

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

**CWP No.2900 of 2015(O&M)**

**Date of decision:24.12.2015**

**Vijay Pal and others**

**....Petitioners**

**VERSUS**

**State of Haryana and others**

**.....Respondents**

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA**

**HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

Present: Mr. Ram Bilas Gupta, Advocate for the petitioners.

Mr. Vivek Saini, DAG, Haryana for respondent No.1.

Ms. Avinash Mandla, Advocate for respondents No.2 and 3.

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**HEMANT GUPTA, J.**

The challenge in the present writ petition is to the notifications dated 14.08.2008 and 30.08.2008 published under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short 'the Act') by invoking urgency provisions as contained in Section 17 of the Act and the Award dated 27.08.2010. The challenge is also to the order dated 31.10.2014 wherein in pursuance of the direction of this Court, the case of exemption from the acquisition of land situated in village Fraidpur was examined and declined by observing as under:-

“1. The CWP No.6730 of 2014 titled as Vijay Pal Vs. State of Haryana and other was disposed of by the Hon'ble High Court vide order dated 07.04.2014. Operative art of the order is reproduced below:-

“...Having heard learned counsel for the parties and considering the fact that the issues raised is essentially a question of fact which can

be essential determined by the respondent authorities after conducting fresh survey and/or re-demarcation of the subject area which has been acquired for construction of roads for Sector 75 to 89 as per the development plan of Faridabad, we dispose of the writ petition with a direction to the respondents to verify the Petitioner's above-mentioned claim and taken an appropriate decision in view of the policy circular referred to above within a period of four months from the date of receipt of a certified copy of this order.

Till then, the parties shall maintain status quo regarding demolition and/or alienation of the structure.

Ordered accordingly.

2. In compliance with the above order, a report was sought from Chief Administrator, HUDA. The same has been received which is based on a report submitted by Administrator. As per report, the house of the Petitioners measuring 10.5 m x 18.90m falls in the alignment of 12m wide service road which is part of 75m wide peripheral road of sector 78, Faridabad. In view of these facts, CA, HUDA has recommended not to release any land in favour of the Petitioners.

The case was examined in the Department and it was observed that the house of the Petitioners measuring 10.5 m x 18.90m situated in the revenue estate of village Faridpur falls in the alignment of 12m wide service road which is part of 75m wide peripheral road of Sector 78, Faridabad. As the structure obstructs service road, which is part of a major urban road artery, so it was recommended not to release any land in favour of the Petitioners since his case is not covered under policy dated 26.10.2007 as modified on 24.01.2011. However, the Petitioners are entitled for benefit under R&R policy for which he may apply to CA, HUDA/ Administrator, HUDA, Faridabad. The Government has approved the recommendation of the Department. The order is issued accordingly. The petitioners be informed.”

The claim of the petitioners in the present petition is, that the petitioners have purchased the land measuring 200 square yards on which double-storey house has been constructed. It is contended that the laying of road is complete and no part of the road is affected by the construction

raised by the petitioners. Therefore, the construction raised by the petitioners is liable to be exempted from the acquisition.

Secondly, that the respondents have acted in discriminatory and arbitrary manner in as much as the vacant land in the village Kheri Kala (part of the same notification) has been released from acquisition whereas the small area of the petitioners over which the petitioners have constructed house has been acquired.

Thirdly, that the petitioners should not be dispossessed from the land acquired till such time alternative plots are allotted in the light of the order passed by this Court in CWP No.25874 of 2012 titled Lovkesh Chander and others v. State of Haryana and others, on 21.10.2013; order dated 02.09.2013 passed in Smt. Chamba Devi and others v. State of Haryana and others and order dated 29.07.2013 in CWP No.11420 of 2012 titled Sultan Singh v. State of Haryana and others (Annexure P-26).

Learned counsel for the petitioners also relied upon order passed by Hon'ble Supreme Court on 04.05.2012 in Special Leave Petition (Civil) No.19956 of 2010 titled Shiv Ram and others v. State of Haryana and another, wherein the State Government has agreed to allot 1000 square yard plot to the petitioners.

