

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) CWP No.19171 of 2011 (O&M)

Date of Decision: 16.09.2016

Duli Chand		... Petitioner
	VS.	
State of Haryana & Ors.		... Respondents

(2) CWP No.2559 of 2013 (O&M)

Trishla Jain & Ors.		... Petitioners
	VS.	
State of Haryana & Ors.		... Respondents

(3) CWP No.1682 of 2008 (O&M)

Braham Singh & Ors.		... Petitioners
	VS.	
State of Haryana & Ors.		... Respondents

(4) CWP No.10030 of 2008 (O&M)

Paras Ram		... Petitioner
	VS.	
State of Haryana & Anr.		... Respondents

(5) CWP No.16664 of 2008 (O&M)

Rattan Lal & Ors.		... Petitioners
	VS.	
State of Haryana & Ors.		... Respondents

(6) CWP No.5696 of 2008 (O&M)

Mahinder Singh		... Petitioner
	VS.	
State of Haryana & Ors.		... Respondents

(7) CWP No.8560 of 2009 (O&M)

Daya Chand		... Petitioner
	VS.	
State of Haryana & Anr		... Respondents

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

1. Whether speaking / reasoned?	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
5. Whether the judgment should be reported in the Digest?	Yes / No

Present: Mr. Shailender Jain, Senior Advocate with
Ms. Mannu Chaudhary, Advocate;
Mr. Sanjay Vij, Advocate;
Mr. Anil Kumar Rana, Advocate for
Mr. Sharad Aggarwal, Advocate
for the petitioner(s)

Ms. Palika Monga, DAG Haryana

Mr. Chetan Mittal, Senior Advocate with
Mr. Rajeev Anand, Advocate for DLF

Mr. Karan Singh, Advocate for
Mr. Ashwani Bura, Advocate
for respondent No.4 in CWP-16664-2008

Ms. Geeta Sharma, Advocate
for respondent No.3 in CWP-1682-2008

Mr. Lokesh Sinhal, Advocate for the intervenor

SURYA KANT, J.

(1) This order shall dispose of the above-captioned writ petitions as in all the cases, the petitioners have laid challenge to the notifications dated 03.10.2006 and 01.10.2007 issued under Sections 4&6 of the Land Acquisition Act, 1894 (in short, 'the 1894 Act'). In some of the writ petitions the award dated 30.09.2009 is also assailed.

(2) Vide the impugned acquisition, the land measuring 331.69 acres comprising revenue estates of three villages Dhundahera, Nathupur and Sikanderpur Ghosi, Tehsil and District Gurgaon was proposed to be acquired for development and its utilization for residential, commercial and institutional Sectors 24 & 25-A in the Urban Estate, Gurgaon. However, after considering objections under Section 5A and the report of Joint Site Inspection Committee, land measuring 99.1 acre which was thickly populated was ordered to be released. Apart from the above, two more parcels of land measuring 20.75 acres and 06.80 acres were also released. In this manner, the total area notified under Section 6 was 204.93 acres.

Thereafter also, different parcels of land were released and finally the award was passed in respect of land measuring 175.09 acres.

(3) Though the cause of action as well as the grounds taken to challenge the subject acquisition are common but it appears expedient to briefly notice the facts of each case separately.

CWP No.19171 of 2011 (Duli Chand vs. State of Haryana & Ors.)

(4) The petitioner's land measuring 15 biswas 6 biswansis (2318 sq.yards) which is part of khasra Nos. given in para 2 of the writ petition and which falls within the revenue estate of village Nathupur is included in the subject acquisition. The left-out share in these khasra Nos. measuring 7 biswas 9 biswansis (1150 sq.yards) was purchased by Parul Lohia vide registered sale deed dated 24.04.2006. The petitioner purchased his share vide sale deed dated 27.04.2006. He is said to have constructed 20 rooms and installed a tubewell in khasra No.643.

(5) The petitioner has further averred that his land is surrounded on all four sides by a colony developed by private builder – DLF Ltd. who is impleaded as respondent No.4. On three sides there is residential colony known as “DLF Phase-III” and on the fourth side there is a primary school site of DLF Ltd. According to the petitioner since his land is an isolated and disjointed pocket, it cannot be utilized by HUDA for the ‘public purpose’ of regulated development of an urban sector and most likely would be transferred to the private colonizer for whose benefit, the petitioner alleges, the impugned acquisition has been made.

