

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

**CWP No.1714 of 2014
Date of decision: 7.4.2015**

Sardar Singh and others

.....Petitioners

Vs.

State of Haryana and another

.....Respondents

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

Present: Mr. R.S.Hooda, Advocate for the petitioners.

Ms. Palika Monga, DAG, Haryana.

Ajay Kumar Mittal,J.

1. Through the present petition under Articles 226/227 of the Constitution of India, the petitioners pray for quashing the notifications under sections 4 and 6 of the Land Acquisition Act, 1894 (in short, "the Act") dated 12.6.2012, 10.6.2013, Annexures P.1 and P.3 respectively, award dated 31.7.2013, Annexure P.10 and the order dated 8.1.2014, Annexure P.11 passed by the respondent authorities in not releasing their dwelling unit/house despite the fact that the same was in existence much before the issuance of notification dated 12.6.2012.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The State of Haryana issued notification dated 12.6.2012 under Section 4 of the Act proposing to

acquire large chunk of land for a public purpose namely for developing 60 KV and 220 KV Power Sub Station and other Public Utility purpose in sectors 76 to 78 and 81 to 95 at Gurgaon. The land of the petitioners comprised in Rect.No.29//4/(0-6), 6(0-10), 7(7-6), 15(5-5) was taken in acquisition vide aforesaid notification. According to the petitioners, the respondent authorities did not include the surrounding land i.e. left, right and back of the petitioners' dwelling unit in the acquisition as there were dwelling units. However, the dwelling unit of the petitioners comprised in Rect.No.29//6/3 (0-10), 15/2(2-0) which was part of the said inhabited area had been included in the acquisition proceedings. As per government policy decision dated 26.10.2007, Annexure P.7, the residential units/structures found in existence at the time of issuance of notification under Section 4 of the Act were required to be released. Petitioner No.1 being co-owner/co-sharer of the land in question approached the Land Acquisition Officer and filed his objections under Section 5A of the Act. Without considering his objections, the State Government issued notification dated 10.6.2013, Annexure P.3 under Section 6 of the Act. Feeling aggrieved, the petitioners approached this Court through CWP No.15921 of 2013 which was disposed of vide order dated 25.7.2013, Annexure P.8 with a direction to the respondents to verify the assertion made by the petitioners and consider the same as per the government policy within a period of three months from the date of receipt of a certified copy of the order. In spite of the said direction, respondent No.2 announced award dated 31.7.2013, Annexure P.10. Thereafter, respondent No.2 called the petitioners for personal hearing and rejected the claim vide order dated 8.1.2014, Annexure P.11. Hence the instant petition by the petitioners.

3. Written statement was filed by Shri Satyabir Singh, Land acquisition Officer, Urban Estate Department, Haryana, Gurgaon on behalf of respondent No.2 inter alia stating that the land in question was acquired for the public purpose as mentioned in earlier part of the judgment. The land was acquired as per the procedure laid down under the law. As per Rehabilitation and Resettlement policy framed by the Government, it was decided to give priority to the resettlement of the category of persons whose self occupied residential structure/house were acquired. It was further stated that land of the petitioners having constructions came on the Master Plan Road and therefore, the same could not be released from acquisition. On these premises, prayer for dismissal of the petition has been made.

4. Learned counsel for the petitioners submitted that the constructed portion of the petitioners was liable to excluded under the State policy. It was further argued that the construction having been raised prior to the issuance of notification under Section 4 of the Act, had not been left out. The acquisition qua the same was bad.

5. Learned counsel for the State on the other hand referred to Annexure R.1 – report under Section 5A by the Land Acquisition Collector, Urban Estate, Gurgaon, wherein in Column No.9, it was noticed as under:-

“Spot inspection has been done. On the spot, the boundary wall is present and no residential activity has been found. So it is appropriate to acquire.”

On the other hand, learned counsel for the petitioners relied upon the following contents in Column No.5 of the aforesaid report:-

“Two rooms measuring 30'x15', Two rooms with varandha, gatar tukri measuring 30'x30', kitchen and latrine, bathrooms, tin shed, submersible of 6”x3”, B.Wall.”

6. Be that as it may. The acquisition is due to unavoidable circumstances for developing 60 KV and 220 KV electric power substation and other public utility purpose in sectors 76 to 78 and 81 to 95 at Gurgaon. Learned counsel for the petitioners was unable to demonstrate that any legal requirements as envisaged under the provision of the Act were not complied with. In such a situation, the acquisition proceedings cannot be faulted.

7. Further, Paras (i) and (ii) of the Rehabilitation and Resettlement Policy framed by the Government of Haryana read thus:-

- “i) Recognizing the sensitivity involved in acquisition of built up residential houses/structures for unavoidable reasons, the Government has decided to accord the highest priority to the resettlement of this category of persons. In the first instance all efforts will be made by the acquiring departments to leave out the residential structures existing in the form of clusters from acquisition except where it becomes absolutely unavoidable either due to its stand alone character or its location being within the Right of Way of infrastructure projects such as roads, canals, railway line etc.;
- (ii) Accordingly, it has been decided that wherever any self occupied residential structure/house has to be acquired for unavoidable reasons in the process of acquisition of land by the Government for any purpose, such owners of built up residential structures would be offered assured allotment of residential plots as per the following scale:-

Scale of residential plots in cases where an existing self occupied house/residential structure is acquired.

Scheme applicable upto 6.9.2010		Scheme revised w.e.f 7.9.2010	
Size of the residential house acquired.	Size of residential plot to be allotted	Size of the residential house acquired	Size of residential plot to be allotted
Upto 100 sq. Yards	50 square yards	Upto 150 square yards	90 sqm
Above 100 but upto 200 square yards	10 square yards	Above 150 but upto 200 square yards	150 sqm

Size of the residential house acquired.	Size of residential plot to be allotted	Size of the residential house acquired	Size of residential plot to be allotted
Above 200 and upto 300 square yards	150 square yards	Above 200 and upto 250 square yards	200 sqm
		Above 250 and upto 300 square yards	250 sqm
Above 300 upto 400 s square yards	200 square yards	Above 300 upto 400 square yards	300 sqm
Above 400 upto 500 square yards	250 square yards	Above 400 upto 500 square yards	350 sqm
Above 500 square yards	350 square yards	Above 500 square yards	450 sqm

8. In view of the stand taken by the State Government in the reply as per the Rehabilitation and Resettlement policy that in case of acquisition of self occupied residential structure/house, such owners would be offered assured allotment of residential plots, no interference is called for under Articles 226/227 of the Constitution. In case, the petitioners are found entitled to any plot, they shall be given the benefit as per the policy. Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

April 07, 2015
'gs'

(Rekha Mittal)
Judge