

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

CWP No.22326 of 2012

Date of decision:18.8.2015

M/s Opera House Export Limited

....Petitioner

VERSUS

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present: Mr. Shailendra Jain, Senior Advocate with
Ms. Mannu Chaudhary, Advocate for the petitioner.

Ms. Palika Monga,DAG, Haryana for respondents No.1 and 2.

Mr. Kamal Sehgal, Advocate for respondent No.3.

Mr. Sanjay Vij, Advocate for respondents No.4 and 5.

HEMANT GUPTA, J.(Oral)

The challenge in the present writ petition is to the notifications under Section 4 and 6 of the Land Acquisition Act, 1894 (for short 'the Act') dated 17.09.2004 and 25.11.2011 (Annexures P-6 and P-17), respectively. Initially, the State Government invoked urgency provisions while publishing notification under Section 6 of the Act dated 27.10.2004 but concededly the writ petition challenging the acquisition was allowed but in appeal, Letters Patent Bench quashed notification under Section 6 of the Act and allowed the State to proceed with the stage of inviting objections. Subsequently, notification dated 25.11.2011 was published and the acquisition proceedings proceeded ahead.

The petitioner was owner of land measuring 44 kanals 14 marlas out of which land measuring 36 kanals 6 marlas became subject matter of notifications as mentioned above. Out of 36 kanals 6 marlas of land, subject matter of acquisition, the petitioner applied for licence to develop a colony. Land measuring 14 kanals 9 marlas was released in view of the application submitted by the petitioners. Consequently 21 kanals 17 marlas of land survived for the purpose of acquisition as a part of notification under Section 6 of the Act dated 25.11.2011.

Learned counsel for the petitioner has vehemently argued that large chunk of land measuring 956 acres, 5 kanals and 18 marlas was intended to be acquired vide notification dated 17.09.2004. By virtue of the orders of the Court, 335 acres of land stands released from acquisition. It is also pointed out that in respect of the land in respect of which writ petitions were allowed, the State Government has now published a fresh notification for acquisition of land under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

It is thus, contended that such action of the respondents has led to discriminatory treatment in the matter of determination of compensation in as much as the land-owners whose land stands acquired now, will be entitled to much higher compensation than the petitioners. Reference has been placed upon CWP No.12510 of 2000 titled Abhishek Gupta v. The State of Haryana and another, decided on 15.07.2008 to contend that different amount of compensation is discriminatory and the proceedings are liable to be quashed.

It is argued that the action of the State in not appealing the orders quashing the acquisition of land vide order dated 16.04.2009 passed by learned Single Bench speaks arbitrary and discriminatory action in respect of the land-owners and therefore, the acquisition proceedings qua the petitioners cannot proceed on account of the inequitable processing of determination of compensation.

In the written statement, the stand is that the petitioner claims release of land measuring 21 kanals 17 marlas for the purposes of expansion of the petitioner. In respect of land measuring 13 kanals 14 marlas, the petitioner has applied for a licence and deposited the requisite fee prior to issuance of Section 4 notification. The Land Acquisition Collector recommended to acquire the remaining land (21 kanals 17 marlas) as it was forming part of road of Sectors 81 to 95 of the Development Plan and that HSIIDC recommended that the subject land was lying vacant and part of the land formed part of 60 metre wide Development Plan for the road while recommending to exclude land measuring 14 kanals 9 marlas for which internal concurrence for grant of licence had been granted by the Town and Country Planning Department, Haryana. Thereafter, the Land Acquisition Collector has announced Award No.34/2013 on 15.10.2013 in respect of land measuring 21 kanals 17 marlas

Ms. Monga further pointed out that judgment of this Court in Abhishek Gupta's case (supra) is subject matter of challenge before the Hon'ble Supreme Court in Special Leave Petition (Civil) No.18585-18586 of 2008 titled Haryana Urban Development Authority and another v.