(6) The petitioner alleges hostile discrimination as the land of licensed builder (DLF Ltd.) has been released before and after Section 6 notification by taking shelter under the self-styled Government policies

(Annexure 5A) and dated 26.10.2007 (P18). The petitioner has thus not only challenged the acquisition proceedings but also questioned the legality and propriety of these policies.

(7) Respondent No.2 – Land Acquisition Collector, Gurgaon in his written statement has explained that the mandatory procedure prescribed under the 1894 Act was meticulously followed and objections received under Section 5A were duly considered besides hearing the objector(s) in person. It is averred that the petitioner did not file any objections hence he cannot be permitted to challenge the acquisition. As regard to the construction of 20 rooms, it is maintained that the land in dispute was vacant at the time of issuance of Section 4 notification.

(8) State of Haryana – respondent No.1 has filed a separate written statement reiterating that the acquisition was carried out in a lawful manner and the petitioner failed to avail the opportunity under Section 5A of the 1894 Act. It is maintained that the land of petitioner was totally vacant at the time when notification under Section 4 of the Act was issued and that the writ petition has been filed **after two years of passing of award**. It has been explained that the 20 rooms allegedly constructed by the petitioner are totally in violation of the restrictions imposed under the Controlled Area Act. There are comprehensive averments made in the written statement to justify the policy decision(s) as well as release orders passed in purported exercise thereof. It is further averred that though this Court in ***Hari Chand vs. State of Haryana (CWP No.17463 of 2007)*** set aside one of the such policy but the Hon'ble Supreme Court allowed the appeal and has remanded the case and further permitted the State to continue with the policy dated

26.10.2007. On this premise it is urged that the petitioner cannot claim parity with a licensed builder for seeking release of his land.

(9) The District Town Planner, Gurgaon has also filed a separate affidavit dated 19.10.2015 along with Layout Plan of Sector 24 & 25A Gurgaon. According to him different parcels of acquired land which are subject matter of these writ petitions are affecting internal roads or other public utilities as illustrated in tabulated form, the relevant part whereof is extracted below:-

Sr. No.	CWP No/SLP No.	Name of the petitioner	Khasra Nos.	Village	Sector	Construction is existing or not	Affects on Planning
1	19171 of 2011	Duli Chand vs. State of Haryana and Ors.	643, 644, 645	Nathupur	24-25A	There exist labour quarter having stone girder roof for rent purpose	This site of Dispensary is affected (Photos attached)
2	2559 of 2013	Trishla Jain and Ors. vs. State of Haryana and Ors.	590, 591, 593, 592	Nathupur	24-25A	Vacant	affecting 7 nos of group housing site and 12.0 mtr wide road (photos attached)
3	1682 of 2008	Braham Singh and Ors. vs. State of Haryana and Ors.	557, 566min	Nathupur	24-25A	Vacant	affecting site for commercial area partly (photos attached)
4	10030 of 2008	Paras Ram vs. State of Haryana and Ors.	355	Nathupur	24-25A	There exist three nos shops having stone girder roof and site being temporary used as taxi stand	affecting site for Working Women Hostel (Photos attached)
5	16664 of 2008	Rattan Lal & Ors. vs. State of Haryana and Ors.	686	Nathupur	24-25A	There exist jhuggis/ tin sheds being used as small shops/ residences	Affecting creche site and park site as well as two stretches of 12.0 mtr road (photos attached)

6	5696 of 2008	Mahinder Singh vs. State of Haryana and Ors.	384/2	Nathupur	24-25A	There exists 6 temporary shop and labour quarters having tin roofing	Affecting proposed 2 nos of Clinic sites and 2 nos of 12.0 mtr and 18.0 mtr wide roads (photos attached)
7	8560 of 2009	Daya Chand vs. State of Haryana and Ors.	789	Nathupur	24-25A	There exist rented labour quarter having tin and stone girder roof	Affecting site reserved to settle oustees claim (photos attached)

(10) The DLF Ltd. and its allied Company, namely, respondents No.4&5 have explained in their reply/affidavit that the colony i.e. DLF Phase-III was set up and continuously developed since the year 1981. The total area of the colony is approximately 455 acres whereas the land of the petitioner is 0.72 acres only. It is claimed that the main objective of the State behind acquisition of small pockets is to integrate such pieces of land within the existing licensed colonies for the planned development of the area.

