

IN THE PUNJAB & HARYANA HIGH COURT
AT CHANDIGARH

CWP No.22323 of 2014

Date of Decision: 08.10.2015

Kuber Resorts Limited & others

...Petitioners

Versus

State of Haryana & others

...Respondents

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

Present: Mr. Puneet Bali, Senior Advocate, with
Mr. Ranjit Saini, Advocate, for the petitioners.

Ms. Palika Monga, DAG, Haryana,
for the respondents.

HEMANT GUPTA, J.

Challenge in the present writ petition is to the notifications dated 21.01.2011 and 12.01.2012 published under Sections 4 & 6 of the Land Acquisition Act, 1894 (for short 'the Act') respectively, whereby land measuring 205 Acres, 5 Kanals & 15 Marlas in respect of two Villages namely Binola and Bilaspur, Teshil Manesar, District Gurgaon was made subject matter of acquisition for a public purpose namely 'for development and utilization of land for establishment of National Defence University'.

The petitioners, claiming to be owner of 606 Kanal & 7 Marla of land in Village Binola and 44 Kanal & 4 Marla in Village Bilaspur subject matter of acquisition proceedings pursuant to notification dated 21.01.2011 issued under Section 4 of the Act, submitted objections under Section 5-A of the Act. The petitioners were called for personal hearing on 30.06.2011 vide notice dated 14.06.2011. On the said date, Shri P.K.Sharma, Chairman & Managing Director, Kuber Group of Companies, went to the office of the Land

Acquisition Collector, but as per the petitioners, the Land Acquisition Collector was not available, therefore, no hearing as required under the provisions of Section 5-A of the Act took place. Thereafter, the petitioners were served with a notice dated 21.07.2011 to furnish the details of the land. The petitioners submitted the information sought for alongwith additional objections on 11.08.2011. However, without examining the additional documents filed, the Land Acquisition Collector recommended acquisition of land on 30.06.2011. It is, thereafter, the declaration under Section 6 of the Act was issued on 12.01.2012. It may be noticed that Award No.13 was announced by the Land Acquisition Collector on 18.09.2012.

The grievance of the petitioners is that the objections filed by them have not been considered nor any opportunity of hearing has been provided to the petitioners.

The petitioners have alleged that they have invested huge money from 1993 onwards and that more than 70% of the land, subject matter of acquisition, is of the petitioners. The petitioners have also alleged that the land adjoining to their land has not been acquired; as the same belongs to the relatives and friends of Mr. Rampal Singh Yadav, Patwari and that the land of the petitioners has been acquired to save the land of such relatives and friends. The said Patwari is said to be relative of Mr. Dharampal Yadav, MLA of the said Constituency. The petitioners also pointed out that one M/s N.C.J. Estate Solutions Pvt. Ltd. filed writ petition bearing CWP No.14064 of 2012 challenging the acquisition proceedings in question. However, the said writ petition was dismissed by this Court on 06.05.2013. In SLP (Civil) No.32633 of 2013 filed by M/s N.C.J. Estate Solutions Pvt. Ltd., the petitioners filed an interlocutory application bearing I.A.No.2 of 2014, but subsequently withdrew

the same on 21.07.2014 to avail the remedy before this Court. It is, thereafter, the petitioners have filed the present writ petition.

In reply, it is submitted that the petitioners have raised contentions, which are factually incorrect. The Ministry of Defence accepted the proposal of the State Government to set up Indian National Defence University (INDU). Thereafter, the notification under Section 4 of the Act was issued on 21.01.2011 in respect of land measuring 205 Acres, 5 Kanals & 15 Marlas including the land of the petitioners. It is averred that Shri P.K.Sharma, Chairman and Managing Director, Kuber Group of Companies, appeared before the Land Acquisition Collector on 30.06.2011. On the said date, his statement was recorded, but he refused to sign the same. It is pointed out that other land-owners were also present on 30.06.2011 and were provided opportunity of hearing. Thus, the assertion that the Land Acquisition Collector was not present is not correct. The Land Acquisition Collector considered the objections filed by the land-owners including the petitioners and submitted its report to the State Government to the effect that the petitioners have not produced any proof of investing money on land and that there is neither fencing nor developed farm house. There is no industry or CLU of the said land.

Mr. Bali, learned Senior Advocate representing the petitioners, vehemently argued that the petitioners were not given opportunity of hearing on 30.06.2011, as there was no cause to call upon the petitioners to submit additional documents on 27.07.2011. The documents were furnished on 11.08.2011, but even before the said date, the Land Acquisition Collector has already made recommendations for acquisition of land. It is, thus, contended that the statutory right of opportunity of hearing has not been granted to the petitioners nor the consideration of the objections is in fair and reasonable

manner. Reliance is made upon the judgment of the Hon'ble Supreme Court in M/s Usha Stud and Agricultural Farms Private Limited & others Vs. State of Haryana & others 2013 (4) SCC 210.

