

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 18989 of 2013 (O&M)

Date of Decision: 10.08.2015

Ramesh Kumar and others

.....Petitioner

Versus

Financial Commissioner and Principal Secretary to Government of
Haryana, Industries and Commerce Department, Haryana.

.....Respondents

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. RAJ RAHUL GARG**

Present: Ms. Anita Balyan, Advocate, for the petitioners.

Ms. Palika Monga, DAG, Haryana.

Shri Kamal Sehgal, Advocate, for HSIIDC.

Shri Amit Prashar, Advocate, for respondent No.7.

1. Whether Reporters of local papers may be allowed to see the judgments?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Hemant Gupta, J.

The petitioners claim to be in possession of the land, which was the subject matter of acquisition vide notification dated 1.4.2010 issued under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') followed by the declaration dated 4.4.2011 issued under Section 6 of the Act.

The grievance of the petitioners is that they have constructed small residential units on the land and have been

residing therein for the last 15 years, therefore, the structures should not be acquired.

In the written statement, the stand of the respondents is that one Bartho Devi and others, were owners of the land measuring 7 kanal. Bharto Devi received the compensation in respect of the land measuring 4 kanal 13 marla. In the remaining land, there are other co-sharers, but not the petitioners. The petitioners are not the owners of the land, but are claiming to be occupants of the same. Since the petitioners are not the owners of the land, therefore, they are not entitled to any compensation. It is also pointed out that the land over which the petitioners are occupants, as per lay out plan, falls under the proposed 75 meters wide development land and 50 metres wide green belt, which cannot be considered for release. It is also mentioned that only in the land measuring 1 kanal 11 marla, the structures in the form of houses, gair gitwar exist, whereas the rest of the land is vacant. Since the petitioners are not proved to be owners of the land, the policy of rehabilitation is not applicable to the occupants, as it deals with rehabilitation of the land owners only.

Learned counsel for the petitioners submits that the petitioners are the persons interested as defined in Section 3(b) of the Act, therefore, the writ petition on behalf of the occupant(s) of the land challenging the acquisition is maintainable.

Section 3(b), Sections 5A(1) and 5A(3) of the Act, read as under:-

“3. Definitions. - In this Act, unless there is something repugnant in the subject or context,-

(a) xx xx xx

(b) the expression “person interested” includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land.”

xx xx xx

5A. **Hearing of objections.** (1) Any person interested in any land which has been notified under Section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a company may, within thirty days from the date of the publication of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) xx xx xx

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.”

The definition reproduced above gives right to all persons claiming “interest in compensation” on account of acquisition of land as a person interested. Therefore, an occupant may be entitled to compensation on account of acquisition of land, but it is the owner alone, who has a right to file objections. It is evident from sub-section (3) of Section 5A of the Act, that right to file objections is conferred on a person who is entitled to claim an interest in compensation.

In view thereof, we find that since the petitioners are not owners of the land, their claim as occupants of the land would be in respect of the compensation of the land only. Therefore, the petitioners cannot be permitted to dispute the acquisition of land.

The acquisition for the purpose of road can not be permitted to be disputed in terms of the Supreme Court judgment reported as Jagdish Chand v. State of Haryana, (2005) 10 SCC 162, wherein the Court allowed the authorities to remove the structures, if required for the purposes of road, hospital and other civic amenities.

It was held by the Hon’ble Supreme Court 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.”

In view of the thereof, we do not find any merit in the present writ petition. The same is accordingly dismissed.

(Hemant Gupta)
Judge

(Raj Rahul Garg)
Judge

10.8.2015
Manoj Bhutani/ds