

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

**CWP No.14345 of 2015
Date of decision: 20.7.2015**

Kanwal Singh and others

.....Petitioners

Vs.

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. N.C.Kinra, Advocate for the petitioners.

Ajay Kumar Mittal,J.

1. The petitioners seek quashing of the order dated 9.5.2014, rejecting their claim for release of their land from acquisition, notifications dated 15.12.2006 and 14.12.2007 issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (in short, "the Act") and the award dated 30.11.2009, Annexures P.13/1, P.5, 7 and 8 respectively.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioners were owners in possession of land measuring 6 bighas 13 biswas situated in the revenue estate of Mouza Rohtak. The State Government issued notification under Section 4 of the Act on 15.12.2006 for establishing Sector 36A Rohtak for public, semi public and residential purposes. The petitioners filed

objections under Section 5A of the Act on 10.1.2007, Annexure P.6. Notification under section 6 of the Act was issued by the State Government on 14.12.2007, Annexure P.7. According to the petitioners, the survey was not properly conducted by the Government. Award was pronounced on 30.11.2009, Annexure P.8. A large chunk of land had been released by the respondents after notification under section 6 of the Act and also under the orders of this Court in various writ petitions. The petitioners are in cultivating possession of the land right from the very beginning. The petitioners made various representations for the release of their land but in vain. Aggrieved thereby, the petitioners filed CWP No.12945 of 2009. This court issued notice of motion and stayed dispossession of the petitioners. The said writ petition was disposed of on 22.11.2013 in terms of order dated 29.8.2013 passed in CWP No.13001 of 2008, wherein direction was issued to the respondents to conduct fresh survey and re-demarcate the land that may be actually required for sector road, dividing road and the green belt. The land which was not required for any public purpose had to be released. Thereafter, the respondents passed order dated 9.5.2014, Annexure P.13/1 declining to release the land of the petitioners. Hence the instant writ petition.

3. We have heard learned counsel for the petitioners.

4. Admittedly, the land of the petitioners was acquired for establishing Sector 36A, Rohtak for public/semi public and residential purposes vide notifications under sections 4 and 6 of the Act dated 15.12.2006 and 14.12.2007 respectively. The award was announced on 30.11.2009. The petitioners had earlier filed CWP No.12945 of 2009 which was disposed of in terms of order passed in CWP No.13001 of 2008 vide

order dated 22.11.2003. It was directed by this Court in CWP No.13001 of 2008 to the respondents to conduct a fresh survey and re-demarcate the land that may be actually required for sector road, dividing road and the green belt. If the respondents were still of the view that the entire acquired land was required for some specific present or future public purposes, they shall take such a conscious decision and pass reasoned order. However, the land to the extent it was not likely to be utilized for any public purpose, shall had to be released. The respondents after considering the matter in the light of the directions issued by this court passed the impugned order dated 9.5.2014, Annexure P.13/1. In the present case, as is evident from the perusal of the impugned order, the acquired land is partly falling in 24 meters wide sectoral road and balance falls in the land proposed for EWS housing in the layout plan of Sector 36A, Rohtak. The relevant part of the order dated 9.5.2014 reads thus:-

“5. From the position explained in the above paras and as per the latest survey it emerges that land in respect of above mentioned CWP is partly falling in 24 mtrs wide sectoral road and balance land falls in the land proposed for EWS housing in the layout plan of Sector 36A under preparation. The petitioner had not filed objection under Section 5A of the Land Acquisition Act, 1894. Thus the case is not covered under the policy dated 24.1.2011. C.A.HUDA has reported that HUDA will use the land for the notified public purpose i.e. Public, semi public and residential. It has also been observed that it has been mainly presented before the Hon'ble Court by the petitioner that the entire land has been acquired which is much more than what is required for aforesaid public purpose and they have no objection or acquisition of their land to the extent it is needed for purpose of construction or widening of road or green belt. The contention of the petitioners is totally

misfounded and incorrect. As already stated the land has been acquired for development of a residential sector and also for various public and semi public uses. It may be clarified here that public and semi public use denotes institutional uses. Accordingly, the land has not been acquired only for the purpose of road or green belt but has been acquired for the development of entire sector for the notified public purpose. In view of these facts, the request of the petitioners for release of land cannot be considered and the same is declined.

6. As per directions of Hon'ble High Court mentioned in para No.5 of the order, the petitioners are entitled for the benefits of R&R policy dated 9.11.2010. Therefore, Chief Administrator, HUDA is directed to take necessary action for providing the benefits to the petitioners as per the policy dated 9.11.2010. In addition, HUDA shall utilize the land expeditiously for the aforesaid public purpose. No portion of the acquired land would be considered for release in favour of private builders or a non Government agency and it will be utilized by HUDA. It is further directed that the HUDA will finalize the LOP and start development of the sector immediately. CA, HUDA may fix timelines for the same.”

6. Further, it clearly falls within the domain of the State to decide whether the land which is being acquired for public purpose would suit the said public purpose. It is only when the action of the State is actuated by malafides that the same would be amenable to judicial review. A Division Bench of this Court in ***Sampuran Singh and others v. Union Territory, Chandigarh and others***, 2007(1) PLR 349 had held as under:-

“11. We are in full agreement with the learned counsel for the respondents. The State can always exercise its absolute power to acquire land, provided a public purpose exists and it is not necessary that it should succumb to the wishes or willingness of the owner or person interested in the land. The only

exception can be when mala fide is shown and then the Courts are bound to protect the individuals from being the victims of such arbitrariness.”

7. Learned counsel for the petitioners has not been able to produce any material to substantiate the claim made in the writ petition. He has also not been able to show any illegality or perversity in the impugned order passed by the respondents which may call for interference by this Court. Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

July 20, 2015
'gs'

(Rekha Mittal)
Judge