

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

Date of decision:30.11.2015

1.

CWP No.1314 of 2015(O&M)

Satwanti and another

....Petitioners

VERSUS

State of Haryana and others

.....Respondents

2.

CWP No.1333 of 2015(O&M)

Satyawati

....Petitioner

VERSUS

State of Haryana and others

.....Respondents

3.

CWP No.1387 of 2015(O&M)

Chandrawati

....Petitioner

VERSUS

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present: Mr.Vikram Punia, Advocate for the petitioner(s).

Mr. Vivek Saini, Assistant A.G. Haryana.

HEMANT GUPTA, J.

This order shall dispose of above mentioned three writ
petitions bearing CWP Nos.1314, 1333 and 1387 of 2015 raising identical

questions of law and facts in respect of acquisition of land vide notification dated 22.02.2007 and 20.02.2008 under Section 4 and 6 of the Land Acquisition Act, 1894 (for short 'the Act') followed by Award dated 18.01.2010.

The petitioners have sought quashing of the order dated 16.10.2014 (Annexure P-6) whereby the claim of the petitioners for release of their land from acquisition was declined for the reason that the acquired land falls within 45 meter wide sector road alignment and, therefore, the policy of release of land is not applicable in respect of the land which forms part of the sector roads.

The description of the land of the petitioners in all the three writ petitions is reproduced in a tabulated form as under:-

Sr. No.	Case Number	Total land of the petitioners	Khasra/Killa Number
1.	CWP No.1314 of 2015	5 Marlas	Killa No.134//26
2.	CWP No.1333 of 2015	3½ Marlas	Killa No.134//6
3.	CWP No.1387 of 2015	10 Marlas	Killa No.134//6

On 22.02.2007, a notification was published under Section 4 of the Act for Development of Residential and Recreational Sectors 8 and 9, Dadri. Thereafter, a notification under Section 6 of the Act was published on 20.02.2008 and the award announced on 18.01.2010.

Earlier, the petitioner filed a writ petition before this Court bearing CWP No.2911 of 2014 titled Satwanti and another v. The State of Haryana and others, which was disposed of on 17.02.2014 in the light of the order passed by this Court in CWP No.23386 of 2011 titled Kuldeep Singh v. State of Haryana and others, decided on 20.08.2013. In Kuldeep

Singh's case (supra), the direction was that if the land of the land-owner is not needed for a 'public utility' like road, greenbelt, sewerage etc. then the claim of release of land be considered. It is in pursuance of such direction, an order was passed on 17.09.2014 which reads as under:-

“3. The case was examined in the Department and it was observed that the petitioners did not file objections u/s 5A of Land Acquisition Act, 1894 and as per the fresh site report, the claimed land affects 45 m wide sector road. Hence, claim of the petitioners is not covered under the policy dated 26.10.2007. As regards order dated 20.8.2013 passed in CWP No.23386 of 2011 titled as Kuldeep Singh Vs. State of Haryana & Anr., the same is not applicable in case of the petitioner as the area of the site is although less than 250 sq. yd., but it affects 45 m wide road, whereas as per clause 15 of the order, the plot having area 250 sq yd or less than that is to be considered for release, if it is not needed for any public utility like road, green belt, sewerage etc. In view of these facts, it was recommended by the Department not to release any land in favour of the petitioner. The Government has approved the proposal of the Department. The order is issued accordingly. The petitioner be informed.”

In the written statement filed, it was mentioned that entire land of the petitioners falls in the proposed 45 meter wide sector road and no land of the petitioners is beyond 45 meter wide sector road. It is also pointed out that the writ petition suffers from gross delay and laches and that the jurisdiction of this Court has been invoked after more than 3 years and that no objections under Section 5-A of the Act were filed. It is also stated that development work for the sector has started and 90% roads have been completed and that the land was lying vacant at the time of issuance of notification under Section 4 of the Act.

An argument was raised on 27.04.2015 that land of similarly situated land-owner has been released from acquisition whereas the land of the petitioner has been treated in a discriminatory manner. The State had sought time to clarify the said aspect. In an additional affidavit dated 11.09.2015, it was pointed out that the land owned by Punit Kumar falling in Khasra No.151//26 is not that of similarly situated person as there was construction on the land owned by Punit Kumar before issuance of notification under Section 4 of the Act and in view of the objections filed under Section 5-A of the Act, the land was not included in declaration under Section 6 of the Act. On the other hand, the land of the petitioners was lying vacant. The petitioners did not file any objections and that the land has been utilized for development of residential and recreational Sector 8 and 9, Dadri.

Learned counsel for the petitioners has vehemently argued that though the stand of the respondents in the written statement was that the land is required for 45 meter wide road but in the additional affidavit dated 11.09.2015, the purpose of acquisition is said to be development of residential and recreational Sector 8 and 9, Dadri. Since, the purpose of acquisition is not road as per the additional affidavit, therefore, the petitioners cannot be treated differently than Punit Kumar.

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

Firstly, in respect of allegation of discrimination, suffice it to state that Punit Kumar had raised construction over the land which was intended to be acquired even before the notification under Section 4 of the

Act was published. It was in pursuance of the objections filed, the land was not included in the notification under Section 6 of the Act. Therefore, it is the constructed portion which was left out from acquisition in pursuance of the objections filed.

On the other hand, the land of the petitioners is the vacant land and that petitioners have not filed any objections under Section 5-A of the Act. In fact, the writ petition itself has been filed after more than 3 years after announcing of the Award. Therefore, the petitioners cannot claim parity with Punit Kumar.

Still further, the entire land of the petitioners falls in the road alignment. Such acquisition for road is permissible, even if there is constructions over the land acquired. Such is the view of Hon'ble Supreme Court in Sube Singh & others v. State of Haryana & others, (2001) 7 SCC 545 and Jagdish Chand Vs. State of Haryana, (2005) 10 SCC 162. In Jagdish Chand's case (supra), the Court 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.

9. We expect that as far as possible, the respondents shall try to retain the structures, unless it becomes difficult for them to have a planned development without removing them in view of what is stated above.”

The argument that the land of Punit Kumar has been released though it forms part of road alignment is again not tenable for the reason that perusal of plan (Annexure R-2) shows that it does not fall within the road alignment. The road adjoins the land of the said Punit Kumar. There is a police post close to the land of Punit Kumar, therefore, the structures released were not forming part of the road alignment.

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

All the three writ petitions are dismissed.

(HEMANT GUPTA)
JUDGE

NOVEMBER 30, 2015
‘D. Gulati’

(RAJ RAHUL GARG)
JUDGE