

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Date of Decision: 4th March, 2015

1. **Civil Writ Petition No. 8971 of 2012**

M/s Royal Retreats Hotels Pvt. Ltd. ..Petitioner

versus

State of Punjab and others ..Respondents

2. **Civil Writ Petition No. 3273 of 2014**

M/s Royal Retreats Hotels Pvt. Ltd. ..Petitioner

versus

State of Punjab and others ..Respondents

3. **Civil Writ Petition No. 3291 of 2014**

Kanwaljit Singh Brar ..Petitioner

versus

State of Punjab and others ..Respondents

CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASHI.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Present : Mr. Rajiv Atma Ram, Senior Advocate with
Mr. Vikas Kuthiala, Advocate, for the petitioners in
CWP Nos. 8971 of 2012 and 3273 of 2014.

Mr. Sunil Chadha, Senior Advocate with
Mr. Rahul Bhargav, Advocate, for the petitioner in
CWP No. 3291 of 2014.

Mr. Vinod S.Bhardwaj, Addl. Advocate General, Punjab,
for the State of Punjab.

Mr. Amar Vivek, Addl. Advocate General, Haryana with
Ms. Palika Monga, Deputy Advocate General, Haryana.

Mr. Sanjeev Sharma, Senior Advocate with
Mr. Shekhar Verma, Advocate, for respondent No.3-GMADA.

Mr. Samarth Sagar, Advocate for respondent No.4-
M.C. Zirakpur in CWP No. 8971 of 2012.

Mr. J.S.Toor, Advocate for respondent-M.C.Zirakpur in
CWP Nos. 3273-2014 and 3291-2014.

Mr. Akshay Bhan, Senior Advocate with
Mr. Alok Mittal, Advocate and
Mr. Ashish Chopra, Advocate for respondent No.6-
M/s Shipra Estates Pvt. Ltd.

S.J.VAZIFDAR, ACTING CHIEF JUSTICE

The petitioners have challenged the acquisition proceedings in respect of their respective properties. They have sought an order quashing the notices under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short 'the Act') and the awards made pursuant thereto.

2. The issues in these writ petitions are similar. We, therefore, dispose of these writ petitions by this common order and judgment.

3. We will first refer to the facts from Civil Writ Petition No. 8971 of 2012.

Respondent No.2 is the Land Acquisition Collector, Punjab; respondent No.3 is the Greater Mohali Area Development Authority (GMADA); respondent No.4 is the Municipal Committee, Zirakpur, District Mohali and respondent No.5 is M/s Shipra Estates Pvt. Ltd.

4. The notification under section 4 dated 09.09.2004 states that the land was likely to be required for the planned development and

for setting up of the residential Urban Estate, Zirakpur. The total area of the land proposed to be acquired was 368 acres. The petitioner's land was sought to be acquired to the extent of about 2 acres. The notification under section 6 dated 10.02.2005 stated the same public purpose for the acquisition of the said land. However, as per the section 6 notification only about 284 acres were sought to be acquired. This acquisition, however, lapsed on the ground that the owners had not consented to the same. The Government, therefore, decided that the award was not to be given and permitted the acquisition to lapse.

5. Mr. Atma Ram, the learned Senior Counsel appearing on behalf of the petitioner stated that under the threat of the proposed acquisition various owners had sold their land measuring about 1170 acres at highly reduced prices to respondent No.5. The decision to permit the acquisition to lapse thereby greatly benefited respondent No.5 who had acquired the properties during the acquisition proceedings at highly reduced prices.

This contention is not relevant for the purpose of this writ petition. As the petitioner was not effected thereby, it is not concerned with the same. The petitioner did not sell its land to respondent No.5. Those who sold their lands to respondent No.5 allegedly at a reduced price in the aforesaid circumstances have not challenged their sales.

6. On 08.03.2006, a Letter of Intent was issued in favour of the petitioner to set up a hotel and multiplex upon its land subject to fulfilling all the conditions mentioned therein. On 13.10.2006, the petitioner entered into a Memorandum of Agreement with the Governor

of Punjab. The Government of Punjab extended to the petitioner several reliefs and concessions for the implementation of the hotel project in consideration of the petitioner making an investment of about ₹ 51 crores for setting up a hotel in accordance with the conditions stipulated in the industrial policy of 2003 and the tourism policy.

