

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

Date of Decision: 08.10.2015

CWP No.27671 of 2013

Jaswant & others

...Petitioners

Versus

State of Haryana & others

...Respondents

Present: Mr. M.L.Sharma, Advocate, for the petitioners.
Ms. Palika Monga, DAG, Haryana, for respondent Nos.1, 2, 5 & 6.
Ms. Aakanksha Sawhney, Advocate, for respondent Nos.3, 4 & 7.
Mr. Rajeev Anand, Advocate, for respondent No.9.
Mr. Sanjay Vij, Advocate, for respondent Nos.10 & 15.
Mr. Mukul Aggarwal, Advocate, for respondent No.11.

CWP No.27861 of 2013

Omkar & others

...Petitioners

Versus

State of Haryana & others

...Respondents

Present: Mr. M.L.Sharma, Advocate, for the petitioners.
Ms. Palika Monga, DAG, Haryana, for respondent Nos.1, 2, 5 & 6.
Ms. Aakanksha Sawhney, Advocate, for respondent Nos.3, 4 & 7.
Mr. Rajeev Anand, Advocate, for respondent No.9.
Mr. Sanjay Vij, Advocate, for respondent Nos.10 & 15.
Mr. Mukul Aggarwal, Advocate, for respondent No.11.

CWP No.28024 of 2013

M/s Shiv Narayan Impex Pvt. Ltd.

...Petitioner

Versus

State of Haryana & others

...Respondents

Present: Mr. M.L.Sharma, Advocate, for the petitioner.
Ms. Palika Monga, DAG, Haryana, for respondent Nos.1, 2, 5 & 6.
Ms. Aakanksha Sawhney, Advocate, for respondent Nos.3, 4 & 7.
Mr. Rajeev Anand, Advocate, for respondent No.10.

Mr. Sanjay Vij, Advocate, for respondent Nos.11 & 16.

Mr. Mukul Aggarwal, Advocate, for respondent No.12.

CWP No.28415 of 2013

Ram Chander & others

...Petitioners

Versus

State of Haryana & others

...Respondents

Present: Mr. M.L.Sharma, Advocate, for the petitioners.

Ms. Palika Monga, DAG, Haryana, for respondent Nos.1, 2, 5 & 6.

Ms. Aakanksha Sawhney, Advocate, for respondent Nos.3, 4 & 7.

Mr. Rajeev Anand, Advocate, for respondent No.9.

Mr. Sanjay Vij, Advocate, for respondent Nos.10 & 15.

Mr. Mukul Aggarwal, Advocate, for respondent No.11.

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

HEMANT GUPTA, J.

This order shall dispose of aforementioned four writ petitions i.e. CWP Nos.27671 of 2013; 27861 of 2013; 28024 of 2013 & 28415 of 2013, challenging the acquisition of land for a public purpose namely 'for the development and utilization of land by the Haryana Urban Development Authority for part of Sector Roads between Sectors 82/85, 84/85, 92/Open space zone, 92/93, 94/95 at Gurgaon as per Development Plan for Gurgaon Manesar Urban Complex – 2031'. Though different notifications have been issued in respect of land situated in different Villages, but the purpose of acquisition is same as well as grounds to challenge the acquisition of land of the petitioners, therefore, for the facility of reference, the facts are taken from CWP No.27671 of 2013, wherein the land of the petitioners measuring 13K-4M situated in the revenue estate of Village Sikanderpur Badha, Tehsil Manesar, District Gurgaon is the subject matter of acquisition.

Vide notification dated 20.03.2013 (Annexure P-17) under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act'), land measuring 31.34 Acres in Village Wazirpur; 3.4625 Acres in Village Dhorka & 19.2425 Acres in Village Sikanderpur Badha was intended to be acquired for a public purpose namely 'for the development and utilization of land by the Haryana Urban Development Authority for part of Sector Roads between Sectors 82/85, 84/85, 92/Open space zone, 92/93, 94/95 at Gurgaon as per Development Plan for Gurgaon Manesar Urban Complex – 2031'. The petitioners filed their objections under Section 5A of the Act, inter alia, pointing out that they have raised their cemented houses. It is also pointed out that since the entire land of Village Sihi is with the builders, the said land has not been acquired. Thus, the land in question has been acquired to save the land of the builders. After considering the objections filed, declaration under Section 6 of the Act was issued on 03.12.2013 (Annexure P-19). It is, thereafter, the present petition has been filed challenging such acquisition proceedings.