Abhishek Gupta and another, wherein the Court has passed the following interim order:-

“Issue notice.

Meanwhile, Status quo qua nature, title and possession of property in question, as of today, shall be maintained.

Four weeks’ time is granted for filing counter affidavit. Rejoinder affidavit be filed within two weeks thereafter.”

Ms. Monga also refers to a judgment in CWP No.15515 of 2012 titled Hukum Chand and others v. State of Haryana and others, decided on 21.04.2015, wherein in respect of same acquisition the argument that land is in small pockets cannot be used for public purpose, was not accepted. It is argued that the land is required for the proposed widening of NH 8 (Delhi Jaipur Highway), therefore, in terms of the judgments 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, the petitioners cannot be permitted to dispute the acquisition of land.

We have heard learned counsel for the parties and find no merit in the present writ petition. After the publication of notification under Section 6 of the Act, the Land Acquisition Collector has announced Award No.34 dated 15.10.2013. A Division Bench of this Court in Hukum Chand’s case (supra) has examined the similar argument that the land in small pockets cannot be acquired, wherein the Court held to the following effect:-

“It is pointed out that out of 956 acres of land intended to be acquired, acquisition in respect of 610 acres was upheld by this Court whereas the writ petitions pertaining to 335 acres were allowed. The

land now notified forms part of land measuring 21 acres 6 kanal and 6 marla vide the impugned notification.

Mr. Sehgal states that in respect of 610 acres, declaration under Section 6 of the Act was published on 27.10.2004 and thereafter award was announced on 09.03.2006 and the compensation deposited. Therefore, it is not the land which is subject matter of declaration under Section 6 of the Act on 25.11.2011 also is to be considered but the land measuring 610 acres is also part of the land acquired for public purpose in respect of which acquisition stands upheld.

Since, large chunk of the land is required for a public purpose, therefore, the argument that land in small packets cannot be used for a public purpose does not stand.

In view thereof, we do not find any merit in the argument raised by learned counsel for the petitioner.”

In Abhishek Gupta's case (supra), the primary challenge was to the discriminatory treatment at the time of acquisition of land. The Court found that acquisition was allowed to lapse in respect of one of the land-owners and proceeded to acquire the land of the other land-owners. It was found that the petitioner whose land was acquired earlier have been at disadvantage vis-à-vis similarly situated person which was not touched when the original notice was published. The said judgment is subject matter of challenge before the Hon'ble Supreme Court wherein, the status quo qua nature, title and possession of the property has been ordered to be maintained.

We find that fortuitous circumstance of subsequent successful challenge to acquisition on account of the order of the Court cannot be a ground to set aside the acquisition in the case of land-owners whose land was intended to be acquired earlier. The argument that the respondents have not appealed against the judgment of learned Single Bench is not tenable. It is a judgment of a Competent Court quashing the acquisition

proceedings. Accepting the judgment cannot be said to be an act of discrimination as it is accepting a judgment of the Court quashing a particular notification. Since, the respondents have initiated separate acquisition proceedings of the land, the acquisition of which was quashed by the High Court at an earlier point of time, that fact cannot be made basis of setting aside the acquisition of the land of the petitioner in the present case as well. The earlier writ petition filed by the petitioner challenging the acquisition having been decided. Such decision cannot be avoided by challenging the acquisition of land which was earlier set aside with liberty to the State to proceed for acquisition of land under Section 6 of the Act.

The question whether the petitioner is entitled to compensation in respect of the enhanced compensation at par with the similar land now subject matter of acquisition is a question which can very well be raised by the petitioner before the Reference Court in a reference under Section 18 of the Act.

We do not find that the question of the acquisition proceedings can be said to be discriminatory only on account of the difference in compensation amount arising out of two different acquisition processes.

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

Dismissed.

(HEMANT GUPTA)
JUDGE

AUGUST 18, 2015
‘D. Gulati’

(RAJ RAHUL GARG)
JUDGE