7. A Master Plan of District Mohali was prepared on 11.09.2008 and duly notified by respondent No.3-GMADA.

8. The acquisition proceedings challenged in the above writ petition commenced with the notice dated 26.08.2009 issued under Section 4 of the Act which stated that the land was likely to be needed by the Government at public expense for the public purpose of constructing a 11 Km. 200 foot wide road from NH-64 to Panchkula-Sector 21 in accordance with the duly notified Regional Plan of Greater Mohali Area Development Authority. The proposed acquisition was in respect of 386.53 acres of which only two acres were from the petitioner's larger plot measuring about 5 acres.

9. The petitioner's main grievance is that the acquisition is only to benefit respondent No.5 as the proposed road ends at the property of respondent No.5. The road passes through the States of Punjab and Haryana. While the Punjab Government has proceeded with the acquisition, the Haryana Government, he says, is not agreeing to the same. In other words, a part of the 11 Km. long road for which the acquisition is proposed, which falls in the State of Haryana, is not likely to go through. The acquisition, therefore, cannot now be for the purpose of the 11 Km. road. The proposed road, therefore, can only

benefit respondent No.5, for it would have an additional access by virtue thereof in respect of its development.

10. It is difficult to find any malafides in the acquisition proceedings for more than one reason. Firstly, the proposed acquisition was in respect of 386.53 acres of which the petitioner's property is only about 2 acres. There is nothing to indicate that an acquisition to the extent of 386.53 acres was proposed only for the purpose of conferring the benefit of an access or additional access to respondent No.5.

11. Further, although the Government of Haryana, at one time showed reluctance to proceed with the acquisition, now proposes acquiring the land that falls within the State of Haryana. A written statement has been filed by the Special Secretary to the Government of Punjab stating that the State of Haryana has now once again agreed to participate in the project and necessary steps are being taken to finalize the acquisition process for the remaining land required for the construction of the proposed road. Ms. Monga, learned Deputy Advocate General, Haryana on taking instructions confirmed that the State of Haryana proposes going ahead with the acquisition of the land that falls within the State. The contention that the purpose of the acquisition does not exist as the Haryana Government has withdrawn from the acquisition proceedings, therefore, no longer survives.

12. We do not intend considering the allegations made by any of the parties regarding the legality or illegality of the construction put up by the petitioner and respondent No.5. The same is irrelevant in this petition which only concerns the legality of the acquisition

proceedings. Nothing prevents the parties concerned from questioning the legality of the construction independently.

13. The parties referred to several maps and site plans with regard to the petitioner's contention that the acquisition is only to benefit respondent No.5.

14. Firstly, in view of the statement on behalf of the State of Haryana and the State of Punjab that the entire acquisition proceedings are to be continued, this contention does not survive. Secondly, as we noted earlier, the proposed acquisition was for 386.53 acres of land. It is difficult to imagine that this entire proposed acquisition was only to benefit respondent No.5 by providing it additional access.

15. We referred earlier to the master plan that was sought to be prepared on 11.09.2008. A publication inviting objections and suggestions from the public regarding the same was made on 02.12.2008. The objections were to be sent by 31.12.2008. No objection was received upto 31.12.2008. The master plan was ultimately finalized on 02.01.2009. It is of vital importance to note that the master plan has not been challenged. Indeed, it would be difficult to challenge the same at this point of time. The master plan having been finalized, the decision to construct the road cannot be challenged. If for that purpose the land is required, the acquisition would be for a legitimate public purpose. Mr. Sanjeev Sharma, learned Senior Counsel appearing on behalf of GMADA-respondent No.3 in all the three writ petitions rightly contended that we must proceed on the basis that the regional master plan is valid as the same has not been challenged.

Further, the objections to the same were not raised at the relevant time.

The master plan was finalized on 02.01.2009. We cannot, therefore, proceed on the basis that the master plan is incorrect or unenforceable.

16. The notification under Section 6 of the Act was issued on 24.08.2010 which proposed an acquisition of only 156.80 acres, out of which 10 acres belong to respondent No.5. Thus a large part of the property of respondent No.5 is also sought to be acquired. This is one more reason for not accepting the allegation that the acquisition was only to benefit respondent No.5.

17. The award was ultimately made on 23.02.2011 for 83.74 acres. Thus, 302.80 acres initially proposed to be acquired was not acquired.

18. Mr. Atma Ram contended that on 11.08.2010 the respondents had submitted a lay out plan showing the proposed road as per the master plan. He further stated that within one day respondent No.5 was granted approval. He also contended that respondent No.5 is not entitled to avail the benefit of the policy of the Government of Punjab dated 10.08.2010 which deals with the procedure to be adopted for giving credit to the promoters of mega projects in the EDC charges as the road to be constructed by respondent No.5 was within its projects. Respondent No.5 contends that the road to be constructed is on the acquired land and, therefore, outside the 5th respondent's project.