In respect of the first argument, the stand of the District Town Planner in the reply dated 09.12.2015 is that the sector roads which were passing through the contiguous abadi have been re-aligned from the vacant land and no sector road has been re-aligned for a single structure. It was further stated that the land of the petitioners is falling within alignment of

12 meter wide service area in outer side along peripheral road. We find that since, the acquisition is for the service area along the peripheral road, therefore, the acquisition of the house constructed thereon is not exempted from acquisition as laid down by Hon'ble Supreme Court in Sube Singh & others v. State of Haryana & others, (2001) 7 SCC 545 and Jagdish Chand Vs. State of Haryana, (2005) 10 SCC 162.

In respect of the second argument that the respondents have acted in a discriminatory and arbitrary manner, the stand of the Land Acquisition Collector in the written statement is that the land of village Kheri Kala of an area measuring 233.98 acres was de-notified being thickly populated area. The land-owners were agitating for re-alignment of road. The Director, Town and Country Planning Department, visited the site and ordered to make the re-alignment for proper development of Master Roads, Sector 75 to 89, Faridabad to save the construction. An area of additional land of 35.13 acres was notified under Section 4 of the Act on 04.07.2011 for re-alignment and followed by notification under Section 6 of the Act dated 02.07.2012.

We have heard learned counsel for the parties and find no merit in the said argument as well. It appears that the structure of the petitioners is the solitary one in the area in question on which the service road is contemplated, whereas the land in Village Kheri Kala was thickly populated which led to re-alignment of road. Therefore, the action of the State Government in re-aligning road so as to save thickly populated area in village Kheri Kala and to acquire small constructed area of the petitioners cannot be said to be discriminatory and arbitrary. In view

thereof, we do not find any merit in the argument that the State Government has acted in a discriminatory manner.

The argument that petitioners should not be dispossessed till alternatives sites are allotted is again not tenable. The common thread of all the orders passed and relied upon by the petitioners is that the appropriate course would be to simultaneously rehabilitate the land-owners by giving plots. The Court has ordered the following in Lovkesh Chander's case (supra):-

“In these circumstances, it appears that instead of granting the benefit of policy dated 26.10.2007 to save the petitioners' residential house, more appropriate recourse would be to immediately rehabilitate them in terms of the policy dated 09.11.2010. We are conscious of the fact that as per the said policy, claims of all the displaced persons are to be invited and their eligibility is to be determined. We would, however, not permit the respondents to indulge in such an exercise for the purpose of allotment of alternative plot to the petitioners. In other words, since the petitioners are to be displaced from a residential house, it must happen simultaneously, namely, the respondents shall have to allot a plot to the petitioners in a nearby developed urban Sector of Faridabad and then only they shall be dispossessed from the subject house.

The petitioners shall, however, be entitled to compensation for the acquired land/structure in accordance with law.”

We find that such order of the Division Bench runs counter to an earlier the Division Bench judgment of this Court in LPA No.2096 of 2011 titled as Haryana Urban Development Authority and others Vs. Sandeep and others, decided on 25.4.2012. The Bench held that the rehabilitation is a process in which all land-owners whose land was acquired are to be given equal opportunity. The land-owners forming part of category of oustees are to be given equal opportunity to apply and to be

considered for allotment of plots. The Special Leave Petition against judgment of this Court in Sandeep Singh's case (supra) stands dismissed. The Court, while considering Question No.4 as to whether the condition in the policies seeking applications from the oustees before the Sector is floated is directory, held as follows:

“In view of the principles laid down, we find that the procedure to invite an application for allotment of plot before the floatation of a sector is only directory provision. When the HUDA invited applications from the general public along with the applications from the oustees, it substantially complies with the conditions in the policies framed by it. The requirement of allotment of plots to the oustees prior to the floatation of sector is for the purpose that the claims of the oustees have to be accepted in priority over the claim of the general public. In terms of the decision on question No.2, referred to above, the oustees form a distinct and separate category and are entitled to reservation. Such reservation can be given effect to, when the plots available in a sector are determined and the percentage of reservation of each category is fixed. Having done so, the HUDA is required to invite applications, may be separately for each category or may be through one advertisement inviting applications from each category. It is a matter of convenience to invite applications through one advertisement from all eligible applicants, may be the general category and from one or more reserved categories. One advertisement would facilitate the disposal of plots in expeditious manner, whereas the different advertisements for each category will only delay the process of allotment of plots. In fact, the public advertisement is the best mode to invite applications from the separate and distinct category including from the oustees, as it avoids the dispute regarding receipt of the notice or otherwise an argument that they were not made aware of the plot being available, as part of the rehabilitation process. Such process provides opportunity to all the similarly situated oustees to apply for the plots. It provides for equal opportunity to all. Thus, we are not inclined to accept the argument that condition in the R & R policies to seek applications from the oustees before the floatation of the sector is mandatory. In fact, the argument of learned counsel for the appellant that the policy for rehabilitation by way of allotment of plots to the oustees is in two parts is more acceptable.

