

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.10357 of 1990 (O&M)

Date of Decision: 16.09.2016

M/s Enkay (India) Rubber Co.Pvt. Ltd.

... Petitioner

VS.

State of Haryana & Anr.

... Respondents

CWP No.14914 of 2014 (O&M)

Dharam Singh

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE DARSHAN SINGH**

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| 1. Whether Speaking? | Yes |
| 2. Whether Reportable? | Yes |
| 3. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 4. To be referred to the Reporters or not? | Yes / No |
| 5. Whether the judgment should be reported in the Digest? | Yes / No |

Present: Mr. Shailender Jain, Senior Advocate with
Ms. Mannu Chaudhary, Advocate;
for the petitioner(s)

Mr. RKS Brar, Addl. AG Haryana

Mr. Amar Vivek, Advocate for HUDA

SURYA KANT, J.

(1) This order shall dispose of the above-captioned writ petitions as in both the cases, challenge has been laid to the notifications dated 08.03.1989 and 07.03.1990 issued under Sections 4&6 of the Land Acquisition Act, 1894 (in short, 'the 1894 Act') whereby land measuring 189.05 acres including that of the petitioners, was acquired for the development and utilization of residential and commercial area comprising Sectors 9, 9-A & 10 at Gurgaon. The land was to be developed by Haryana Urban Development Authority under the HUDA Act, 1977.

(2) For the correct appreciation of the controversy, the facts of both the cases are being extracted separately.

CWP-10357-1990 [M/s Enkay (India) Rubber Co.Pvt. Ltd. vs. State of Haryana vs. State of Haryana & Anr.]

(3) The petitioner is a private limited Company. It owns land measuring more than 10.50 acres i.e. 82K 15M within the revenue estate of Village Kadipur, Tehsil and District Gurgaon. On the major part of the land i.e. slightly more than 9 acres, the petitioner has set up its rubber industry which was registered way back on 29.09.1961. The petitioner is said to have obtained all the requisite licences/permission to set up and run the industry. The permission for Change of Land Use was also accorded by the Director, Town and Country Planning on 02.04.1965.

(4) The petitioner's remaining land measuring 12K 17M, fully described in para-2 of the writ petition and which was admittedly lying vacant, was proposed to be acquired vide notification dated 08.03.1989 issued under Section 4 of the 1894 Act for the acquisition of 224.96 acres land of village Kadipur for the public purpose set out in para-1 of this order.

(5) The petitioner raised objections under Section 5-A pointing out, *inter alia*, that they have a running industrial unit set up way back in the year 1961 where 600 workers are employed; it is an export-oriented unit with a turn-over of ₹1 crore; it was in the need its vacant land also which may not be acquired.

(6) The competent authority did not find merit in the objections as according to it, the petitioner's land under acquisition was lying vacant and was needed for the notified public purpose. Since the said vacant land was included in the final declaration notified under Section 6 of the 1894 Act, the

aggrieved petitioner has approached this Court questioning the acquisition process.

(7) It appears that in the initial proposal, part of the petitioner's occupied land was also included for acquisition but having regard to the fact that there its industrial unit had been set up, such land measuring more than 9 acres was released and only 1.5 acre which is lying vacant, even as per the latest Google Map brought on record by the petitioner, was acquired.

(8) The respondents have in their written statement reiterated that only the vacant land has been acquired. It is maintained that objections under Section 5-A were duly considered in accordance with law. The plea of discrimination has also been specifically controverted. Reliance is also placed on a Division Bench judgment of this Court dated 06.03.1991 passed in CWP No.7504 of 1990 (Daya Krishan Kataria vs. State of Haryana & Ors.) which pertained to this very acquisition. There the plea of discrimination was negated on the ground that the acquired land was a vacant plot whereas the released properties were houses/structures.

(9) The petitioner has filed an additional affidavit dated 27.04.2016 with a view to bring the subsequent events on record. It is averred that during pendency of this writ petition constructions have been raised over 75% of the acquired land by the landowners and many of them have further sold their plots, resulting into development of various unauthorized colonies near the petitioner's land. It is further averred that the land of the petitioner is surrounded by several industrial, commercial and residential constructed layouts which the Municipal Corporation has recommended to State Government for regularization and thus no public purpose would be served by retaining the petitioner's land. It is stated that hardly any land is now left

with the respondents, hence it may be inferred that HUDA has abandoned the development scheme. Heavy reliance is placed on Government letter dated 20.04.2012 (P18) whereby HUDA was asked to pronounce award in respect of vacant land only and not where constructions were raised meanwhile. The letter further recites that action be taken against the officials who are responsible for allowing the unauthorized constructions to take place. Reference to the Division Bench judgment dated 21.03.2011 pertaining to this very acquisition, passed in **CWP No.5231 of 1990 (Sahdev Singh & Ors. vs. State of Haryana & Anr.)** is also made, apparently to clarify that the writ petitions of only such landowners were dismissed who took false plea *re:* construction on their acquired land.

