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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 3060 of 2014
Date of Decision: 4.9.2015

Resident Welfare Association

....Petitioner

versus

State of Haryana and ors

....Respondents

CORAM: - HON'BLE MR. JUSTICE HEMANT GUPTA.
HO'NBLE MRS. JUSTICE RAJ RAHUL GARG.

Present: - Mr. Jagdish Manchanda, Advocate for the petitioner.

Ms. Palika Monga, DAG, Haryana

Mr. Amar Vivek, Advocate for
respondent-HUDA

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HEMANT GUPTA, J.

Challenge in the present writ petition is to the notification dated 4.7.2011 (Annexure P-19) published under Section 4 of the Land Acquisition Act 1894 (for short 'the Act') intending to acquire 35.13 acres of land including 12.64 acres of land in village Baslewa, the area in which the land of the petitioner-association is said to have been situated. The declaration under Section 6 of the Act was published on 2.7.2012 (Annexure P-21). Thereafter, the Land Acquisition Collector announced the Award on 20.5.2013 (Annexure P-26).

The petitioner-association earlier filed a writ petition before this Court challenging the acquisition of land, which was disposed of on 9.7.2013 (Annexure P-27) with the direction to respondents to treat the petition as a representation on behalf of petitioner-colony and take an appropriate decision within a period of three months. It is thereafter, the Director General, Urban Estates, Haryana Panchkula passed an order dated 9.12.2013 (Annexure P-28), wherein it has been found that as per the approved revised circulation plan of Sector 75 to 89, Faridabad, the land in dispute falls partly with the re-alignment of sector dividing road of Sector 87 and 88, Faridabad and partly in institutional belt on either side of the said road. It is also pointed out that as per the survey conducted at the time of publication of the notification under Section 4 of the Act, there was structure was in existence over the land in dispute.

In a separate reply filed on behalf of Land Acquisition Collector-respondent No.4, it has been found that only 13 members of the petitioner- association filed objections under Section 5-A of the Act whereas only 7 members had small construction comprising of one room or two rooms and the remaining land was vacant. As per the survey conducted, at the time of notification under Section 4 of the Act, no existing structure was found constructed over the land in dispute.

In another written statement filed by District Town Planner, Faridabad dated 4.8.2014 on behalf of respondents No. 2 and 3, it has been pointed out that the members of the petitioner-association have raised unauthorized construction after the approval of the re-alignment of the

master plan road under the Punjab Scheduled Roads and Controlled Area Reconstruction of Unregulated Development Act, 1963 (for short 'the 1963 Act'). It is also stated that the extent of unauthorized colony is being expanded.

In another written statement dated 29.10.2014 filed on behalf of respondent No. 5, it has been pointed out that the construction work of roads of 1555 meter out of total length of 1855 meter has been completed at site which is more than 83% of the total construction work. The electrification work has been completed over an area of 500 meter and foundation and cable has been laid over an area 900 meter. A sum of Rs. 4.85 crore has been incurred on account of execution of the above said work.

In support of his arguments that the members of the petitioner association are entitled to alternative plots, the Learned counsel for the petitioner-association refers to an order passed by the Division Bench of this Court on 19.2.2014, which reads as under: -

“Having heard learned counsel for the petitioner and after going through the site-plan coupled with the speaking order under challenge, we are satisfied that one/two rooms houses of the members of the petitioner-Association can not be saved as it would stall an ambitious project of proposed roads which are meant to serve the public at large. However, we are of the view that if the petitioner's members are to be uprooted from the site, an alternative plot of equivalent size with compensation for the structures wherever raised, is paid to them and some reasonable time is granted for shifting to the alternative sites.

Let notice of motion be issued to the respondents for 09.04.2014.

Meanwhile, demolition as well as further construction shall remain stayed.”

In the light of the aforesaid order, the argument of learned counsel for the petitioner is that even if the land of the petitioner is required for construction of road, the members of the petitioner-association cannot be dispossessed without allotting the alternative plot of equivalent size with compensation of the cost of the similar structures to be raised.

We have heard learned counsel for the parties and find no merit in the present petition.

A perusal of the Annexure P-1 dated 8.12.2009 attached with the present petition shows that 49 persons are members of the Petitioner – Association. But the details of sale deeds have been given in respect of 31 members. The dates of sale deeds are between the period 2006 and 2009. As per the averments made in the written statement, 13 objections were received whereas constructions have been raised by 7 persons only. The petitioner-association has not filed any rejoinder to controvert the assertions made by respondents in the written statement. In another written statement, the assertion is that the construction has been raised after publication of the notification under Section 4 of the Act and after notification of the master plan. The categorical assertion of respondents is that the construction has been raised in violation of the provisions of the 1963 Act. Some of the notices served upon the occupants to restore the land to its original position at it existed before the raising of the construction has been appended with the written statement. Still further some photographs

of the construction raised shows that it is temporary construction. Some of the construction made has no roof as well. One of the occupants has raised the construction of a temple as well.

Since, the constructions, if any, are raised in violation of the statutory provisions contained in 1963 Act and most of the constructions were not in existence prior to the publication of the notification under Section 4 of the Act, the construction raised by the petitioner-association cannot be taken note of so as to re-align the road. It may be stated that in **Sube Singh & others Vs. State of Haryana & others (2001) 7 SCC 545** and **Jagdish Chand Vs. State of Haryana (2005) 10 SCC 162**, the construction can be the subject matter of acquisition if the same is required for a road, therefore, even if there are some constructions, the same can very well be the subject matter of acquisition.

The categorical stand of the respondents is that the petitioner-association would be entitled to benefit of rehabilitation and resettlement in terms of the policy framed by the State Government. Since, the construction raised by the petitioner-association is unauthorized; we find that the offer of the respondents to rehabilitate the petitioner-association is fair and reasonable. There cannot be any pre-condition of providing them alternative land for rehabilitation. The construction of road is of paramount importance which cannot be scuttled only for the reason that the alternative plots have not been made available to the petitioners so far.

However, the respondents shall in view of the stand in the written statement, rehabilitate the petitioner-association in terms of the policies framed from time to time.

In view of the said fact, we do not find any merit in the present petition.

Dismissed.

(HEMANT GUPTA)
JUDGE

(RAJ RAHUL GARG)
JUDGE

4.9.2015
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