CWP No.2559 of 2013 (Trishla Jain & Ors. vs. State of Haryana & Ors.)

(11) There are three petitioners in this case who claim themselves to be joint owners of the land fully described in para 2 of the writ petition situated within the revenue estate of village Nathupur, Tehsil & District Gurgaon. They claim that the “*respondents have failed to publish the impugned notification in two daily newspapers having circulation in the locality where the land of the petitioners is situated*”. It is further alleged that the land has been acquired for the benefit of private colonizer, namely, M/s DLF Ltd. and its allied company who have been impleaded as respondents No.3&4. It is alleged that no public purpose would be served by acquiring the petitioners’ land which is a small isolated pocket. The

petitioners have further claimed that since the land is located in the National Capital Region, it could not be acquired without approval of the Board constituted under the National Capital Region Act, 1999.

(12) The Land Acquisition Collector Gurgaon – respondent No.2 has explained in his written statement that the substance of the notification under Section 4 was published in two daily newspapers dated 06.10.2006 (one Hindi and another English). The notification was also pasted on the notice board of Halqua Patwar Khana and proclamation through chowkidar by beating of empty drum in the villages and the vicinity was also carried out. All the objections received under Section 5A were duly considered and the objectors were heard in person. The petitioners, however, did not file any objection. The allegations of acquiring the land for private colonizer have been refuted to be baseless. The land of the petitioners is admittedly lying vacant. As per the District Town Planner, the land is required for the public purpose of 12.0 meter wide road and it is also affecting 7 sites of Group Housing Societies.

(13) Respondent No.3 – private builder has also filed its written statement controverting the petitioners' allegations. It is claimed that DLF Phase-III is being developed since the year 1981 and for some of the public utilities, its land measuring 3.12 acres has also been acquired by the State.

CWP No.1682 of 2008 (Braham Singh & Ors. vs. State of Haryana & Ors.)

(14) The petitioners are three brothers, whose land as per the details given in para 2 of the writ petition situated within the revenue estate of village Nathupur has been acquired. According to petitioners, they filed objections under Section 5A with a specific plea that the land in question is

their only source of livelihood where a tubewell was also installed. They allege that the objections were rejected mechanically.

(15) The Land Acquisition Collector Gurgaon – respondent No.2 has in his written statement acknowledged the receipt of objections from petitioners vide receipt No.13901 dated 31.10.2006. He has further averred that petitioner No.1 personally appeared before the Land Acquisition Collector and was heard. He also voluntarily made a statement in support of objections which was recorded and is duly signed by him. No merit was found in the objections, hence the same were rejected. The other allegations like the release of land of influential persons have been controverted.

CWP No.10030 of 2008 (Paras Ram vs. State of Haryana & Anr.)

(16) The petitioner has questioned the acquisition of his land measuring 1 bigha 17 biswas situated in the revenue estate of village Nathupur, Tehsil & District Gurgaon, the details whereof are given in para 2 of the writ petition. His foremost plea is that he has constructed a residential house and spent huge amount of money where he is now residing with his family. It is further averred that since one of the public purpose of acquisition is to develop the area as a residential Sector and he is also utilizing the land for the same very purpose, his land deserves to be released as per Government policy. The petitioner has placed on record site plan of his residential property (P4) along with photographs (P6). The petitioner relies upon the Government policy dated 26.10.2007 to urge that the house/structure found in existence at the time of issue of Section 4 notification deserves to be released.

(17) The Land Acquisition Collector Gurgaon has filed written statement on behalf of respondents No.1&2. It is acknowledged that the

petitioner filed the objections which were duly considered. He personally appeared before the Land Acquisition Collector and made a statement which was recorded and signed by him. The site was thereafter inspected by Joint Site Inspection Committee and it recommended that the petitioner's land cannot be released.

