 up to Sector 72 Gurgaon. Such Southern Peripheral Road is mentioned in the Draft Development Plan of Gurgaon published on 11.07.2006 in accordance with the provisions of Section 5 of the Punjab Scheduled Roads and Controlled Areas Restrictions of Unregulated Development Act, 1963. Subsequently, Final Development Plan was published on 05.02.2007.

It is also pointed out that such road is planned for smooth flow of inter-city and intra-city traffic the entire Gurgaon-Manesar Urban Complex. The Southern Periphery Road with take off point shall be Toll Plaza on National Highway-8 towards Gurgaon. It is also pointed out that 1795 objections were filed but none by the petitioners was filed in respect of Draft Development Plan. It is pointed out that entire acquisition proceeding stands completed except for 3.34 acres of land as is in the

present writ petition. The total length of Southern Periphery Road is 14.5 KM out of which land for 10.4 KM already stands acquired whereas the present acquisition proceedings are for the remaining 4.1 KM length of road for which 128.47 acres of land is being acquired for the portion of Southern Periphery Road starting from National Highway-8 up to Sector 72 Gurgaon. Except for the land in question, award has been announced and possession taken over by the State Government and the land has been further handed over to Haryana Urban Development Authority. The compensation amount of approximately Rs. 127.16 Crore has already been given to the land-owners.

Subsequently, in pursuance of an order passed by this Court on 05.05.2014, an additional affidavit has been filed by Sh. Dilbag Singh Sihag, Chief Town Planner, Haryana on 07.05.2015. The averments mentioned in para 3 and 4 of the affidavit reads as under:-

“3. That a proposal regarding the consent and extent to which the private builders are willing to share the cost of rehabilitation of the petitioners in terms of aforesaid orders of Hon’ble High Court, was sought from the leading colonizers and also from The Confederation of Real Estate Developers’ Associations of India (CREDAI) vide Directorate memo no.26197-199 dated 13.11.2014, followed by a reminder dated 10.12.2014. In response to aforesaid communication, CREDAI has taken a stand that State Government is levying external development charges (EDC) for acquisition and development of city level infrastructure which also includes Southern Periphery Road (SPR) and therefore Real Estate Industry cannot participate or assume responsibility to rehabilitate land owners whose land falls within area reserved for such roads and city level infrastructure. It will be pertinent to mention here that the colonizers are required to pay external development charges (EDC) levied at the time of grant of licence as a proportionate cost for acquisition/construction of town level

infrastructure services which also includes the road network designated in the Development Plan. SPR is one such major road designated in the Development Plan and has been acquired to fulfil the obligation of providing road network for Gurgaon for which entire funds have been collected from the colonisers. It is specifically pointed out here that cost of acquisition and construction of this road is not being borne by the State Government.

4. That as already submitted in detailed reply dated 27.4.2010, the provision for 90 mtr. wide Southern Periphery Road (SPR) has been made in the Final Development Plan of Gurgaon Manesar Urban Complex, for smooth flow of intracity traffic of Gurgaon Manesar Urban Complex and intercity traffic between Delhi and beyond Gurgaon. The take off point of this road from NH-8 shall be before Toll Plaza towards Gurgaon and it terminates on Faridabad Gurgaon Road. It further, links to Gurgaon-Mehrauli road near Dehli-Haryana interstate border. The SPR road from Faridabad-Gurgaon Road to NH-8 is 14.34 KM long. Out of this 8.89 KM is the length from Gurgaon-Faridabad road to Gurgaon-Sohna Road. The above section of SPR is totally constructed at site and is operational. The remaining SPR Road from Sohna Road to NH-8 is 5.45 KM length. The present acquisition proceeding are to complete part of this section for which 128.47 acres of land is being acquired between the portion of SPR starting from NH-8 upto Sector-72, Gurgaon. A copy of Development Plan of Gurgaon Manesar Urban Complex 2031AD showing the status of construction is enclosed as Annexure-R/1. This construction of road is essential for completing the connectivity of SPR with Gurgaon Mehrauli Road which serves large number of sectors in Gurgaon and also connects the National Highway No.8. The said road will also provide an alternate main artery for the traffic from South Delhi to Manesar, Dharuhera, Rewari, Bawal and beyond and thus will provide much needed relief to ever increasing congestion on NH-8 within existing Gurgaon Town. It is pertinent to mention here that Haryana Urban Development Authority has acquired entire stretch of Southern Periphery Road except two bottlenecks i.e. at junction of Southern Peripheral Road with Gurgaon Sohna Road due to existence of Ambedkar Bhawan in 100 stretch (however, alternate loop has been constructed to give access to SPR and road is operational for traffic in this stretch), 300 mtr. stretch due to instant CWP (construction in this stretch is held up). A plan showing aforesaid bottlenecks is