CWP-14914-2014 [Dharam Singh vs. State of Haryana & Ors.]

(10) The petitioner is owner of land measuring 4 bigha 10 biswas bearing khasra Nos.10638/1140/2 (1 bigha – 0 biswa) and 10632/1119/2 (3 bigha 10 biswa) within the revenue estate of Gurgaon. The above-stated land was included in the proposal of acquisition notified under Section 4 of the Act on 08.03.1989. The petitioner filed objections under Section 5-A of the 1894 Act and on consideration, the competent authority accepted the objections in part and released his constructed area measuring 1 bigha bearing No.1119. The remaining vacant land was included while notifying the declaration under Section 6 of the Act on 07.03.1990.

(11) The petitioner challenged the acquisition of his remaining land by way of CWP No.6244 of 1990 which was dismissed, along with a bunch of other writ petitions by a Division Bench of this Court on 21.03.2011. The lead judgment was rendered in **CWP No.5231 of 1990 (Sahdev Singh & Ors. vs. State of Haryana & Ors.)** (P5) where this Court also referred to an

earlier decision dated 30.06.2010 passed in **CWP No.13539 of 1990** (**Birinder Singh vs. State of Haryana**), upholding the subject acquisition.

(12) After the petitioner's as well as other connected writ petitions were dismissed by this Court on 21.03.2011, the State Government sent a letter dated 20.04.2012 asking Collector to pronounce the award in respect of vacant acquired land. As regard to the area where constructions had been raised meanwhile, action was directed to be taken against the HUDA officials who were responsible for allowing such unauthorized constructions to take place.

(13) The petitioner claims to have acquired a fresh cause of action on the basis of above-stated letter and filed CWP No.1655 of 2013 which was dismissed as withdrawn on 15.03.2013 (checked from file) with liberty to file a fresh petition on the same cause of action after impleading necessary and proper parties. The instant third writ petition has since been filed on the plea that the decision to pronounce award in respect of vacant land or to exempt the constructed area is discriminatory, based upon pick and choose hence the said letter is liable to be quashed.

(14) The petitioner has placed on record the satellite images of his acquired land besides several other documents to contend that the acquisition *qua* his land measuring 3 bighas 10 biswa is bad in law regardless of the fact that the said acquisition has already been upheld by this Court.

(15) The Land Acquisition Collector, Urban Estate, Gurgaon has filed reply on behalf of the respondents. It is explained that the acquisition process was carried out following the mandatory procedure and the

constructed area of the petitioner measuring 1 bigha was also released. The dismissal of the writ petition has been sought for various reasons including:-

- a) the writ petition suffers from delay and laches as it has been filed after three years of passing the awards dated 20.04.2012 and 25.06.2012;
- b) the second writ petition on the same cause of action is not maintainable;
- c) the possession of the petitioner's land has been handed over to Estate Officer, HUDA on the date of passing of the award and an entry to this effect has been made in the Rapat Roznamcha;
- d) the writ petition is otherwise not maintainable after passing of the award;
- e) the acquired land of the petitioner was lying vacant at the time of its acquisition and even now there is no authorized construction raised thereupon.

The other allegations made by the petitioner have also been specifically controverted.

(16) The petitioner has filed rejoinder along with the Real Time Aerial Imagery of Pataudi Road depicting the location of his acquired land and the structure, if any, raised thereupon.

Contentions on behalf of Petitioners:

(17) We have heard learned counsel for the parties at a considerable length and gone through the record, especially through the subsequent events highlighted from petitioners' side, including the site plans and latest photographs etc. placed on record.

(18) It was vehemently urged by Sh. Shailendra Jain, learned senior counsel for the petitioners that -

- (i) the impugned acquisition is a colorable exercise of power and abuse of *eminent domain* status;
- (ii) no public purpose can now be achieved through the subject acquisition as most of the acquired area has been unauthorisedly constructed and the respondents have decided to release such constructed area;
- (iii) the petitioner in the first case is a renowned industry and it uses its vacant land for allied activities like, parking of cycles of workers and for temporary storage of the raw material etc.;
- (iv) since the area adjoining the petitioner's acquired land had either been released or the acquisition was allowed to lapse due to existing constructions, no meaningful purpose would be served by retaining the petitioner's land except unjust enrichment of the State;
- (v) those who have raised unauthorized constructions are benefited as their properties have been released whereas the vacant lands are acquired in a totally arbitrary and inequitable manner;
- (vi) the petitioner in the second case has also raised construction therefore, such land is liable to be exempted from acquisition in view of the Government's own decision dated 20.04.2012;
- (vii) HUDA is now left with hardly any land for further development of the residential sectors for which acquisition took place.