The grievance of the petitioners is that they are owners of land measuring 13K-4M situated in the revenue estate of Village Sikanderpur Badha, Tehsil Manesar, District Gurgaon, where they have raised construction of the houses and are residing therein, whereas an intentional, motivated & mala fide curve has been put in order to acquire the houses of the petitioners and leave the vacant land of the private respondents.

The stand, in the written statement filed by the District Town Planner, Gurgaon on behalf of respondent Nos.2 & 5, is that the road, subject matter of acquisition, is as per the Final Development Plan - 2031 published on 15.11.2012 under the Punjab Scheduled Roads and Controlled Areas Restrictions of Unregulated Development Act, 1963. It is pointed out that the alignment of the road of Sector 84 & 85 was changed, as notified in the Development Plan – 2025, on the basis of recommendations of the Committee headed by the

Administrator, HUDA, Gurgaon. The re-alignment of the road was incorporated in the Final Development Plan – 2031 notified on 15.11.2012, which was simultaneously incorporated in the Sectoral plan of Sectors 84, 85, 88 & 89 bearing drawing No.DTP(G)2072/2012 dated 28.03.2012. It is also pointed out that the Committee recommended re-alignment of the road due to non-feasibility at the ground for the reason that the thickly built up area, which was a spill over population of village abadi of Village Sikanderpur Badha was coming in the earlier proposed road alignment of Sector 84 & 85 making the road alignment non-feasible. Reliance is placed upon Google image and the part Sectoral plan of Sectors 84 & 85. It is averred that the road alignment was changed to save the thickly built up structures and not with any intention to acquire the constructed houses of the petitioners.

The proceedings of the Meeting dated 04.08.2011, referred to in the written statement, have been appended as Annexure R-2/3. The relevant extract of the proceedings is as under:

“1. Sector Dividing Road, Sector – 92 & Open Space:

Recommendation of Earlier Committee:

In Sector-92, Gurgaon during site visit Committee found that in the revenue estate of Village Dhorka, an old village temple is existing in khasra No.36//9 min and a Harijan Basti is existing partially in Khasra No.36//23. Award of area of both these khasra Nos. which is coming in road alignment is not yet announced. To save these residences and mandir, sector road needs to be realigned. It is pertinent to mention here that the constructions in 36//23 is spread only in half area, but since the plots in this kila number are allotted to Harijans in 1983 under 20 Point Programme, hence this khasra No. needs to be kept out of acquisition. On the other side of this sector road (as per FDP GMUC-2021 AD and DDP GMUC-2025) there is a open space i.e. flowing green, hence this realignment will also not affect any licensed applied/granted area. Committee was of the opinion that alignment of road should be modified in such a manner that both these pockets may not be affected.

Recommendation of New Committee:

The Committee agrees with the proposal of earlier committee and recommends approval of this realignment as shown in the attached plan.

2. Sector Dividing Road, Sector 81 – 81A & Open space:

Recommendation of Earlier Committee:

In Sector 81 during site visit, Committee found that an old Dhani in the name of Meer Ki Dhani is existing in khasra No.29//11 min and 12 min in the revenue estate of Village Lakhnaula, award of which is not yet announced. As major part of this old dhani is coming in the road alignment, as per FDP GMUC-20221 Ad. Hence to save this Dhani the alignment of this sector road needs to be re-aligned in such a manner, that it will affect minimum existing structures. Constructions existing in proximity of this Dhani have also been shown in the attached plan which clearly shows that proposed re-alignment affects minimum existing structures.

Recommendation / suggestions of New Committee:

The committee agrees with the proposal of earlier committee and recommends approval of this re-alignment as shown in the attached plan. It is pertinent to mention here that name of Dhani mentioned above as Meer Ki Dhani is actually named as Tara Chand Ki Dhani.

3. Sector Dividing Road, Sector 92, 93, 94 & 95:

Recommendation of Earlier Committee:

DTP Gurgaon presented the sectoral plan of Sector 922, 93, 94 & 95 before the Committee. He informed that about 4400 m length of GAIL pipe line is passing beneath of the proposed sector dividing road of Sector 92-93 & 94-95. He further informed that the GAIL authority only allowed crossing of the pipe line by any road at or near right angle and it will not allow the pipe line to run beneath the proposed road as shown in the Sectoral Plan. This problem is similar of nature to the one that HUDA faced during the construction of sector dividing road of Sector 62-65 and 63-64. Wherein the Gas Authority of India Ltd. got the construction work stopped and asked HUDA to change the alignment of the road. Hence the Committee recommended to re-align the road as shown on the attached plan.

