

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No17985 of 2009 (O&M)

Date of Decision: 30.09.2016

Dr. Tejvir Singh Nain & Ors.

... Petitioners

VS.

State of Haryana & Ors.

... Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE SUDIP AHLUWALIA**

Present: Mr. DS Patwalia, Senior Advocate with
Mr. Sehajbir Singh, Advocate for the petitioners

Ms. Palika Monga, DAG Haryana

Mr. Arun Jain, Senior Advocate with
Mr. Munish Gupta, Advocate for respondent No.5

Mr. Atul Lakhanpal, Senior Advocate with
Ms. Babli Lakhanpal, Advocate for respondent No.7

SURYA KANT, J.

(1) The petitioners have laid challenge to the notifications dated 15.12.2006 & 14.12.2007 issued under Section 4 & 6 of the Land Acquisition Act, 1894 (in short, 'the Act'), respectively as well as the Award dated 03.07.2009, whereby land falling within the revenue estate of villages Pahrawar, Kanheli, Garhi Bohar and Kheri Sadh, Tehsil and District Rohtak has been acquired for the development and its utilization as a Residential, Transport, Trade, Communication and Recreational activities, Sector-26, Rohtak. The development works were to be executed by HUDA under the Haryana Urban Development Authority Act, 1977.

(2) The petitioners purchased three different parcels of land total measuring 3663.32 sq.yards situated within the revenue estate of village Pahrawar somewhere in the month of March, 2006 which has also been

included in the impugned acquisition. The petitioners thus also seek a direction for the release of the said land.

(3) A reference to the relevant facts may be made.

(4) State of Haryana vide notification dated 15.12.2006 issued under Section 4 of the Act proposed to acquire 401.52 acres of land spread over in the revenue estate of three villages referred to above, for the development of Sector-26, Urban Estate, Rohtak. The declaration under Section 6 was notified on 14.12.2007 for the land measuring 378.88 acres. Finally, the award was announced on 03.07.2009 for the land measuring 340.29 acres. Since the petitioners' land measuring 3663.32 sq.yards, was also proposed to be acquired, they filed objections under Section 5A of the Act on 15.01.2007. Their primary objection was that due to the peculiar location of their land, it was not possible to utilize it for the notified public purpose. It was claimed that their land was highly valuable and therefore, the other lands available at cheaper rate could be acquired. The land was said to have been purchased for the same purpose for which it was sought to be acquired. It was averred that the petitioners' land was in close vicinity of educational institutions and some residential colonies which were being developed by private builders. The petitioners also pleaded discrimination as according to them the land of Government Employees' Cooperative Group Housing Society and private builders like Omaxe and Sun City had been exempted from acquisition.

(5) The petitioners' objections did not find favour with the Collector and on acceptance of his report, the State Government issued notification under Section 6 of the Act. The Collector thereafter announced the Award dated 03.07.2009 (P6) in respect of the land of village Pahrawar.

It may be mentioned that 262.15 acres land of village Pahrawar was proposed to be acquired and more than substantial part thereof namely, 224.57 acres land was finally included in the award.

(6) The petitioners have chosen to assail the acquisition of their land after the passing of award. The foremost ground taken by the petitioners to challenge the acquisition is their plea of discrimination as according to them the land has been acquired or released/exempted totally on pick and choose basis. They rely upon a site plan depicting the land said to have been released in favour of (i) Omaxe Constructions / M/s Digit Development Pvt.Ltd.; (ii) Gram Panchayat of village Pahrawar; (iii) Delhi Catholic Archdiocese, Archbishop's House and some blue-eyed political favourites etc. The petitioners have also impleaded the allied companies of M/s Omaxe, Gram Panchayat of Village Pahrawar and the Catholic organization as party respondents to substantiate their plea of discrimination.

(7) The Land Acquisition Collector, Urban Estates, Rohtak – respondent No.3 has filed his written statement taking a preliminary objection that the writ petition challenging the acquisition after the award has been announced, is not maintainable and that it also suffers from inordinate delay and laches. The Collector has further averred that objections filed by owners under Section 5A were objectively considered. Since the land of the petitioners was admittedly lying vacant, their objections were rejected. The plea of discrimination has been controverted. It is explained that only 20.13 acres of land has been released as Change of Land Use permission had already been granted for such land before the issuance of Section 4 notification. Another 18 acres of land is said to have been released by the State Government for justifiable reasons.

(8) The Estate Officer, HUDA – respondent No.2 has also filed a separate written statement reiterating the stand taken by the Land Acquisition Collector.

(9) Respondents No.4&5 namely, the associate companies of M/s OMAXE have filed their written statement explaining that land measuring 16 kanal 3 marla was purchased by them on 10.10.2005 while another piece of land measuring 8 kanal 3 marla was purchased on 22.02.2006. The Company applied for grant of licence for its total land measuring 77.487 acres which included the land in Sector 28 Rohtak also (in addition to the land falling in Sector 26) and since such licences were applied before the finalization of the acquisition process, the competent authority granted them licence on 08.09.2008 (R2) as per the Government policy which provides, *inter alia*, that the land for which CLU was granted or licence has been applied for can be exempted from acquisition. The authorized representative of the company has filed additional affidavit dated 26.05.2014 explaining that only the land described in para 3 of the affidavit has been released which was purchased by them much before the start of the acquisition process i.e. vide sale deeds dated 05/06.10.2005 and the licence was also applied for on 02.03.2006. The supporting documents have also been duly appended with the affidavit.