(18) The District Town Planner, Gurgaon in his common affidavit has explained that there is no residential house of the petitioner at the site. There are three shops having temporary roof of stone girder and the site was being temporarily used as a taxi stand. It is claimed that as per the Layout Plan of Sector 24 & 25A, the site is meant for construction of Working Women Hostel.

CWP No.16664 of 2008 (Rattan Lal & Ors. vs. State of Haryana & Ors.)

(19) Petitioners are members of one family, whose land measuring 2 bigha 0 biswa as described in para 4 of the writ petition situated within the revenue estate of Village Nathupur is also part of the impugned acquisition. The ownership-claim is based upon a Civil Court decree dated 08.08.2006 passed in Civil Suit No.13 of 13.01.2003. Though a copy of the judgment is not on record but it appears from the contents of the mutation (P2) that the said Civil Suit was filed by petitioner No.1 or by all of them against the Gram Panchayat. During the course of hearing, it was pointed out that the title dispute between Gram Panchayat and the petitioners is now *sub judice* before this Court in RSA 3383 of 2007 (Gram Panchayat Nathupur vs. Rattan Lal).

(20) The precise claim of petitioners is that they have constructed a house of A-Class construction and their small piece of land is surrounded by thickly populated area hence it cannot serve any public purpose. It is

claimed that since the acquisition is made for regulated development of residential sector and the petitioners too are using the site for the same purpose, hence their land be ordered to be released. Some photographs depicting the gate and a portion of the house have also been appended. Reliance is placed on Government Policy dated 26.10.2007, for the release of the said property.

(21) The Land Acquisition Collector Gurgaon – respondent No.3 has filed the written statement. It is acknowledged that the petitioners filed their objections under Section 5A and petitioners No.1&2 were personally heard before deciding the objections. In addition, petitioner No.3 filed separate objections while petitioners No.6,7&8 filed joint objections. Petitioner No.3 also appeared in person. Mange Ram petitioner No.6 appeared on behalf of petitioners No.6,7&8. Surat Singh appeared on behalf of legal heirs of petitioner No.1 (who appears to have died meanwhile). Thereafter only, the Land Acquisition Collector as well as Joint Site Inspection Committee sent their respective reports. It is specifically averred that the entire land of Khasra No.686 was lying vacant at the time of issuance of Section 4 notification and the construction, if any, has been raised subsequently in an unauthorized and illegal manner.

CWP No.5696 of 2008 (Mahinder Singh vs. State of Haryana & Ors.)

(22) Petitioner is a co-owner in the land comprising Khasra No.384/2 (0-11-10) situated within the revenue estate of village Nathupur. He claims to have constructed **37 rooms** on the land which he has given on rent to earn livelihood. The petitioner has appended site plan of his property (P2) which suggests that various rooms in rows with tinshed roofs have been constructed. The photographs are, however, not on record.

(23) The Land Acquisition Collector Gurgaon – respondent No.2 has in the written statement acknowledged the fact that the petitioner filed objections which were entered at receipt No.14068 dated 02.11.2006. He was heard in person and volunteered to make a statement which was duly recorded and signed by him. In Preliminary Submission No.3, it is further averred “*that there were two rooms and service station of the petitioner on the land in dispute at the time of issuance of notification u/s-4 of the Act. Apart from the said construction, the entire land in dispute was totally vacant...*”. Since the land was not being utilized in conformity with the layout plan of the area, it was recommended not to be released. Rest of the allegations have been controverted.

(24) The Administrator, HUDA – respondent No.3 has also filed the written statement along with report of the Joint Site Inspection Committee. It is maintained that only those constructions were recommended to be released which were part of thickly populated area.

CWP No.8560 of 2009 (Daya Chand vs. State of Haryana & Anr.)

(25) The petitioner is a resident of Village Nathupur, Tehsil & District Gurgaon. He has averred that there exists a residential house constructed by his ancestors since the year 1949 on the land comprising khasra No.789. The Khasra No. was previously owned by *shamlat patti* and its ownership was then transferred in favour of Gram Panchayat. The Gram Panchayat thereafter passed a resolution allowing petitioner to purchase the property where the house was constructed and such a claim was duly established vide Civil Court judgment and decree dated 07.10.2006, against which appeal preferred by Gram Panchayat was dismissed on 16.04.2007.