Respondents Counter:

(19) Learned State counsel, on the other hand, maintained that Sectors 9, 9-A & 10 have been fully developed by HUDA except the pockets under litigation. She argued that the competent authority has invoked its policy-decision to release the existing structures uniformly and the petitioners have also been benefited under the same. It is explained that in the first case land measuring more than 9 acres where industrial unit has been set up along with open area, was released and only the vacant land has been acquired which shall be utilized for the notified public purpose or any *bona fide* ancillary purpose like public utilities or residential units for Economically Weaker Sections etc.

(20) As regard to the second writ petition, learned State counsel argued that the petition is barred by the principle of *res judicata* as his earlier petition challenging the same acquisition was dismissed on merits. The Government letter dated 20.04.2012 (P8) authorizing to pronounce award in respect thereto does not in any manner give rise to a fresh cause of action in favour of the petitioner. She pointed out that the constructed area of the petitioner had been released on acceptance of his objections filed under Section 5-A and only vacant land was acquired. She made a pointed reference to the Google Images/Aerial photographs relied upon by the petitioner, to contend that the acquired land is still lying vacant as the so-called structure is nothing but a temporary shed/hut set up to utilize the vacant land as a lawn.

CONCLUSIONS:

(21) Having given our thoughtful consideration to the rival submissions, we do not find any merit in these writ petitions. We say so for

the reasons that admittedly the notified public purpose has been substantially achieved by a Govt. agency, namely, HUDA who has fully developed the Sectors. It may be true that various pockets under litigation are lying unutilized and various patches of acquired land have been released also as a result of unauthorized constructions. Since the land was acquired to develop residential sectors, the Government policy to release residential houses surely does not offend the public purpose as the released structures can be adjusted with the regulated development of a residential sector. While the first petitioner has been favoured to continue with its industrial unit in an area now surrounded with residential sectors, for which the said petitioner of course is not to be blamed as the industry was set up way back in 1961 whereafter only towns and cities have expanded their width and length.

(22) The petitioner's plea in the first case that it requires the vacant land for future expansion or ancillary purposes, has to be compared with the need of a welfare State towards residential sites for Economically Weaker Sections or where basic amenities for general public are to be set up. So long as the State or its agencies do not transfer the acquired site for one's private benefit for the sake of profiteering, it would be wholly unjustified and premature to infer any unjust enrichment by State or its agency.

(23) The petitioner(s) did raise the plea of unfair consideration of their objections under Section 5-A but the official record does not lend any support to such contention. On the other hand, the objections were partly allowed after due application of mind. No other procedural infirmity has been pointed out on behalf of the petitioner(s).

(24) There is no gainsaying that the subject acquisition has been repeatedly upheld by this Court firstly in the year 1991 and then in the year

2010 and again in the year 2011 and there are no extraordinary distinguishable features in the case of the first petitioner so as to prompt this Court to deviate and take a different view.

(25) So far as the second writ petition is concerned, it is an apparent abuse of process of law. The petitioner's first writ petition was dismissed on merits on 21.03.2011 and all the grounds now taken by him were very much available to him at that time except the letter dated 20.04.2012. The petitioner has formulated the 'Headnote' as well as the 'relief clause' of the writ petition in such a deceptive manner so that it does not catch the Court's eyes that he is in fact challenging the acquisition of 1989-1990 through this third writ petition filed in the year 2014. The letter dated 20.04.2012 merely says that on dismissal of a bunch of writ petitions the award in respect of vacant land may be passed, leaving aside the constructed area. Assuming that this letter is quashed as prayed for by the petitioner, does it prevent the authorities from passing award *qua* his land when his writ petition challenging such acquisition already stands dismissed? The answer must be in negative as the fate of the petitioner stood sealed on 21.03.2011 when his writ petition was dismissed. The so-called 'cause of action' pretended by him is only a follow-up action. The instant writ petition is thus barred by principle of *res judicata*. It also suffers the incurable disability of delay and laches. The acquisition pertains to the year 1989-1990. No award could be passed due to stay granted by this Court in the year 1990 itself. The award passed in the year 2012 may give rise to a different cause of action, namely, to seek enhancement in compensation but surely it has no relevance on the merits of the acquisition. Similarly, correspondence between the State Government and HUDA in respect of the acquired land *qua* which award is

to be passed or the constructed area to be left out, does not clothe the petitioner with any fresh cause of action. Furthermore, the photographs relied upon by the petitioner also suggest that the land is lying vacant though he has raised some temporary structures may be to give a false impression that no award could be passed *qua* his land also.

(26) In the light of the above discussion, we do not find any merit in these writ petitions and the same are accordingly dismissed. Since the petitioner in the second writ petition (CWP No.14914 of 2014) has not approached this Court with clean hands, he is burdened with cost of ₹25000/- to be deposited in the High Court Bar Association Lawyers' Welfare Fund within a period of one month from the date of release of this order failing which the Registry is directed to initiate *suo motu* contempt of court proceedings and list the same before the Bench as per roster.

(27) Ordered accordingly.

(Surya Kant)
Judge

16.09.2016
vishal shonkar

(Darshan Singh)
Judge