19. As we mentioned earlier, this petition concerns the acquisition proceedings. If respondent No.5 is not entitled to the benefit of a particular policy, it is a different matter altogether, which must be a

subject matter of independent challenge. That the 5th respondent's lay out plan is on the basis of this road *prima-facie* at least is not relevant. Even if the policy does not permits development of a public road in order to avail the benefit conferred thereunder, necessary consequences would follow. If it is held to be dis-entitled to avail the benefit of the policy, remedial measures will have to be taken by respondent No.5. The acquisition will not be affected thereby.

20. In support of the contention that the acquisition of the petitioner's property was *mala fide*, it was contended that although the road from Panchkula to Zirakpur could have been straight, the master plan provides for a deviation only to favour respondent No.5.

21. The master plan as we mentioned earlier, was finalized on 02.01.2009. It has not been challenged. We must proceed on the basis that the master plan is valid. If that be so, this contention cannot be raised to oppose the acquisition.

22. There is yet another aspect which does not permit a successful challenge to the acquisition proceedings which we will refer to after referring to the facts of the other two writ petitions.

23. The aggregate area involved in the above petition and in Civil Writ Petition No. 3273 of 2014 is two acres of the petitioner's property. In this writ petition, the notice under Section 4 of the Act was issued on 10.01.2013; the notice under section 6 was issued on 23.05.2013 and the award under section 11 was made on 12.09.2013.

24. Mr. Atma Ram contended that the notice under section 4 admits that the acquisition is for respondent No.5. The submission is

not well founded. The notification under section 4 states that the land is likely to be needed by the Government for public purpose, namely, for acquisition of remaining khasras of 200' wide road "from NH-64 to Shipra Estate Ltd.-respondent No.5". The notification does not state that the acquisition is 'for' Shipra Estate Ltd. It refers to the location of the property to be acquired. This is clear from the word 'to' in the expression "from NH-64 to Shipra Estate Ltd.".

25. Mr. Sunil Chadha, learned Senior Counsel appearing on behalf of the petitioner in Civil Writ Petition No. 3291 of 2014 adopts Mr. Atma Ram's contentions. The acquisition in this case pertains to 1 Bigha 3 Biswas comprised in three khasra Nos. 1043/683, 1042/683 and 1045/684 of an aggregate area of 1150 sq. yards. The notification under section 3(A) of the National Highways Act, 1956 is dated 10.07.2006 and under section 3(D) is dated 22.01.2007. The award was made on 22.05.2007.

Mr. Chadha contended that the land proposed to be acquired under the three khasra numbers was 2 Bighas 10 Biswas, 10 Biswas and 1 Bigha 15 Biswas, respectively aggregating to 4 Bighas 15 Biswas. Ultimately, it was decided to acquire 1 Bigha and 3 Biswas from Khasra Nos. 1043/683 and 1042/683 respectively aggregating to 1 Bigha 3 Biswas. He also relied upon an order and judgment dated 20.04.2011 which directed de-notification of the land to be acquired on the earlier occasion. Despite the same, the respondents did not do so. The petitioner filed contempt proceedings. The petition was not pressed in view of the respondents' statement that the petitioner's land has been

left out of the acquisition process. Mr. Chadha, raised a grievance that now the State of Punjab intends acquiring different portions of the land but from the same khasra numbers. He contended that the proposed road is to help respondent No.6, namely, Maya Estates.

26. We are not inclined to entertain these objections in this writ petition. The objections were not taken under Section 5-A of the Act. There is no valid reason for not having done so. The fact that the petitioners are Non-Resident Indian makes no difference. It is pertinent to note that even in the representation to the authorities, subsequently this objection regarding bend in the road being only for the malafide purpose to benefit respondent No.5 was not raised.

27. Our attention was invited to the maps which indicate the road. It is necessary to mention here that this small portion would stall the entire public project which is of enormous public convenience. The project involving the development of the road has been implemented in stages. It would lead to considerable de-congestion of traffic as the traffic from Delhi and Shimla would not have to go to through Zirakpur and Chandigarh and several other townships. The vehicles would take the outer road and proceed in several directions without causing any traffic congestion in Chandigarh-Zirakpur etc. From the map, it appears that even if Haryana does not implement the project by continuing the proposed road in its State, it would make no difference as decongestion would still occur on account of this outer road.

28. In the circumstances, the writ petitions are dismissed. The stay granted shall continue upto and including 06.04.2015.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

(AUGUSTINE GEORGE MASIH)
JUDGE

4th March, 2015
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Whether to be referred to the reporter or not.	√ Yes	No.
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