

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM No. 6166 of 2015 and
CWP No. 7446 of 2015

Date of Decision: 11.5.2015

Naseeb Kaur

....Petitioner.

Versus

State of Haryana and others

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE REKHA MITTAL.**

PRESENT: Mr. Narender Singh, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

CM No. 6166 of 2015

Application is allowed as prayed for. Annexure P-13 filed along with the application is taken on record subject to all just exceptions.

CWP No. 7446 of 2015

1. Through the instant petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the notifications dated 18.12.2008 (Annexure P-1) issued under Section 4 of the Land Acquisition Act, 1894 (in short "the Act") and dated 17.12.2009 (Annexure P-2) under Section 6 of the Act vide which her constructed house has been acquired for the development of Sector 10 Part Dadri. Further, a prayer has been made for setting aside the order dated 9.9.2014 (Annexure P-11) whereby the

constructed house of the petitioner and open land equivalent thereto has not been released.

2. A few facts necessary for adjudication of the present petition as narrated therein may be noticed. The petitioner is owner in possession of the land measuring 2 kanals out of 8 kanals situated within the revenue estate of village Dadri, Tehsil Charkhi Dadri, District Bhiwani. She and her family members had ancestral land at village Khanpur Khurd, Tehsil Matanhel, District Jhajjar which was purchased by them vide sale deed dated 23.7.2007 and a residential house with 'A' class construction was built thereon prior to the issuance of notification under Section 4 of the Act. Government of Haryana acquired 18 acres of her ancestral land for National Thermal Power Plant. The respondents vide notification dated 18.12.2008 (Annexure P-1) followed by notification dated 17.12.2009 (Annexure P-2) under Section 6 of the Act acquired 67.26 acres of land of village Dadri, Tehsil Dadri, District Bhiwani including the land of the petitioner for transport, commercial, communication and roads in Sector 10, Part Dadri. The petitioner filed objections under Section 5-A of the Act. The respondents only released 363 square yards of her constructed house and acquired the rest of her house/land including a portion of the house which existed even prior to the issuance of notification under Section 4 of the Act. The petitioner moved a representation dated 1.1.2013 (Annexure P-3) to the respondents for the release of her land from acquisition upon which respondent No.2 sought a report along with recommendations for the release of her house from the Administrator, Haryana Urban Development Authority (HUDA), Hisar vide letter dated 1.3.2013 (Annexure P-4). Respondent No.3 vide letter dated 5.3.2013 (Annexure

P-5) recommended for the release of 400 square yards of land of the petitioner from acquisition. The Administrator, HUDA, Hisar vide letter dated 2.9.2013 (Annexure P-6) wrote to respondent No.2 for the release of 400 square yards of land of the petitioner. As per the policy dated 26.10.2007 (Annexure P-7), the respondents were required to release all such structures including houses, factory and commercial establishments which existed prior to the issuance of notification under Section 4 of the Act. The petitioner challenged the said acquisition by way of CWP No. 787 of 2014 and this Court vide order dated 3.12.2014 (Annexure P-8) directed the respondents to conduct a fresh survey of the properties owned by the petitioner and thereafter re-determine the area released/to be released in terms of the directions and observations issued therein. In pursuance thereto, the petitioner sent a representation dated 26.3.2014 (Annexure P-9) to the respondents for release of her house/land from acquisition. The respondents formed a Joint Site Inspection Committee (JSIC) who submitted its report dated 27.4.2014 (Annexure P-10). The Secretary-cum-Director General, Urban Estates Department, Haryana vide its order dated 9.9.2014 (Annexure P-11) released only additional 129 square yards of land of the petitioner. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that double the area constructed was required to be released from acquisition and reliance was placed upon the site plan, Annexure P-12.

4. We have heard learned counsel for the petitioner.

5. The Secretary-cum-Director General, Urban Estates Department, Haryana had noticed that besides 363 square yards of constructed area, an additional area of 129 square yards may also be

released for providing approach to the petitioner's house. It has been recorded as under:-

“2. In compliance with the order of Hon'ble High Court, a report was sought from CA, HUDA. The same has been received. As per the report petitioner is the owner of 1K-8M land bearing in Khasra No. 171//23/1 falling in revenue estate of Dadri, District Bhiwani. Out of the total land (1K-8M), 363 sq. yards area whereon the residential house of the petitioner exists, was released by the Government on the basis of recommendation made by Land Acquisition Collector, Hisar, after hearing of objections under Section 5A of Land Acquisition Act, 1894. However, after visiting the spot, the JSIC has observed that the already excluded land measuring 363 sq. yards, presently is not having any approach and accordingly JSIC has recommended that 129 sq. yards additional land of the petitioner be released so as to allow approach. CA, HUDA has accordingly recommended for release of additional land measuring 129 sq. yards for providing approach to the petitioner's house.

3. In view of the facts mentioned above, the Government has approved the proposal of the Department of releasing 129 sq. yards land falling in khasra No. 171//23/1 in revenue estate of Dadri, District Bhiwani in favour of the petitioner. The order is being issued accordingly. The petitioner be

informed and LOI be issued in her favour.”

6. As per the report dated 27.4.2014 (Annexure P-10 Colly) of the JSIC, the petitioner was owner of 1 kanal 8 marlas situated within the revenue estate of Dadri, District Bhiwani. The Government on the basis of recommendations made by the Land Acquisition Collector, Hisar and after hearing the objections under Section 5-A of the Act, released the area measuring 363 square yards upon which the residential house of the petitioner existed. The JSIC after visiting the spot found that the area measuring 363 square yards already excluded was not having any approach and, therefore, recommended for the release of the additional land of 129 square yards of the petitioner which was ultimately released. The land of the petitioner measuring 492 square yards (i.e. 363 square yards + 129 square yards) out of 1 kanal and 8 marlas has already been released. No ground for further release in the facts and circumstances arises.

7. Accordingly, finding no merit in the writ petition, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

May 11, 2015
gbs

(REKHA MITTAL)
JUDGE