

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

CWP No.20325 of 2011

Date of decision:10.9.2015

Kitabo Devi 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: Mr. Amit Jain, Advocate for the petitioners.

Ms. Palika Monga, DAG, Haryana for respondents.

HEMANT GUPTA, J.(Oral)

The challenge in the present writ petition is to the notifications dated 19.10.2010 and 10.06.2011 published under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short 'the Act') respectively for acquiring the land measuring 32 kanals including land measuring 5 kanals 2 marlas of the petitioners situated in Khasra No.55//24 for the purpose of establishment of Vehicle Testing Centre for imparting training on certain specific road, climatic conditions, multiple vehicles and establishment of separate Regional Transport Authority Office adjoining to the Driving Training School at village Kanheli, Tehsil and District Rohtak.

Initially, while publishing the notification under Section 4 of the Act in a vernacular, the description of the land was specified as Rectangle No.57//7 which was corrected by corrigendum dated 28.01.2011

(Annexure P-5) wherein the Rectangle No.57//7 was corrected to be read as Rectangle No.55//7.

Learned counsel for the petitioners has sought to challenge the acquisition on the ground that there could not be any corrigendum to correct the notification under Section 4 of the Act. He relies upon a Division Bench judgment of this Court reported as Manohar Singh v. State of Haryana, 2009 (2) RCR (Civil) 160. It is also argued that the correction was only of Rectangle No.57//7 and not in respect of other khasra numbers. Therefore, such corrigendum will not correct the defect in the publication of the notification. It is also argued that the petitioners have sought change of land use under Section 8 of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (for short '1963 Act') for setting up of a recreational club which was declined for the reason that the land falls in a residential zone.

On the other hand, learned counsel for the respondent pointed out that there was mistake of publication of rectangle number in the Gazette notification published in Hindi whereas the English version was correct. The mistake in the Hindi version in the Gazette notification might have been repeated in the vernacular newspaper as well. It is pointed out that it was Rectangle No.57 which was incorrectly mentioned which has been ordered to be corrected as Rectangle No.55. Since Rectangle No.57//7 was forming part of one line, therefore, the mistake in the said line is ordered to be corrected vide corrigendum dated 28.01.2011

(Annexure P-5). It is also argued that the request of the petitioners for change of land use was declined on the following grounds:-

- The applied has been notified under Section 4 of the Land Acquisition Act, for establishment of Vehicle Testing Centre etc. vide notification dated 10.6.2011.
- The land has been purchased as a share of joint holding, takseem intkal of which has not been submitted.
- Adequate documentary proof regarding sources of funds for implementation of the project has not been submitted.

It is also pointed out that the development plan has since been amended permitting setting up of a Driving Training School over the land in question. Learned counsel for the respondents also referred to a judgment of Hon'ble Supreme Court in Bhagat Singh etc. v. State of U.P. and others, 1998 Supp (3) SCR 404, to contend that there is no requirement that the land proposed to be acquired by the Government for a particular public purpose should be reserved for the same purpose in the Master Plan or Zonal Plan for the said area.

We have heard learned counsel for the parties and find no merit in the present writ petition. From a perusal of the Gazette notification in English dated 19.10.2010 (Annexure R-1) appended with the written statement dated 24.04.2014, it is apparent that it correctly gives the description of land. As per averments made by the State in the written statement, there was a mistake in rectangle number in the Hindi version in the Gazette notification which was followed in the Hindi newspapers.

Such mistake in the rectangle number could very well be corrected. Still further, the petitioners have not suffered any prejudice on account of such mistake as they have filed objections as contemplated under Section 5-A of the Act to the notification published under Section 4 of the Act even with the wrong rectangle number. We also find that the corrigendum issued to correct one line containing Rectangle No.57//7 to read as Rectangle No.55//7 cannot be said to be incorrect in any manner as Rectangle No.57 was mentioned in only one line. Therefore, we do not find any merit in the argument raised by learned counsel for the petitioners in this respect.

Reference to the judgment in Manohar Singh's case (supra) is not tenable. In the aforesaid case, the land was not forming part of notifications under Section 4 and 6 of the Act which were issued by invoking urgency provisions of Section 17 of the Act. It was only after 9 months, a corrigendum was issued. The Court has found that by virtue of a corrigendum, such notifications could not be amended when the land is sought to be acquired by invoking urgency provisions. The said judgment arises out of a different fact and has no parity with the issues raised in the present writ petition.

In respect of the argument that the land was reserved for residential purpose in the development plan under 1963 Act whereas the same is proposed to be used for non-residential purpose, therefore, acquisition of land is not tenable. Such argument does not merit acceptance in view of the judgment of Hon'ble Supreme Court in Bhagat Singh's case (supra). 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 find that even if different purpose is mentioned in the development plans, the State can acquire land though, it shall be necessary to seek change of land use form the Competent Authority.

In view of the above, we do not find any merit in the present writ petition.

Dismissed.

(HEMANT GUPTA)
JUDGE

SEPTEMBER 10, 2015
'D. Gulati'

(RAJ RAHUL GARG)
JUDGE