Recommendation / suggestions of New Committee:

The Committee review the alignemtn viz-a-viz licence apply/granted area in the vicinity, uses of the Development Plan and the GAIL pipe line alignment and agree with the proposal of earlier committee and recommends to approve this realignment as shown in the attached plan.

4. Sector Dividing Road, Sector 84 & 85:

Recommendation of Earlier Committee:

The Committee inspected the site of sector dividing road of Sectors 84-85 and found that the stretch of this road passing by the village Sikanderpur Badha abadi is not feasible on the ground because of the thickly built up area, which is spill over population of Village, coming in its way. Hence, it was decided to re-align this road by giving it a loop (refer sectoral plan) to avoid the thickly built up areas as well as isolated buildings, except an abandoned godown shed to which CLU was granted in the year 2000. The Committee observed that this structure is lying defunct, which can be acquired for making this road feasible on the ground. Besides, the Committee also pointed out that the amended alignment passes through the licensed granted sites of M/s Reliable Realtech Pvt. Ltd. for Group Housing and M/s Vatika Land Base Ltd. for setting up a residential plotted colony as shown on the enclosed sectoral plan. Areas measuring 0.6 acres of group housing site and 1.408 acres of plotted colony falls in the proposed re-alignment. It is pertinent to mention here that both the sites are lying vacant.

Recommendation / suggestion of New Committee:

It is informed by DTP, Gurgaon that realignment proposed by the earlier committee was passing through licensed land of M/s Vatika Landbase & M/s Reliable Realtech Pvt. Ltd. As per direction of HQ, it was enquired and found that M/s Vatika Landbase has not created any third party right in his licensed land affected by the realignment, but M/s Reliable Realtech Pvt. Ltd. had got his building plan approved and created third party rights. Hence re-alignment through this licensed land of M/s Reliable Realtech will create legal complications. In view of this new information, Committee is of the opinion that the proposed realignment of earlier committee will be further modified in such a manner that it will not pass through licensed land of M/s Reliable Realtech Pvt. Ltd. This proposed realignment will affect two structures (one is abandoned CLU) granted ware house and other is a 'B' class residential house) as shown in the attached plan. The committee recommended to approve this realignment.

The Committee is also of the opinion that as majority of all the sector roads of Sector – 81 to 95 already stand acquired and construction work is in full swing, these realignment may be approved at the earliest and acquired so that road network of Sector 81 to 95 will be completed.”

We have heard learned counsel for the parties at length and find no merit in the present set of writ petitions. The purpose of acquisition is of laying the roads. 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 Supreme 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 to the following effect:

“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 terms of the aforesaid judgments, since the land in question is being acquired for roads, the nature of construction on such land cannot stall the project of laying the roads and/or the ancillary services.

However, the question, which is raised and required to be examined is, whether the alignment of the road has been changed to benefit the private builders so as to treat the land-owners in a discriminatory and arbitrary manner. Different site plans have been produced by the parties. A perusal of site plan (Annexure P-11) shows that adjoining the abadi of Village Sikanderpur Badha, there are constructed residential houses. The initial road alignment covers said constructed portion. However, the re-alignment of the road excludes such largely constructed portion and has only two or three small constructed portions coming in the revised lay out plan. In the revised site plan, road is planned over the plotted colony namely M/s Vatika Land Base Ltd., but touches the licensed group housing of M/s Reliable Real Tech Pvt. Ltd. Only small residences having tin-shed construction are coming in the alignment of such road. Image (Annexure R-2/3) from Google Earth shows multiple constructions in the area of original road alignment, where in the revised lay out plan, there is hardly any construction.

Whenever there is acquisition, it is bound to cause hardship to the persons whose land is subject matter of such acquisition. However, the decision to lay roads at one place or the other, the circumstance of saving large number of constructions or few is relevant consideration. As against large number of dwelling units being acquired, some of them allotted under 20 Point Programme, acquisition of land of some other land owners, serves the larger public interest though at the individual cost of private interest of the petitioners. One can

understand, the hardship, which the petitioners may suffer on account of acquisition of their land, but such individual interest has to give way to the public interest. Since the larger public interest is to be preferred as against the individual interest, therefore, we find that change of road alignment is not with a view to acquire any particular land, but to save thickly populated area from acquisition. In fact, the proposed re-alignment covers the part of the licensed colony of a private builder as well.

In view of the above, we do not find any merit in the present set of writ petitions. Consequently, all the writ petitions are dismissed.

(HEMANT GUPTA)
JUDGE

08.10.2015
Vimal

(RAJ RAHUL GARG)
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