IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.22084 of 2013(O&M)

Date of decision:29.10.2015

Ompal Attri and others ….Petitioners

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
Mr. Gaurav Aggarwal, Advocate for the petitioners.

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

Mr. Pritam Singh Saini, Advocate
for respondent No.3.

Mr. Keshav Partap Singh, Advocate
for the applicant (in CM No.11431 of 2014).

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HEMANT GUPTA, J.

The challenge in the present writ petition is to the notifications dated 28.06.2012 and 24.06.2013 published under Section 4 and 6 of the Land Acquisition Act, 1894 (for short 'the Act'), respectively.

The petitioners, 79 in number, claim to be owners of small plots of land comprising in Rectangle No.164 Killa No.24 (8-8), Rectangle No.173 Killa No.3 (8-0) and 4(7-7) situated at village Assandh, Tehsil Assandh District Karnal having purchased plots in the year 2004-05 in a colony called 'Shri Krishna Kripa Colony' adjoining Karnal Road Assandh. Such colony has 47 residential plots and 19 commercial shops.

The petitioners alleged to have filled up the foundations of their respective plots.

A proposal was initially made to acquire 32.5 acres of land for construction of additional Grain market at Assandh. The proposal of the said acquisition did not include the land of the petitioners but subsequently on the basis of recommendation of the District Town Planner, land measuring 37 acres, 2 kanals and 10 marlas including the land of the petitioners was intended to be acquired for the purpose of setting up of a new Grain Market. A notification under Section 4 of the Act was issued on 28.06.2012. The petitioners filed objections to such intended acquisition under Section 5A of the Act. The Land Acquisition Collector made a report on 06.11.2012 recommending the release of plots of the petitioners. The relevant extract from the said recommendation reads as under:-

> "After inspection of the spot, on perusal of objections received and revenue record, I have reached to the conclusion that I am hereby recommending to exempt Murabba No.173, Killa No.6, area measuring 1 Kanal 15 Marla on which houses are constructed, Murabba No.219 Killa No.22/2 area measuring 11½ Marla on which houses are constructed and Murabba No.164, Killa No.24, area measuring 8 Kanal 8 Marla and Murabba no.173, Killa No.3, area measuring 8 Kanal and Killa No.4, area measuring 7 Kanal 7 Marla on which shops are constructed and basement/plinth as to house level has been constructed by the land owners and Khasra No.2338 min Gair Mumkin Rasta area measuring 2 Kanal 8 Marla for its acquirement."

The copy of such report was also forwarded to the Executive Officer and Secretary, Market Committee, Assandh for necessary action.

On receipt of the said report, Haryana State Agriculture Marketing Board (for short 'HSAMB') at whose instance the land was proposed to be acquired for setting up a new Grain Market constituted a Site Inspection Committee to examine the issues raised by the Land Acquisition Collector. Such Committee gave its report which has been appended with the writ petition as Annexure P-8 which reads as under:-

> "As per Orders of the Chief Administrator, HSAM Board vide letter No.L.A.-II-2013/465/21861-64 dated 18.04.2013, the site notified under Section 4, was visited by Secretary Board, Zonal Administrator, HSAM Board, Karnal and Administrator, Market Committee, Assandh on 03.05.2013 to examine the issues raised by DRO-cum-LAC, Karnal with respect to objections, suggestion under Section 5A of the Land Acquisition Act, 1894. The Committee considered the various issues at site and the proposed land i.e. bearing Khasra No.164 in Killa No.24 and Khasra No.173, Kila No.3 & 4 which are recommended by the DRO-cum-LAC for release while hearing the objections under Section 5A. It is not feasible to release the said land because the land which is in question is on the front side of the proposed Mandi. The committee also found that there is no big construction as such on the site except small portions of scattered foundation walls up to a height of 1-2 ft. The committee also observed that there were only two rooms constructed at the proposed site. So the Committee is of the view that the proposed land be acquired in its complete shape and size as envisaged under section 4."

On the basis of such report, HSAMB sent a communication dated 03.06.2013 to the State Government recommending acquisition of entire land. It is thereafter, notification under Section 6 of the Act was published on 24.06.2013.

Learned counsel for the petitioners has referred to the consideration of recommendation of the Land Acquisition Collector and the comments of HSAMB vide the noting (Annexure P-9). A perusal thereof shows that the approval of the Hon'ble Chief Minister was sought before publication of notification under Section 6 of the Act. The Principal Secretary, Agriculture, agreed with the recommendation of Chief

Administrator, HSAMB, which was approved by the Hon'ble Chief Minister on 10.06.2013. Thereafter, the impugned notification was issued.

The petitioners have sought to dispute the process of acquisition of land, inter alia, on the ground that the notification under Section 6 has been issued on the basis of extraneous material provided by HSAMB, therefore, the decision making process is not fair and reasonable. The objections filed before the Land Acquisition Collector has to be considered by the Land Acquisition Collector alone. The State Government has to consider only the report before deciding to publish declaration under Section 6 of the Act. The consideration of objections has to be done by the State Government and not on the basis of report of any third person. Learned counsel for the petitioners relies upon a judgment of Hon'ble Supreme Court reported as Surinder Singh Brar and others v. Union of India and others, 2013(1) SCC 403.