(10) Similarly, Land Acquisition Collector, Urban Estate, Rohtak too has filed an additional affidavit explaining that M/s Omaxe was granted licence for 18.412 acres only vide State Government order dated 27.11.2008 i.e. much before the passing of the award.

(11) A separate written statement has been filed by respondent No.7- Delhi Catholic Archdiocese, Archbishop's House explaining that the

organization is devoted to social-work and has established many educational and community health institutions for the rehabilitation of differently abled children and for empowerment of rural women. The organization purchased land measuring 12145.08 sq.meter in the revenue estate of village Pahrawar way back on 29.06.1995 and in the year 2004 it decided to set up a training centre for the physically handicapped children and women from the marginalized rural community. The application for Change of Land Use permission to set up the said institution was submitted on 03.09.2004 and the Director, Town and Country Planning issued the Letter of Intent on 18.11.2005. All these steps were taken much before the start of acquisition process though the CLU was granted only on 10.08.2009. On this premise, it is maintained that the petitioners can have no claim any parity.

(12) We have heard learned counsel for the parties at a considerable length and gone through the record.

(13) It was vehemently urged by learned counsel for the petitioners that the acquisition suffers from the evil of favouratism and cannot stand to the test of Articles 14, 19 & 300-A of the Constitution. He argued that there was no rationale behind releasing the land of M/s OMAXE or the Gram Panchayat or of the Delhi Catholic Archdiocese and/or to acquire the land of the petitioners who are similarly placed, as their land abuts one of the released land on one side.

(14) It was urged that the acquisition as well as the subsequent release orders are tainted with pick and choose policy, benefiting the builders and affluent persons, hence the entire process is rendered arbitrary and vitiated in law. Learned counsel also argued that after the release of different parcels of land, no public purpose could really be achieved.

(15) Learned counsel also stated at the bar that the petitioners have no objection against the acquisition of their land to the extent that it was needed for public roads etc.

(16) On the other hand, learned State counsel submitted that out of 401.52 acres of land which was proposed to be acquired, a huge chunk of land measuring 340 acres has been finally acquired for the regulated development of Sector 26 through a Government agency, namely, HUDA. She argued that the petitioners cannot claim parity with M/s OMAXE for the reason that the said builder had already applied for the grant of licence for its land much before the commencement of acquisition process and had deposited the requisite statutory charges. The Government policy uniformly permits the release of land for which CLU has been obtained or licence has been applied for, for developing it for a purpose which is in conformity with the overall layout plan of the area. As regard to the release of land in favour of Gram Panchayat of Village Pahrawar, she explained that the Gram Panchayat has given its land to a social organization for establishment of an educational institute and thus the said land has been decided to be utilized for institutional purposes, namely, a purpose for which the subject acquisition has been made. Likewise, Delhi Catholic Archdiocese had applied for CLU way back in the year 2004 to set up an Institution with laudable object and it is in public interest that the State Government encourages setting up of such like institutes by an organization which is committed to philanthropic activities. She thus maintained that there is a marked distinction between the nature and purpose for which the petitioners want their land to be released *vis-à-vis* the released lands. According to her,

there is no parity between the two hence the plea of discrimination taken by the petitioners is totally misdirected and misconceived.

(17) Having given our thoughtful consideration to the rival submissions, we are of the considered view that the petitioners cannot claim any parity *vis-à-vis* the Gram Panchayat of village Pahrawar or Delhi Catholic Archdiocese as the land of both these organizations have been released for establishment of educational or welfare institutions in public interest. These are not the commercial activities meant for individual's profiteering. Further, the steps for establishment of the institutions were taken well before commencement of the acquisition process, therefore, the State Government was justified in releasing their land, more-so when it does not violate the zoning plan of the area.

(18) As regard to M/s OMAXE, it is true that after releasing the land of the private builder, licence has been granted for the development of its land as a residential colony. It is surely not a charitable activity and is a commercial venture of the private builder. The petitioners, however, cannot claim parity with such builder for the reason that it has gone uncontroverted on record that the land was purchased by the private builder in the year 2005 and the licence was also applied in March, 2006 i.e. much before the issue of Section 4 notification in December, 2006. Since the Government policy permitted to release the land for which CLU/licence has been granted/applied and such a policy is not under challenge in these proceedings, we find it difficult to hold that the decision of the State Government favouring the builder either violated Article 14 of the Constitution or the very scheme of the 1894 Act.

(19) We may hasten to add that it is not a case where the builder indulged in distress sales after the acquisition process had started and then applied or obtained licence from the State Government as was found as a matter of fact by this Court in the case of *Sant Singh & Ors. vs. State of Haryana & Ors., 2014 (2) PLJ 675*, as affirmed by the Hon'ble Supreme Court in *Uddar Gagan Properties Ltd. vs. Sant Singh & Ors., (2016) 1 SCC 548*.

(20) Still further, the released land of the builder measures 18.412 acres only. As against it, Sector 26 has been developed on a land measuring more than 340 acres which obviously leaves no room to doubt that it is the Government agency HUDA who has predominantly developed the urban area.

(21) The land of the petitioners was admittedly lying vacant. If it is ordered to be released on the plea that the petitioners want to utilize it for the same purpose for which the acquisition has been made, such a reasoning would necessarily apply to the entire acquisition process. Thus the very public purpose of acquisition would stand frustrated.

(22) In the light of the above discussion, we do not find any merit in this writ petition which is accordingly dismissed but without any order as to costs.

(Surya Kant)
Judge

30.09.2016
vishal shonkar

(Sudip Ahluwalia)
Judge

1. Whether Speaking?
2. Whether Reportable?
*

Yes
Yes