

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

CWP No.16085 of 2012(O&M)

Date of decision: 5.11.2015

M/s Kataria Constructions Pvt. Ltd.

....Petitioner

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. Kanwaljit Singh, Senior Advocate with
Mr. Vikram Gupta, Advocate for the petitioner(s).

Ms. Palika Monga, D.A.G. Haryana, for respondents.

HEMANT GUPTA, J.

The issues raised in the present writ petition are also the issues raised in the writ petitions given at the foot note of the order. However, for the facility of reference, the facts are being taken from the present writ petition itself.

The challenge in the present writ petition is to the notifications dated 14.08.2008 and 01.03.2012 published under Section 4 and 6 of the Land Acquisition Act, 1894 (for short 'the Act'), respectively for acquisition of land measuring 1169.98 acres in 19 villages including the land of the petitioner situated in village Nimka for the purposes of development and utilization for Master Plan Roads of Sector 75-89 as per the Development Plan of Faridabad. The petitioner has purchased the land, subject matter of acquisition vide three separate sale deeds dated 15.02.2008 and 20.02.2008.

Initially, notifications under Section 4 and 6 of the Act were published by invoking urgency provisions under Section 17 of the Act on 14.08.2008 and 30.08.2008 respectively. Some writ petitions were filed challenging the invocation of urgency provisions including one by the present petitioner i.e. CWP No.7057 of 2010. Vide order dated 27.05.2011, notification under Section 6 of the Act was set aside in seven writ petitions pertaining to land measuring 31.82 acres. Liberty was given to the land-owners to file the objections under Section 5A of the Act. The Land Acquisition Collector was directed to give opportunity of hearing and then to make a recommendation as per law. It is thereafter, the petitioner submitted objections on 25.06.2011 (Annexure P-10) wherein the petitioner conveyed its no objection to acquire portion of land required for the purposes of road only but sought release of remaining land. The Land Acquisition Collector considered the objections and recommended to the State Government to the following effect:-

“This construction and Master plan is situated on the road in between Sec. 75 to 89 which should be acquired under public consideration. Decision should be taken on the higher level on account of benefit is to be given to applicant under R/R Police.”

It is thereafter, the notification under Section 6 of the Act was published on 01.03.2012 in respect of land measuring 367 acres of village Nimka and the award of the land in question was announced on 09.08.2012.

In a short affidavit filed on behalf of Additional Director, Urban Estates, Haryana, Panchkula, it was pointed out that the application filed by the petitioner for grant of licence was returned on 04.07.2008 but the petitioner did not respond to the communications. It is also pointed out

that the petitioner sought change of land use on 19.05.2011 which was again returned as the land was under acquisition for the purposes of sector roads. It is also pointed out that right of way for this peripheral road is 75 meters along with 30 meters wide green belt including a service road which makes the total width 105 meters. The acquisition boundary has been fixed with Killa lines to avoid unauthorized constructions/colonization by taking approach from this road. The land of the petitioner acquired beyond green belt is to be utilized for the multi-storey parking as per lay out plan which is a very important infrastructural element to cater to present day needs of urbanization. It is also pointed out that the land of the petitioner was vacant at the time of issuance of notification under Section 4 of the Act and that release of land of the petitioner would frustrate for the purpose of acquisition.

Learned counsel for the petitioner refers to the site plan (Annexure P-8) to contend that part of the land owned by the petitioner falling beyond 30 meter green belt on one side and 75 meter road on the other should be released from acquisition.

On the other hand, Ms. Palika Monga referred to the site plan (Annexure R-2) filed with the review application to point out that the land of the petitioner adjoining the green belt and service road is proposed to be used for multi-level parking and marginal part of the land is coming within the proposed six plots of 6 marla category for housing of Economically Weaker Sections. Therefore, the land is required for a public purpose.

It may be stated that earlier the writ petition was disposed of on 21.10.2013 on the basis of concession of the learned State Counsel that the remaining land which is not required for Master Plan road would be

released. The said order was recalled 08.08.2014 and the writ petition restored to its original number.

Learned counsel for the petitioner has vehemently argued that the land which does not fall within the road alignment cannot be acquired as the purpose of acquisition is for maintenance and development of sector roads. The multi-level parking or the construction of houses for Economically Weaker Sections is not the declared public purpose. Therefore, such marginal land cannot be made subject matter of acquisition to be used for the purposes other than mentioned in the notifications under Section 4 and 6 of the Act.

On the other hand, Ms. Palika Monga, learned Deputy Advocate General, Haryana, contended that multi-level parking is a part of development of the sector roads to allow smooth traffic on the sector roads. She also contends that even if the multi-level parking or the construction of housing for Economically Weaker Sections for the sake of arguments considered to be not part of the stated purpose of acquisition but since the said purpose is a public purpose as defined in Section 3 (f) (ii) of the Act, therefore, the land can be put to the alternative public purpose as well. Reference was made to a Division Bench judgment of this Court in CWP No.17979 of 2011 titled Jagtar Singh and others vs. State of Punjab and others, decided on 09.02.2012, which was rendered after considering large number of binding precedents of Hon'ble Supreme Court.

