

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

Date of decision: 28.11.2015

CWP No.25061 of 2014

Smt. Sanjana Devi & others

...Petitioners

Vs.

Union of India & others

...Respondents

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

Present: Mr. Krishan Kumar Gupta, Advocate, for the petitioners.

Mr. Sunil K. Sahore, Advocate, for respondent No.2.

Ms. Palika Monga, DAG, Haryana, for respondent No.3.

HEMANT GUPTA, J.

Challenge in the present writ petition is to the notifications dated 09.07.2013 (Annexure P-2) and 07.07.2014 (Annexure P-9) published under Sections 3A and 3D of the National Highways Act, 1956 (for short 'the Act') respectively.

The petitioners are the owners of land measuring 39 Kanal 4 Marla abutting National Highway No.65 in Village Barwa, Tehsil Siwani, District Bhiwani. It is asserted that on the land in question, there are 25 trees of *Sheesham* and that the petitioners are solely dependent upon the income from the agricultural land and that the proposed land would bifurcate the land of the petitioners, therefore, the land should not be acquired.

A notification dated 09.07.2013 under Section 3A of the Act was published to acquire land measuring 386 Kanals and 6 Marlas including land measuring 16 Kanals 18 Marlas of the petitioners for 'building (widening/four-laning, etc.), maintenance, management and operation of National Highway

No.65 in the land from K.M. 213.400 to K.M. 241.500 (Narwana to Haryana/Rajasthan Border Section)'. The petitioners submitted objections to such intention to acquire land. The General Manager (Technical) and Project Director, National Highway Authority of India, vide communication dated 10/11.09.2013 informed the Land Acquisition Collector, Bhiwani that none of the objections except for the road alignment passing through the village Barwa are acceptable, so all the objections except for bypass alignment of village Barwa were recommended for rejection. In respect of Barwa bypass over the land owned by the petitioners, the Land Acquisition Collector was informed that new alignment has been examined technically and revised 3A notification will be submitted after taking into account all the technical parameters.

It is in pursuance of aforesaid communication, a revised notification under Section 3A of the Act was published on 23.01.2014. The proceedings for acquisition were not completed in pursuance of the notification dated 23.01.2014, but notification dated 07.07.2014 under Section 3D of the Act was published pursuant to the earlier notification dated 09.07.2013 under Section 3A of the Act.

The petitioners have referred to a communication dated 02.07.2014 (Annexure P-11), wherein Member (Finance)/ Joint Secretary, National Highways Authority of India has communicated the Financial Commissioner, Department of Revenue, Government of Haryana and Deputy Commissioner, Bhiwani that the work of Hissar to Kaithal – Rajasthan Border (165 KM) has been allotted to M/s IRB and the work is about to start. It is also pointed out that notification under Section 3A was published as per the original alignment, but due to some pressure, the alignment was changed and new notification under Section 3A was issued. It has been decided that the old alignment will be retained with slight modifications and, therefore, the Land Acquisition Collector be directed to finalize notification under Section 3D of

the Act based on original notification under Section 3A of the Act as per the original alignment. It was observed that new notification favours a petrol pump, whereas the old notification as per original alignment bypasses the said petrol pump.

In the reply filed on behalf of respondent No.2 - the National Highways Authority, it is mentioned that the land has been acquired for the purpose of widening of National Highway No.65 in larger public interest. The alignment was approved by the competent authority keeping in view the minimum acquisition of superstructures. It was submitted to the following effect:

“8. That the grounds taken in para 8 of the writ petition are denied being wrong. It is respectfully submitted that the land has been acquired contents of for the purpose of widening / 4 laning of National Highway NH-65 KM 213.400 to KM 241.500 (Narwana to Haryana/Rajasthan Border Section) in larger public interest and the alignment was approved by the competent authority keeping in view the minimum acquisition of structures.

It is respectfully submitted that proposal to change the alignment was not found to be feasible as it will result in further acquisition of additional land. The same will also affect other many structures though some land of the petitioner will be saved but the same would result in change of the alignment and will affect the land of other people. Moreover, competent authority of NHAI has approved the original alignment with slight modifications as shown in Annexure R-1. In this regard, contents of para 6 to 9 of the preliminary submissions made above are reiterated for brevity.”

In a separate reply on behalf of the Land Acquisition Collector, it was mentioned that suggestions of the petitioners besides other objectors alongwith recommendations were sent to the National Highways Authority on 12.06.2014 vide Annexure R-3/2. In respect of objections of the petitioners, it was observed as under:

“Spot examination of land owned by applicant conducted. A fresh notification about land of applicant under acquisition is received

on 10.06.2014. Hence said original objection is being sent to Project Director.”

