

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

**CWP No.26172 of 2012 (O&M)
Date of decision: 10.08.2015.**

Sanjay Kumar and others

.....Petitioners

versus

State of Haryana and others

.... Respondents

with

**CWP No.2694 of 2013 (O&M)
Date of decision: 10.08.2015.**

Sub Major Ranvir Singh 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. Saurabh Dalal, Advocate for the petitioners.

Ms. Palika Monga, DAG, Haryana.

HEMANT GUPTA, J.

This order shall dispose of aforesaid two writ petitions i.e. CWP No. 26172 of 2012 and CWP No. 2694 of 2013. However, for the facility of reference the facts are taken from CWP No.26172 of 2012, wherein challenge is to the acquisition of land vide notification dated 30.06.2011 issued under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') and followed by notification dated 29.06.2012 issued under Section 6 of the Act. The challenge to the acquisition of the land is on the

ground that construction over the land in question exists before the issuance of notification under Section 4 of the Act, therefore, such land cannot be acquired in terms of the policy of the State Government.

During the course of hearing before this Court, it was found that the land of petitioners No.4, 5 and 6 have not been acquired, whereas constructed portion of petitioner No.6 stands released. Therefore, the District Town Planner was directed to visit sites of petitioners No. 1, 2 and 7 to submit report regarding existing structures and also whether the part of the property of petitioner No.2 can be released without affecting the road alignment. The order dated 22.01.2014 reads as under:-

“It appears that the constructed portion of petitioner No. 3 has been released while no land of petitioners No. 4, 5 and 6 has been acquired. As regard to petitioners No. 1 and 7, the stand of the respondents is that no construction was found and that no objections were received from petitioners No. 5 and 6. About petitioner No. 2, it is stated that his house falls on the road alignment. Counsel for the petitioners states that let his land to the extent it is not required for the construction or widening of the road be released.

In the light of the aforesaid stand taken by the parties, the District Town Planner, who is present in Court readily agrees to visit the sites of petitioners No. 1, 2 and 7. He shall submit report with regard to their existing structures and also whether the part of the property of petitioner No. 2 can be released without affecting the road alignment.

Adjourned to 28.04.2014”.

In pursuance of said order, an affidavit dated 02.12.2014 has been filed by the Additional Director, Urban Estate Department, Haryana to the following effect:-

CWP No.26172/2012 Name of Petitioner	Khasra/ Kila No.	Status of construction	Location
<u>Petitioner No.1</u> Sanjay Kumar S/o Late Sh. Nafe Singh	76/ / 16 125 sq m	Maruti Suzuki Showroom and workshop has been constructed in 125 sq mtr after Section 4 notification.	Falls in 45 mtr wide road.
<u>Petitioner No.2</u> Sh. Bhoop Singh S/o Sh.Hoshiar Singh	76/ / 16 1700 sq yd	Restaurant and Boundary has been constructed in area 129.16 sq yards.	1570.96 sq yards falls under 45 mtr wide road and rest area 129.16 sq yards constructed before Section 4 notification falls outside road.
<u>Petitioner No.7</u> Bale Ram S/o Bakhtawar Singh	70/ / 10 200 sq yd	Residential plot at site	Falls in 45 mtr wide road.

It is further averred that petitioner No.1 has raised structures after issuance of notification under Section 4 of the Act, whereas construction on the land measuring 129.16 square yards was raised by petitioner No.2 before issuance of Section 4 notification, which falls outside the alignment of 45 metres wide road and the same was recommended for release and has been approved by the State Government on 17.11.2004.

A perusal of the affidavit shows that the land measuring 125 square metre of petitioner No.1; 1570.96 square yards of petitioner No.2 and 200 square yards of petitioner No.7 fall within 45 metre wide road and therefore, said land cannot be released.

The Hon'ble Supreme Court in Sube Singh & others Vs. State of Haryana & others (2001) 7 SCC 545, has struck down the classification of the construction raised as 'A', 'B' & 'C' to held that the land, which is required for construction of a road or hospital can be acquired. In Jagdish Chand Vs. State of Haryana (2005) 10 SCC 162, the Hon'ble Court held that the direction to exempt structure from acquisition will not come in the way

of authorities if required for the purpose of road and hospital and other civic amenities. It has been held:

“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 aforesaid judgments, no further interference is called in the present writ petition as the land as mentioned is required for the purpose of road. The writ petition stands disposed of in terms of the affidavit dated 2.12.2014.

(HEMANT GUPTA)
JUDGE

10.08.2015
Manoj Bhutani

(RAJ RAHUL GARG)
JUDGE