(26) The obvious claim of the petitioner is that the residential house which was constructed many decades back deserves to be released as per the Government policy dated 26.10.2007. The site plan and photograph of the house have also been appended (P7 & P8).

(27) The Land Acquisition Collector Gurgaon has filed written statement on behalf of respondents No.1&2, acknowledging that the petitioner had filed objections under Section 5A which were duly considered. He was heard in person also and he also made and signed his statement. In Preliminary Submission No.3, the Land Acquisition Collector has surprisingly taken a self-contradictory stand as on one hand it is averred that Khasra 789 “*was vacant at the time of issuance of notification u/s-4 of the Act*” but in the very next breath it is admitted that “*there was construction in the said khasra No. at the time of issuance of notification u/s-4 of the Act*”. It is further claimed that the petitioner is not the owner of acquired land/property.

Additional Facts Common to All the Cases:

(28) It may be mentioned here that on 22.01.2009, this Court took notice of the fact that after issuing Section 4 notification, 293 acres land was declared for acquisition under Section 6 but no land of the builders was included therein. It was also asserted that a large chunk of land has been released for extraneous considerations vide notification dated 11.06.2008. This Court thus directed as follows:-

“We direct the concerned Secretary to Government of Haryana to give particulars of the persons whose land was originally covered under Section 4 and was not covered under Section 6 of the

Act and the reasons for doing so. In the affidavit, it may also be clarified in whose favour land was released after notification under Section 6 of the Act and on what grounds...”

(29) In deference to the above-reproduced directions, the then Principal Secretary, Urban Estate Department, filed his affidavit dated 02.03.2009 explaining that land measuring 293.45 acres (of village Nathupur), 25.09 acres (of Sikanderpur Ghosi) and 13.15 acres (of village Dundahera) i.e. total 331.69 acres was proposed to be acquired vide notification under Section 4 dated 03.10.2006. Para 3 of the affidavit thereafter read as follows:-

“That after taking into consideration the report of the Land Acquisition Collector, Gurgaon on the objections raised under section 5-A of the Act and the report of Joint Site Inspection Committee (hereinafter referred to JSIC), an area measuring 99.21 acres on which these were thick constructions was excluded from the acquisition proceedings. Further an area measuring 6.80 acres which stood acquired earlier was also excluded from the acquisition proceedings. In addition in this an area measuring 20.75 acres which was a part of the licenced area. The licences for the area measuring 20.75 acres were give vide licence Nos.LC-419 dated 05.05.2004, LC-416 dated 03.06.2004 and LC-498 dated 05.05.2007. Thus an area was notified under section-6 of the Act.”

(emphasis applied)

(30) After giving details of the subsequent release orders, para 5 of the affidavit further explains that 8.13 acres land was dropped from acquisition as this area was to be included for extension of Cyber City and in this manner finally 175.09 acres land was acquired.

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

Petitioners' Contentions:

(32) It was vehemently urged by learned counsels for petitioners led by Shri Shailender Jain, senior counsel that –

- (i) the 'public purpose' of acquisition is totally sham; the acquisition is a colorable exercise of power for the benefit of private builder who is impleaded as party respondent in some of the cases;
- (ii) the acquired land comprises different pockets within the area of DLF Phase-III which is a colony of the private builder. HUDA has no land in that Sector which can be used for regulated development;
- (iii) the land of private builder and other influential persons has been released or not acquired under the garb of Government policies which action is *ex facie* violative of Articles 14, 19, 21 & 300-A of the Constitution. The Government policies do not conform to the mandate of Section 48 of the 1894 Act;
- (iv) Since the true motive behind impugned acquisition was to force the landowners like petitioners to accept the unilateral terms and conditions dictated by DLF Ltd. for the purchase of their

properties as distress sales, the principles laid down by this Court in **Sant Singh & Ors. vs. State of Haryana & Ors., 2014 (2) PLJ 675** as approved by Hon'ble Supreme Court in **Uddar Gagan Properties Ltd. vs. Sant Singh & Ors., (2016) 1 SCC 548** are fully attracted;