The mandatory provision is the right of consideration for allotment of plots. The condition of inviting applications before the floatation of a sector is a directory provision, as it relates to procedure of allotment of plots.”

The appeal and the large number of the writ petitions were disposed with the following directions:-

“Thus, the present appeal as well as the other connected matters are disposed of with the following directions, in addition to the decision on the questions of law discussed above.

- (i)       xx                               xx                               xx
- (ii)       That the entitlement of the size of the plot and the procedure for allotment shall be as on the date of allotment in pursuance of an advertisement issued inviting application from the oustees;
- (iii)       That the HUDA or such other authority can reserve plots up to 50% of the total plots available for all reserved categories including that of oustees. As to what extent there would be reservation for the oustees, is required to be decided by the State Government and/or by HUDA or any other authority, who is entitled to acquire land;
- (iv)       That the oustees are entitled to apply for allotment of plot along-with earnest money in pursuance of public advertisement issued may be inviting applications from the general public and the oustees through one advertisement. If an oustee is not successful, he/she can apply again and again till such time, the plots are available for the oustees in the sector for which land was acquired for residential/commercial purposes or in the adjoining sector, if the land acquired was for institutional and industrial purposes etc. The plots to the oustees shall be allotted only by public advertisement and not on the basis of any application submitted by an oustee;
- (v)       That the price to be charged from an allottee shall be the price mentioned in the public advertisement in pursuance

of which, the plot is allotted and not when the sector is floated for sale for the first time;

- (vi) That the State Government or the acquiring authority shall not advertise any residential plot for sale without conducting an exercise in respect of plots ear-marked for reserved categories and after identification of the plots available for the oustees in each sector. Thereafter, the State Government or the acquiring authority shall publish an advertisement inviting applications from such oustees to apply for allotment of plots in accordance with law: and
- (vii) If in any sector, more than 50% plots have been allotted by way of reservation including to the oustees, then such allotment shall not be cancelled or reviewed in view of the judgment of this court.”

We find that the direction to allot plots to the land-owners simultaneously with the taking of possession is unfair and defeats the very purpose of acquisition and is against the policy framed, the validity and legality was upheld by this court in Sandeep’s case (supra). The allotment of plot to a landowner cannot be in preference to all other land-owners falling in the same category. The allotment of plots have to be after giving opportunity to all land-owners to apply for the available plots. Otherwise, it will be unfair distribution of public property.

Still further, Hon’ble Supreme Court in State of Madhya Pradesh vs. Narmada Bachao Andolan & another, (2011) 7 SCC 639, has held that the oustees are entitled to resettlement and rehabilitation as per the policy framed for the oustees of the project concerned. The relevant extract from the judgment reads as under:-

“31. Thus, from the aboveresferred judgments, it is evident that acquisition of land does not violate any constitutional/fundamental right

of the displaced persons. However, they are entitled to resettlement and rehabilitation as per the policy framed for the oustees of the project concerned.

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36. The Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or more scientific or logical or wiser. The wisdom and advisability of the policies are ordinarily not amenable to judicial review unless the policies are contrary to statutory or constitutional provisions or arbitrary or irrational or an abuse of power. (See *Ram Singh Vijay Pal Singh v. State of U.P.* (2007) 6 SCC 44, *Villianur Iyarkkai Padukappu Maiyam v. Union of India* (2009) 7 SCC 561 and *State of Kerala v. Peoples Union for Civil Liberties* (2009) 8 SCC 46.)”

In *S. Gurdial Singh and others v. Ludhiana Improvement Trust*, (1995) 5 SCC 138, the Hon’ble Supreme Court has held that unless there is any express scheme framed by appropriate authorities and the scheme is in operation, the allotment of alternative sites is not permissible. The relevant extract from the judgment reads as under:-

“4. It is then contended, relying upon the decision of this Court in *State of U.P. v. Pista Devi* AIR 1986 SC 2025 that the appellants are entitled to allotment of alternative sites for commercial purpose. Therein, the land was acquired for housing development and the persons whose properties were sought to be displaced were directed to be provided housing accommodation under the schemes formed thereunder. The general ratio therein cannot be uniformly and mechanically extended to all the cases unless there is any express scheme framed by appropriate authorities and the scheme is in operation. Under these circumstances, we cannot give any express direction in this behalf. However, when the grievance was made by the appellants, an admission was made in the counter-affidavit filed in the High Court thus:

“The petitioners could get a plot of land as local displaced persons in lieu of their acquired land according to rules on the subject.”