On the other hand, learned State counsel has produced the file of objections filed on behalf of Shri P.K.Sharma, as Chairman and Managing Director of Kuber Group of Companies. The copies of such objections were also sent to Mr. Samir Mathur, Finance Secretary & Principal Secretary to Government of Haryana as well as to Defence Ministry, Government of India. A perusal of the objections filed shows that the petitioners have objections regarding acquisition of land of Village Binola, Gurgaon, but no details of the land or the extent thereof was disclosed. Mr. P.K.Sharma, Chairman & Managing Director, Kuber Group of Companies, also sent representation dated 11.03.2011 through Courier as well as through Regd. A.D. to the Financial Commissioner & Principal Secretary to Government of Haryana. The Financial Commissioner & Principal Secretary to Government of Haryana sent such representations to the Deputy Commissioner, Gurgaon vide communication dated 30.03.2011 and 17.06.2011 respectively. Similar representation sent by the petitioners to the Prime Minister's Office was also sent to the Deputy Commissioner, Gurgaon on 30.05.2011.

The Land Acquisition Collector has produced the original record of consideration of objections under Section 5-A of the Act. Such record is in a tabulated form sent to the State Government vide communication dated 25.08.2011. In the said communication, it is mentioned that 3 objections were received in respect of Village Bilaspur and 7 objections were received in respect of Village Binola. The summary of the objections submitted by the petitioners are mentioned in Column No.7, whereas the recommendations of

the Land Acquisition Collector are contained in Column No.8. The true translation of both the relevant Columns is as under:

7	8
Request letter of the complainant	Recommendation of the Land Acquisition Collector
More than 100 acres of land pertaining to the company is sought to be acquired. The company has developed the land for the last 18 to 19 years as farm house and that said land was purchased for industrial and commercial purposes. To give more profit to the share-holders, the company has incurred lakhs of rupees. In the year 1995-96, the company has started a project namely Kuber Calorie Tank on which more than Rs.15 crores have been invested. Company has constructed boundary and fencing on its land and that large number of security employees have been deputed. It is also the stand of the company that amount more than the compensation awarded has been incurred and said loss cannot be fulfilled. Therefore, the land be released from acquisition.	Spot has been inspected. Objections were not found tenable. At the spot, no farm house has been developed. No CLU/license of the land for industrial and commercial has been obtained. There is no boundary wall and fencing on the land. No proof regarding amount incurred on the land has been produced. Company is not the sole owner of the land, whereas as per revenue record other land-owners are also share-holders and objections under Section 5-A of the Act have not been received on their behalf. Therefore, recommendations are made to acquire the land.

The argument of learned counsel for the petitioners is that even before the details of the land could be submitted by the petitioners, the recommendations have been made by the Land Acquisition Collector for acquisition, is not correct. A perusal of the original record of the objections filed shows that there was no details of land owned by the petitioners. Though the opportunity of hearing was granted to the land-owners including the petitioners on 30.06.2011, but recommendations were forwarded only on 25.08.2011 after the information regarding the land was made available to the Land Acquisition Collector on 11.08.2011. The argument of learned counsel for the petitioners that report was submitted on 30.06.2011 itself is not correct.

The report was submitted on 25.08.2011. Though in reply, no date of the report has been mentioned, but from a perusal of the original record produced by the respondents shows that recommendations were made on 25.08.2011 i.e. after the communications dated 11.08.2011 was received by the Land Acquisition Collector.

As per the said report, the land was found vacant during inspection. Neither the farm house was developed nor has any license been obtained or even applied for change of land use for industrial or commercial purposes. There is no boundary wall or fencing on the land. No proof has been produced regarding investment over the land. The Company is not the sole owner of the land, as there are other share-holders according to revenue record and no objections have been received from them. Keeping in view the said fact and the fact that CWP No.14064 of 2012 filed by M/s N.C.J. Estate Solutions Pvt. Ltd. in respect of the same acquisition proceedings stands dismissed, we do not find any illegality in the procedure of acquisition. It may be stated that in the said writ petition, the land of M/s N.C.J. Estate Solutions Pvt. Ltd. was also found to be vacant whereas, the request of the land-owners for change of land use was rejected. In the present case, the petitioners have not made even any request for change of land use.

It may also be noticed that the petitioners have levelled allegations against Shri Rampal Singh Yadav, Patwari, who has not been impleaded as a party. The petitioners have sent the objections by name to Shri P.D.Sharma, District Revenue Officer -cum- Land Acquisition Collector, Gurgaon. It is Shri Sharma, who has filed separate written statement dated 21.01.2015. It is, inter alia, stated that he inspected the site; considered the objections and furnished his report. It was recommendation made by him, which culminated in the

issuance of declaration under Section 6 of the Act. Therefore, the entire basis of the claim of the petitioner is factually incorrect and legally not tenable.

At this stage, we may refer to the judgment relied upon by the petitioners in M/s Usha Stud and Agricultural Farms Private Limited's case (supra). It has been held therein that the rule of *audi alteram partem* is required to be followed by the Land Acquisition Collector and that it is obligatory for the Collector to submit report containing his recommendations on the objections together with the record of the proceedings held by him. The principle laid down in the aforesaid judgment has been strictly followed by the Land Acquisition Collector in the present case.

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

(HEMANT GUPTA)
JUDGE

08.10.2015
Vimal

(RAJ RAHUL GARG)
JUDGE