

In the High Court of Punjab and Haryana at Chandigarh

CWP No.25362 of 2014

Date of decision: October 08, 2015

Surender

..... Petitioner

Versus

State of Haryana and others

..... Respondents

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

Present: Mr. Vikram Singh, Advocate
for the petitioner.
Ms. Palika Monga, DAG, Haryana
for respondents No.1,2 and 4.

HEMANT GUPTA, J.(Oral)

Challenge in the present writ petition is to the notifications dated 23.02.2007 and 20.03.2008 published under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short 'the Act') in respect of land of the petitioner situated in village Khaira, Tehsil and District Mohindergarh.

The petitioner claims to be owner of the land bearing khasra No.28//14/1 min (2-9), 7(8-0) and has constructed residential houses consisting 7 rooms, latrine, bathroom and boundary wall in front of constructed house measuring 419 sq. yards. He also installed electricity connection and residing therein since more than 20 years.

The petitioner has sought to challenge the acquisition on the ground that the land in question has residential house constructed by him, therefore, such constructed portion cannot be acquired. It is pointed out that earlier the petitioner filed a Writ Petition wherein a direction was issued to consider the claim of the petitioner for release of the land. That the order passed by the Competent Authority

Annexure P-5 rejecting the claim of the petitioner for release of land on the ground

that the construction has been raised by the petitioner after publication of notification under Section 4 of the Act is not legal. The petitioner is entitled to the benefit of policy dated 26.10.2007.

In the reply, it has been pointed out that the Land Acquisition Collector announced the award in respect of land in question on 19.02.2010 and the possession was handed over to the representative of HUDA on the same day. The compensation of `4,48,252/- was disbursed to the petitioner vide cheque No.328686 dated 09.04.2010. The land of the petitioner is required for widening of the 45 mtr. road and green belt.

The said written statement was filed on 10.02.2015 but no replication has been filed. As per report, the construction has been raised after publication of the notification under Section 4 of the Act. Still further, the petitioner has received the amount of compensation more than four years prior to the filing of the writ petition. In view of these facts, we find that the petitioner is estopped to challenge the acquisition proceedings.

Still further, the land of the petitioner is required for a road but even if, there is a construction on the land subject matter of acquisition, the same could be acquired. 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.”

In view thereof, we do not find any merit in the present petition.

The same is dismissed.

(HEMANT GUPTA)
JUDGE

(RAJ RAHUL GARG)
JUDGE