Later in Amarjit Singh and others v. State of Punjab and others, (2010) 10 SCC 43, Hon'ble Supreme Court has held that rehabilitation is not a recognized right either under the Constitution or under the provisions of the Land Acquisition Act, 1894. The Court held as under:-

“49. We must, in fairness to Mr. Gupta mention that he did not suggest that rehabilitation of the oustees was an essential part of any process of compulsory acquisition so as to render illegal any acquisition that is not accompanied by such measure. He did not pitch his case that high and in our opinion rightly so. The decisions of this Court in New Riviera Coop. Housing Society v. Land Acquisition Officer (1996) 1 SCC 731 and Chameli Singh v. State of U.P. (1996) 2 SCC 549 have repelled the contention that rehabilitation of the property owners is a part of the right to life guaranteed under Article 21 of the Constitution so as to render any compulsory acquisition for public purpose bad for want of any such measures.

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51. There is, thus, no gainsaying that rehabilitation is not an essential requirement of law for any compulsory acquisition nor can acquisition made for a public purpose and in accordance with the procedure established by law upon payment of compensation that is fair and reasonable be assailed on the ground that any such acquisition violates the right to livelihood of the owners who may be dependent on the land being acquired from them”

In recent judgment reported as Census Commissioner and others v. R. Krishnamurthy, (2015) 2 SCC 796, the scope of interference in the policy matters was examined and held that it is not within the domain of the courts to embark upon an enquiry as to whether a particular public policy is wise and acceptable or whether a better policy could be evolved. The Court held as under:-

“23. The centripodal question that emanates for consideration is whether the High Court could have issued such a mandamus commanding the appellant to carry out a census in a particular manner.

24. The High Court has tried to inject the concept of social justice to fortify its direction. It is evincible that the said direction has been issued without any deliberation and being oblivious of the principle that the courts on very rare occasions, in exercise of powers of judicial review, would interfere with a policy decision.

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27. At this juncture, we may refer to certain authorities about the justification in interference with the policy framed by the Government. It needs no special emphasis to state that interference with the policy, though is permissible in law, yet the policy has to be scrutinised with ample circumspection.

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33. From the aforesaid pronouncement of law, it is clear as noon day that it is not within the domain of the courts to embark upon an enquiry as to whether a particular public policy is wise and acceptable or whether a better policy could be evolved. The court can only interfere if the policy framed is absolutely capricious or not informed by reasons or totally arbitrary and founded ipse dixit offending the basic requirement of Article 14 of the Constitution. In certain matters, as often said, there can be opinions and opinions but the court is not expected to sit as an appellate authority on an opinion.”

Since the policy of rehabilitation contemplates allotment of plots only after possession is taken by the State Government, therefore, any direction contrary to the policy and in preference to a land-owner who has come to Court is neither fair nor reasonable. We find that direction to allot plot simultaneously with the taking of possession is not a condition contemplated either by the policies or by the Hon’ble Supreme Court judgments.

Neither the judgments of the Supreme Court nor the judgment of this Court in Sandeep Singh's case (supra) was brought to the notice of the Bench, when directions were issued for simultaneous allotment of plot without giving opportunity to all the similarly situated landowners to be considered for allotment of plot in terms of the policies notified. The Court has not set-aside or modified the policies for rehabilitation of the land owners whose land was acquired. Therefore, the directions against the policies cannot be sustained. Consequently, the claim of the petitioners for allotment of alternative spot simultaneously with the taking of possession is untenable and is declined.

Thus, the present writ petition is dismissed.

However, the petitioners may apply for allotment of plot as and when the plots are advertised for the land-owners whose land has been acquired in the light of judgment of this court in Sandeep Singh's case (supra).

**(HEMANT GUPTA)**  
**JUDGE**

**DECEMBER 24, 2015**  
'D. Gulati'

**(RAJ RAHUL GARG)**  
**JUDGE**