However, respondent No.2 informed that it is necessary to acquire land according to alignment. Therefore, the recommendations were made for acquisition of land vide Annexure R-3/4. The office file regarding the process of considering the objections under Section 5A of the Act has also been produced for perusal. A perusal thereof shows that the Land Acquisition Collector agreed with the following report of the Patwari:

“Subject: Village Barwa, Tehsil Siwani, District Bhiwani, having area 388 Kanal 6 Marla Draft 3D Notification for countersignature.

The above cited subject is confirmed that Draft 3(D) Notification of Village Barwa has been received for countersignature and the same has been verified for which the Gazette Notification 3(A) dated 09.07.2013 and the same was published in News Paper on dated 04.08.2013. The 14 objections were received on 3(A) and the action was been taken according to rule vide this office letter No.684 dated 05.06.2014 and informed by notice and on dated 11.06.2014 being personally present at Village Barwa and the matter was heard. As per objections received and after hearing the objections sent to Project Director NHAI, Hisar vide this office letter No.706 dated 12.06.2014 for further remarks and they have included the objections in their remarks and also given the remark on the objection of some land owners, that as per allotment the acquisition of the land is necessary, which was received on dated 02.07.2014. On this subject the report of Project Director is clear and he told that as per allotment the acquirement of land is necessary. In addition to this almost all objections have been heard through Court or Advocates and statements have been recorded. Keeping in mind the report of Project Director, all objections to be rejected are appropriate. If agreed, then rejecting the objections, the notification of Draft 3(D) to be countersigned according to rule and be submitted to the department.”

Learned counsel for the petitioners vehemently argued that the objections filed by the petitioners have not been considered by the Land Acquisition Collector after submitting his initial report on 23.01.2014 proposing a new road alignment on the basis of the recommendations of the

Project Director of respondent No.2. The report of the Land Acquisition Collector is as per the report of the Project Director, even another notification was published for re-alignment of the road. Therefore, the acquisition of land in question is wholly unfair, unjust and not tenable.

On the other hand, Mr. Sahore pointed out that the land of the petitioners is a vacant land, whereas in the re-alignment proposed, many structures including houses were becoming subject matter of acquisition. Therefore, it was decided to abandon the notification for re-alignment of road and the acquisition completed on the basis of notification under Section 3A of the Act already published. Since the land of the petitioners is vacant and the land is being acquired for National Highway, the same cannot be said to be unfair and unjust. He relies upon the orders passed by a Division Bench of this Court in CWP No.6016 of 2012 titled 'Amravati Enclave All Residents Sarv Lalyankari Parishad, Amravati Enclave & others Vs. Union of India' decided on 30.03.2012; CWP No.7568 of 2013 titled 'M/s AV Fasteners P. Ltd. & others Vs. Union of India & others' decided on 10.01.2014 and CWP No.10955 of 2014 titled 'Megh Raj Jindal Vs. Union of India & others' decided on 19.10.2015 to contend that the planning of the road alignment is for the experts to decide and this Court in exercise of judicial review will not examine the question, as to whether there should be a change in the road alignment or which of the road alignment is proper.

Having heard learned counsel for the parties at length, we find that the decision to change the road alignment was taken in a Meeting chaired by the Hon'ble Minister Road Transport & Highways, which is evident from the draft Minutes of the Meeting produced by the petitioners as Annexure P-7. Since the acquisition is for National Highway and that too of the vacant land, we find that the same cannot be interfered with in exercise of the judicial review.

Some of the judgments referred to by the learned counsel for the petitioners are to the effect that objections under Section 5A have not been examined in proper perspective. However, we find that even reliance on such judgments is not tenable. Though at one stage, the Project Director, National Highways Authority of India, proposed road re-alignment, but subsequently the Land Acquisition Collector has made recommendations for acquisition of land as per the alignment originally proposed. The noting of the Patwari, which was agreed by the Land Acquisition Collector, has been reproduced above. Therefore, it is the recommendation of the Land Acquisition Collector, which led to publication of a notification under Section 3D of the Act. Thus, we find that there is no procedural illegality or irregularity in the notifications issued, which may warrant any interference in the present writ petition.

Consequently, the present writ petition is dismissed.

(HEMANT GUPTA)
JUDGE

28.11.2015

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(RAJ RAHUL GARG)
JUDGE