

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH.**

CWP No. 7906 of 1990. [O&M]
Date of Decision: 25th July, 2016.

Partap Singh Thakran & Ors.

Petitioners

Versus

State of Haryana & Ors.

Respondents

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

Present: Mr. Girish Agnihotri, Sr. Advocate with
Mr. Arvind Seth, Advocate, for the petitioners.

Mr. RKS Brar, Additional AG, Haryana.
Mr. Amar Vivek, Advocate, for the HUDA.

SURYA KANT, J. [ORAL]

The petitioners seek quashing of the notifications dated 08.03.1989 and 07.03.1990 issued under Sections 4 and 6 of the Land Acquisition Act, 1894 whereby their land comprised in Khasra Nos. 167 to 172 situated within the revenue estate of village Hidyatpur Chhawani, District Gurgaon and which is within the municipal area, has been acquired for the development and its utilisation for residential and commercial area of Sector 9, 9-A and 10 in the Urban Estate of Gurgaon. The petitioners are said to have constructed 45 rooms, mostly shops prior to 08.03.1989 on the acquired land, hence, according to them, such construction deserves to be released as per the State Government policy which was being followed consistently. They have further averred that as the land is sought to be acquired to develop residential and commercial area and the petitioners are also using their land for commercial purpose, it deserves to be released.

[2]. The Land Acquisition Collector in his written statement dated 28.11.1991 has taken a preliminary objection that various writ petitions challenging the same acquisition have been dismissed by this Court and as per the revenue record, only petitioner No. 5 is the owner of land bearing Khasra Nos. 168 and 169, therefore, other petitioners have no *locus-standi*. It has also been specifically averred that the objections filed on behalf of the petitioners were duly considered and one of them [Sukhbir Singh] was heard before rejecting the objections. The respondents have further maintained that the shops were constructed unauthorisedly and the same can not be released as the area comprising Khasra Nos. 169 to 172 is to be developed as a residential sector. The allegations of any discrimination in this regard have also been denied.

[3]. It may be mentioned at this stage that various other writ petitions challenging the same acquisition were disposed of in terms of settlement arrived at between the landowners and the State Government whereunder a part of the acquired properties/lands was released. It was after noticing such subsequent events that the following order was passed in this case on 04.03.2014:-

“Heard learned counsel for the parties. Keeping in view the fact that some of the cases arising out of the same acquisition including CWP No.10357 of 1990 (M/s Enkay (India) Rubber Company Private Limited versus State of Haryana and another) have been amicably settled, we have impressed upon the learned State counsel to instruct the authorities to reconsider the petitioners' claim for the release of their land to the extent it is not needed for any public purpose like widening of the road. The petitioners in that event shall give an undertaking by way of affidavit that they shall use the released land in conformity with the zoning plan of the area and after

getting the building plan sanctioned from the Competent Authority. They shall also undertake to demolish the unauthorized construction, if any, raised on the site. Learned State counsel shall have the instructions in this regard. List on 21.03.2014”.

[4]. On 21.04.2014 State counsel informed that the land of the petitioners can not be released on the parity of M/s Enkay India Rubber Company for the reason that the petitioners want to utilise it for commercial purposes, namely, where they have raised illegal construction of shops though the area falls within the residential zone where such commercial activities are prohibited.

[5]. Some of the writ petitions where the landowners have purchased small size plots like 100 square yards for construction of residential houses or have constructed such houses though unauthorisedly, have been allowed vide a separate order of even date passed in **CWP No. 7063 of 2014 [Sunil Kumar & Ors. Vs. State of Haryana & Ors.]** and a direction has been issued to the Director General, Town and Country Planning, Haryana to constitute a team of officers to carry out fresh survey and inspection to identify the residential houses/structure/plots and release the same subject to such conditions as have been illustrated by this Court or were imposed by the State Government while releasing the houses/properties of similarly placed persons on 20.04.2012.

[6]. We have heard learned counsel for the petitioners in this case at a considerable length and gone through the record. We have also considered the contention that the analogy applied by this Court in the connected cases like **Sunil Kumar & Ors. Vs. State of Haryana & Ors.'** case be followed in this case as well. We are, however, unable to apply the

same reasoning in entirety as admittedly the petitioners have raised a sort of commercial market consisting 45 shops, all constructed unauthorisedly and the area falls within the residential sector where the petitioners can not be allowed to run such a haphazard and unregulated commercial activities.

[7]. As regard to the legality of the acquisition, no lacuna could be pointed out by the petitioners, for there is a meticulous compliance of Section 5-A of the Act before issue of Section 6 notification. The public purpose to develop the residential sector through the Government agency is beyond any pale of doubt and it has actually been developed also.

[8]. The Government policy dated 26.10.2007 regarding release of the houses and structures found in existence before issuance of Section 4 notification can not be applied *ipso-facto* in the instant case as it would lead to regularisation of an unauthorised and illegally set up commercial market comprising 45 shops. The existence of such like market in the mid of a residential area would become perennial source of nuisance for the residents besides an implicit acknowledgment of unauthorised and illegal constructions. We, thus, decline to extend such benefit to the petitioners.

[9]. Notwithstanding these findings, the petitioners are entitled to the benefit of the R&R Policy whereunder they may seek allotment of either a commercial or a residential site in the oustees' category. Since, we have directed in Sunil Kumar and other's case to release the small size residential houses/plots measuring 100 square yards or so, we direct that alternatively, if the petitioners undertake to utilise the released part of their property only for residential purposes, the land equivalent to two residential plots of 100 square yard each may be released provided that the petitioners undertake [i] to demolish the shops and to use the site only for residential purposes; [ii]

they are ready and willing to deposit the development and other statutory charges which the authorities are entitled to impose for regularisation of unauthorized constructions and (iii) undertake to abide by other conditions as imposed in Sunil Kumar and others's case or by the State Government.

[10]. The writ petition stands disposed of in the above terms. Dasti.

(SURYA KANT)
JUDGE

July 25, 2016.
dinesh

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No