

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CWP No.11259 of 2013

Date of Decision: 20.08.2015

BESCO Limited

...Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mrs. Kaveeta Wadia, Mr. Pankaj Gupta & Mr. Shashank Tripathi,
Advocates, for the petitioner.

Ms. Palika Monga, DAG, Haryana,
for respondent Nos.1 to 3.

Mr. Kamal Sehgal & Mr. Rajesh Hooda, Advocates,
for respondent No.4.

HEMANT GUPTA, J.

The petitioner, as owner of land comprising in Khasra No.28-1 (3-8), 2 (8-0), 3 (8-0), 8 (8-0), 9 (8-0), 10 (8-0), 26 (2-2) and Musteel No.39-6 (2-3) situated in Village Malpur, Tehsil Dharuhera, District Rewari on the basis of sale deed dated 13.08.1986, has invoked the writ jurisdiction of this Court, challenging the acquisition of land vide notification dated 13.05.2010 issued under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act'), followed by notification dated 12.05.2011 issued under Section 6 of the Act.

The petitioner has challenged the said acquisition proceedings on the ground that the predecessor of the petitioner has been granted permission for change of land use on 17.03.1982, but the project could not be set up at Dharuhera. The land measuring 1 Kanal 6 Marla was earlier acquired for the purpose of National Highway and, thereafter, the land measuring 46 Kanal 7 Marlas is sought to be acquired for setting up of an industrial area vide the notifications impugned in the writ petition.

The stand of the respondents in the written-statement is that the writ petition has been filed after announcement of Award on 10.05.2013. It is pointed out that the permission to change of land use expired in the year 1986 after its validity period of two years. It is pointed out that the petitioner has not taken any effective step for setting up of an industrial unit during the period of 26 years. It is also pointed out that the land of petitioner is forming part of 50 meter wide statutory green belt alongwith NH-8; 30 meter service road besides Sectors roads having rows of 20 meters and 30 meters. The respondents have also produced lay out plan as Annexure R-1.

Learned counsel for the petitioner refers to a Division Bench judgment rendered in CWP No.14340 of 2011 titled 'Sultan Singh & others Vs. State of Haryana & others' decided on 29.11.2013, to contend that a direction was issued by this Court to the team of Officers to visit the entire area under acquisition and consider the desirability of releasing those land or properties, which fulfill the criteria of the Government policy then applicable. It is, thus, contended that the claim of the petitioner be examined in the light of the said judgment. It is also pointed out that the said order is subject matter of Special Leave Petition before the Hon'ble Supreme Court, wherein status quo as far as possession is concerned has been granted.

The Division Bench of this Court in Sultan Singh's case (supra) observed as under:

"50. While there may not be any illegality in releasing the land/property of M/s Chetak Logistics or M/s Pashupati Spinning and Weaving Mills from acquisition *per-se* but it is imperative upon the State Government to be considerate and extend similar treatment to all other similarly placed landowners. As has been noticed above, it was totally incidental and fortuitous that the Officers' Committee happened to visit Gujjar-Ghatal road and just found the huge structure of Warehousing Sheds belonging to M/s Chetak Logistics. As the Committee had gone to visit only those

sites in respect of which objections under Section 5-A were received, it is more than possible that there may have been several other alike structures which were left un-released from acquisition. For Chetak Logistics it was a prudential escape as the visit of its site was never on the agenda of the Officers' Committee. The others similarly placed may not have been so fortunate. Since no exercise was undertaken to identify the structures/buildings of other owners who though did not submit objections under Section 5-A but their properties deserved to be released under the policy dated 26th October, 2007, the authorities are obliged to re-ascertain the facts and extend the benefit of Government policy or the State Government's decision to all and one except those structures which stand isolated. Howsoever well intent may be the Government's decision to release the land and building of M/s Chetak Logistics, the denial of such benefit to other unidentified but deserving landowners would amount to denial of equality before law. We can not lose site of the fact that some of the petitioners have also not filed objections under Section 5-A but on fact-situation they might be at par with M/s Chetak Logistics notwithstanding the conclusion drawn by us in Para No. 34 of this order. To say it differently, we hold that even if a landowner did not file objections under Section 5-A but is able to make out a case of denial of parity, he can seek equality and such consequential benefits as have been granted to other similarly placed owners.

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52. For the reasons afore-stated, the 'public purpose' of the acquisition being a salutary step towards the regulated industrialisation of the State is upheld. However, the denial of benefit of Government Policy for the release of different types of land or properties from acquisition to other landowners including the petitioners only on the plea of non-submission of objections under Section 5-A is declared illegal and annulled. Similarly, in rest of the cases, the claim of parity if made out, would also require reconsideration. The respondents are consequently directed to depute the Officers' team to visit the entire area under acquisition and consider the desirability of releasing those land or properties [including of the petitioners] which fulfill the criteria of the

Government Policy then applicable. The Officers' Committee shall be at liberty to invite fresh claims in this regard but only those buildings/structures shall be considered for exemption which were in existence at the time of issue of Section 4 notification. The exercise in this regard shall be completed within a period of three months and till then status-quo with regard to the existing structures shall be maintained.”

Learned counsel for the respondents has no objection for the disposal of the present writ petition in the light of the aforesaid judgment.

In view of the fact that identical acquisition in respect of the same notifications stands decided by a Division Bench of this Court in Sultan Singh's case (supra), the present writ petition is disposed of in the same terms.

(HEMANT GUPTA)
JUDGE

20.08.2015
Vimal

(SHEKHER DHAWAN)
JUDGE