On the other hand, the reply on behalf of the State is that the process of acquisition of land was started on the recommendation of the Market Committee, Assandh for the extension of new Grain Market. The site was finalized in the meeting held on 09.09.2010. It is also pointed out that there is no requirement to grant second opportunity of hearing to the land-owners before issuing a notification under Section 6 of the Act. As per Section 6 of the Act, the satisfaction has to be recorded by the appropriate Government that the land is required to be acquired for a public purpose. It is pointed out that the Site Inspection Committee noticed that the old Grain Market has been set up in an area of 33 acres and that there is land belonging to Zamindars to the East of the old Grain Market and to the South there is *abadi* and office of BDPO whereas to the

West of the Old Mandi there is a General Hospital as well as *abadi*. Therefore, it was considered appropriate to extend the old Grain Market towards the East of old Mandi. It is in pursuance of such decision of the meeting dated 16.08.2010 (Annexure R-1/2), the notification under Section 4 of the Act was published. The Site Inspection Committee has thoroughly examined the site in question after receipt of the report of the Land Acquisition Collector and it was not found feasible to release the land as the land in question is on the front side of the proposed Mandi. It is the decision of the appropriate Government for publication of a declaration under Section 6 of the Act after following the due procedure.

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

In Surinder Singh Brar's case (supra), the Hon'ble Supreme Court found that the Land Acquisition Collector has not given his independent view but followed the wishes of his superior officials. The junior officers were overawed by the view expressed by the Administrator and instinct of self-preservation prompted them not to go against the wishes of the Administrator. The relevant extract from the judgment reads as under:-

> "48. The Special Secretary, Finance and the Adviser to the Administrator also failed to act in consonance with the mandate of Section 5A(2) read with Section 6(1). They could not muster courage of expressing an independent opinion on the issue of compliance of Section 5A and need of the land for the specified public purposes. The noting recorded by the Special Secretary, Finance, which has been extracted hereinabove shows that the officer had virtually reproduced what the Administrator had mentioned in his letter dated 31.7.2006. The Adviser went a step further. He merely appended his signatures on the note recorded by the Special Secretary, Finance forgetting that in terms of the

> aforementioned two sections 'the appropriate Government' is required to take decision after considering the report of the LAO. The least which can be said about the manner in which the Adviser approved the note prepared by the Special Secretary, Finance is that there was abject failure on the part of the concerned officer to discharge his duty despite the fact that he was entrusted with the onerous task of taking a decision on behalf of 'the appropriate Government' after considering the reports of the LAO. The casual manner in which the senior officers of the Chandigarh Administration dealt with the serious issue of the acquisition of land of citizens signifies their total lack of respect for the constitutional provision contained in Article 300A, the law enacted by Parliament, that is, the Act and interpretation thereof by the Courts. It seems that the officers were overawed by the view expressed by the Administrator and the instinct of self-preservation prompted them not to go against the wishes of the Administrator who wanted that additional land be acquired in the name of expansion of IT Park despite the fact that a substantial portion of the land acquired for Phase II had been allotted to a private developer."

However, in the present case, the situation is reverse. The Land Acquisition Collector had recommended release of land of the petitioners but the Secretary of the State Government as well as Hon'ble Chief Minister has taken a decision to proceed with the acquisition of land by publishing a declaration under Section 6 of the Act. Therefore, the judgment referred to by learned counsel for the petitioner has no applicability to the facts of the present case.

In terms of sub-Section (2) of Section 5A of the Act, the Land Acquisition Collector has to submit a report to the appropriate Government. Such report was forwarded to the Market Committee, the beneficiary Department for whose benefit the land was intended to be acquired. The Market Committee or HSAMB is not stranger to the acquisition but is an instrumentality of the State for whose benefit the land is sought to be acquired for a public purpose. Whether the recommendations of the Land Acquisition Collector merits acceptance or not could be examined by the beneficiaries for whose benefit land is sought to be acquired. The land was intended to be acquired on the basis of recommendation of the HSAMB. Therefore, publication of the notification under Section 6 of the Act was also dealt with in consultation with HSAMB. Therefore, it is not extraneous fact which has been taken into consideration but the requirement of the beneficiary which has been taken into consideration as to whether the recommendation of the Land Acquisition Collector merits acceptance or not. The decision has been taken by the highest Executive Authority in the State. Therefore, we do not find that the decision making process leading to publication of notification under Section 6 of the Act suffers from any illegality or irregularity.

Still further, the colony has been carved out in violation of the provision of The Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963. At least no permission from the Competent Authority has been either alleged to have been taken, at least none is produced. Therefore, purchase of the small plots by the petitioners from a colonizer for the construction of shops or residential buildings is in contravention of the statutory provisions. Therefore, mere purchase of the plots will not confer any legal or equitable right on the petitioners.

Consequently, we do not find any merit in the present writ petition.

Dismissed.

However, it shall be open to the petitioners to submit their claim for allotment of alternative sites in terms of the rehabilitation and re-settlement policies framed by the State Government. As and when such claim is received, the State Government shall consider the same in accordance with law.

(HEMANT GUPTA)
JUDGE

OCTOBER 29 2015 **(RAJ RAHUL GARG)**
'D. Gulati' **JUDGE**