appended as Annexure- R/2. Further, HUDA has already incurred expenditure of Rs.17.1 crore on construction of portion of SPR between Sohna Road and NH-8. Thus, it can be seen that in spite of acquisition and construction of major portion of aforesaid portion of SPR, intended relief to commuters could not be given on account of present litigation. Therefore, the answering respondents request for early resolution of this case to enable completion of this road and accordingly submit a revised proposal for rehabilitation of the petitioners in succeeding paras.”

It is also averred in para 5 of the affidavit that the land acquired for Southern Peripheral Road is also required for laying of trunk water supply lines to carry potable water from water treatment plant at Basai, Gurgaon to Sectors 68-80, Gurgaon. The non-availability of potable water in these sectors is subject matter of CWP No.23839 of 2014 titled as Mukesh Sharma v. State of Haryana and others. It is also pointed out that the State Government has formulated Rehabilitation and Resettlement (R&R) Policy, 2010 which provides for allotment of plots in lieu of the bona fide constructed houses with 20% rebate on the rate of allotment price of plots in such area where land is being acquired. Along with an affidavit, plan (Annexure R-2) has been appended which shows that the land of the petitioner is falling in between two stretches of the already constructed 90 meter wide road.

Learned counsel for the petitioners has vehemently argued that from the affidavits of Sh. Dilbag Singh Sihag, it is apparent that funds for the construction of the road have been collected from the colonizers. Therefore, the land of the colonizers which is adjoining the land under

acquisition can very well be utilized for re-alignment of the road by exempting the constructed houses of the petitioners.

We have heard learned counsel for the parties and find no merit in the present writ petition. The Development Plan published in terms of the Punjab Scheduled Roads and Controlled Areas Restrictions of Unregulated Development Act, 1963 shows the area in question as the area reserved for road. The land has been acquired for laying of 90 meter wide Southern Peripheral Road along with 30 meter wide green belt area on both sides of road. The Southern Peripheral Road stands constructed on both sides of the land in question, as is apparent from Annexure R-2.

Since the land is required for construction of the road, the same is permissible in view of the judgments of Hon'ble Supreme Court in in Sube Singh & others v. State of Haryana & others, (2001) 7 SCC 545 and Jagdish Chand Vs. State of Haryana, (2005) 10 SCC 162. The Supreme Court in Jagdish Chand case' *supra* held as under:-

“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.”

The averments in para 3 of the affidavit is in the context of the order passed earlier by this Court on 05.05.2014 to seek rehabilitation of the petitioners by the colonizers. It says that the State has collected external development charges and therefore, the providing of road is the responsibility of the State. The affidavit discloses the length of the road, the construction already undertaken and also that it will provide alternative main artery from South Delhi to Manesar, Dharuhera, Rewari, Bawal and thus will provide much needed relief to ever increasing congestion on NH-8 within the existing Gurgaon Town.

In view of the aforesaid fact, we find that the land is not being acquired for the benefit of the colonizers as is sought to be projected but to meet the requirement of the general public including to provide water supply. Such public purpose cannot be frustrated on account of a portion of land of the petitioners falling in between the road alignment. The petitioners shall be entitled to allotment of plots in terms of rehabilitation and re-settlement policy of the State Government.

Since the public interest is proposed to be served by construction of the road, we find that the individual interest of the petitioner cannot be permitted to frustrate the larger public interest.

Consequently, we do not find any merit in the present writ petition.

Dismissed.

(HEMANT GUPTA)
JUDGE

AUGUST 24, 2015
‘D. Gulati’

(RAJ RAHUL GARG)
JUDGE