We have heard learned counsel for the parties and find no merit in the present writ petition.

The sole argument to challenge the acquisition proceedings is that the land which does not fall within the road alignment called marginal

land should be released from acquisition. We do not find any merit in the said argument. The public purpose is development and utilization for Master Plan Roads of Sector 75-89 as per the Development Plan of Faridabad. Not only the roads are required to be developed but the ancillary services are also required to be provided while laying roads. Multi-level parking is an ancillary service to the laying of roads and thus it very much forms part of stated public purpose. Even otherwise from the judgments of the Hon'ble Supreme Court in Gulam Mustafa and ors vs. The State of Maharashtra and ors, AIR 1977 SC 448; Mangal Oram and ors vs. State of Orissa and another, AIR 1977 SC 1456; State of Maharashtra vs. Mahadeo Deoman Rai @ Kalal and ors, (1990) 3 SCC 579 and Union of India and ors vs. Jaswant Rai Kochhar and ors, (1996) 3 SCC 491 as noticed in Jagtar Singh's case (supra), the land acquired for a public purpose can be utilized for another public purpose. This Court in Jagtar Singh's case (Supra) held to the following effect:-

“On the basis of such judgment (*M/s Royal Orchid Hotels Limited and another Vs. G.Jayarama Reddy and others* (2011)10 SCC 608), it cannot be said that the State Government having acquired land for one public purpose, is estopped to convert the use of the said land for any other public purpose. There is no finding that the land acquired for one public purpose cannot be used for another public purpose. The entire case was based upon transfer of land to a private builder. In the two judgments referred to by Mr. Anupam Gupta, it has been held that after announcing of the award and taking possession under Section 16 of the Act, the acquired land vests with the Government free from all encumbrances. The landowners do not get any right to ask for revesting the land in them and to ask for restitution of the possession even if the land is not used for the purpose for which it was acquired.....

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In view of the aforesaid judgments, though the land was not acquired under the provisions of the Act, but still applying the principles of acquisition under the Act, the public purpose for which the land is acquired can always be changed to another public purpose by the State

Government for optimum utilization of the land. The requirements of the community keep on varying. The schemes can be varied to meet the changing needs of the public.”

The multi-level car parking or housing for Economically Weaker Sections are both public purposes falling within Section 3 (f) (ii) of the Act. Therefore, the acquired land can be put to use for another public purpose.

Learned counsel for the petitioner has referred to a recent judgment of Hon’ble Supreme Court rendered in Mohan Singh Gill and others v. State of Punjab and others, (2015) 8 SCC 345 to contend that the purpose of acquisition cannot be changed. A perusal of the said order shows that the land was intended to be acquired for development of Missing Link-II from Dhandra Road to Sidhwan Canal via Malerkotla Road, Ludhiana. The Court noticed that large portion of acquired land was used for a totally different purpose i.e. commercial purpose which is not the purpose stated in the notification. The commercial purpose found was that of shops on both sides of the road. The Court concluded as under:-

“26) In the aforesaid backdrop, we find strength in the submission of the appellants that the hidden purpose for acquiring “surplus” land, i.e. the land apart from what is required for constructing Missing Link-II, was to develop it as commercial area (which is not stated in the acquisition notification) so that the finances could be arranged for construction of road or for some other purpose. This cannot be treated as public purpose. If the land was to be utilised for commercial purpose, there has to be a proper planning into it and it needs to be demonstrated that utilisation of the land serves some public purpose. We do not find it to be so in the present case.”

Ms. Monga pointed out that the marginal land along with the Master Plan Road, as per the planning practice, would be maintained as a

green buffer between residential sectors and industrial sectors as per the additional affidavit dated 13.7.2015 of Shri R.K.Singh, Additional Director Urban Estates Department, Haryana in CWP 21835 of 2013 which writ petition is also part of the bunch of cases taken up for decision today. Such provision of green buffer has been made in Draft Development Plan 2031 AD Faridabad. It is asserted that the marginal land along with Master Plan Roads will be utilized by the State Government for designated use of these sectors and also for green buffer zone.

In the present case, the land is not being acquired for any commercial purpose but the purpose subservient to the purpose of acquisition of road or for any other public purpose including green buffer zone, therefore, the purpose of acquisition remains public purpose.

In view thereof, we do not find any merit in the present writ petitions.

Dismissed.

(HEMANT GUPTA)
JUDGE

NOVEMBER 5, 2015
‘D. Gulati’

(RAJ RAHUL GARG)
JUDGE

Sr. No.	Case number and year	Title
1.	CWP No.21835 of 2013	Kunwar Pal and others vs. State of Haryana and others
2.	CWP No.21858 of 2013	Balbir Singh and another vs. State of Haryana and others
3.	CWP No.21862 of 2013	Budh Ram and others vs. State of Haryana and others
4.	CWP No.21875 of 2013	Likhi Ram and others vs. State of Haryana and others
5.	CWP No.21011 of 2014	Brahmpal and others v. State of Haryana and others