- (v) the small pockets of land owned by petitioners have been acquired to provide common facility sites to a private builder hence the acquisition is bad in law as held by this Court in **Devdutt & Ors. vs. State of Haryana & Ors. 2014 (4) RCR (Civil) 94**;
- (vi) power to withdraw from acquisition under Section 48 of the 1894 Act can be exercised only in exceptional circumstances and not on wholesome basis as has been done in the instant case;
- (vii) large-scale release of land and issue of Letter of Intent/license in favour of private builder after the passing of award do suggest that the State has no intention to develop the acquired area for the notified public purpose;
- (viii) the notification under Section 4 was not properly published and many affected owners have been deprived of filing their objections;
- (ix) this Court in the case of (i) **Parul vs. State of Haryana & Ors. (CWP No.15117 of 2009) decided on 23.09.2013** and (ii) **Rajpal Yadav & Ors. vs. State of Haryana & Ors.** dated 01.04.2015 though has upheld the acquisition in question but

those judgments are distinguishable as the issues raised hereinabove were neither urged nor considered in those cases.

(33) Some of the petitioners who have not challenged the Government policy dated 26.10.2007, have placed reliance thereupon to urge that their houses/other structures which were found in existence before issue of Section 4 notification deserve to be released in terms of that policy read with the *dictum* in **Patasi Devi vs. State of Haryana & Ors. (2012) 9 SCC 503** and various decisions of this Court to the same effect.

Counter by the Respondents:

(34) Learned State counsel, on the other hand, maintained that the acquisition under challenge does not suffer from any illegality and deserves to sustain. She argued that-

- (i) The writ petition in *Duli Chand's* case is liable to be dismissed on the ground of delay and laches as he has chosen to approach this Court after two years of passing the award. His land was lying vacant at the time when Section 4 notification was issued but thereafter he raised unauthorized temporary construction comprising some rooms which have been rented out to poor labourers without providing any basic amenities. These are temporary sheds which have been raised to avoid payment of statutory charges leviable on authorized construction;
- (ii) Some of the other petitioners have also raised such illegal temporary structures to take undue benefit of the Government policy and none of them has been found residing at the acquired sites;

- (iii) It is totally false that the entire Sector is developed by DLF Ltd.
The fact of the matter is that even after releasing thickly populated area measuring about 100 acres and after excluding other released parcels of land, there is more than 175 acres land available for development as a residential, commercial or institutional area;
 - (iv) It is also false and misleading that the small pockets have been acquired for DLF or any other private builder;
 - (v) It is contrary to record to say that the land in favour of any private builder has been released. The land for which LOI had been applied was never included in the acquisition process;
 - (vi) The writ petition filed by **Parul Lohia** who is co-owner of Duli Chand – petitioner in the first case has already been dismissed and the subject-acquisition has been further upheld by this Court in **Rajpal Yadav's** case.
 - (vii) As regard to the challenge laid to the policy, such issue of validity of policy dated 26.10.2007 is now *sub judice* before the Hon'ble Supreme Court in *Kishore Chhabra vs. State of Haryana & Ors. SLP (C) No.28411 of 2011*;
 - (viii) Different parcels of land are required for one or the other public utilities as per the layout plan of Sector 24 & 25A Gurgaon as is explained in the affidavit filed by District Town Planner;
- (35) Learned senior counsel for DLF Ltd. urged that Duli Chand – petitioner in the first case has not approached the Court with clean hands. He bought the land for speculative purposes few months before the acquisition process and it was mutated in his favour after publication of

Section 4 notification. He pointed out that the facts of the case in hand are different than those of Sant Singh's case as DLF started purchasing and developing the adjoining land way back in the year 1981 onwards. After developing the purchased land, the plotted colony has been set up and third party rights have been created. He argued that there is not even a single instance brought on record where DLF pressurized and purchased the land of any owner by putting the latter under the fear of acquisition.

Issues for Determination:

(36) Having given our thoughtful consideration to the rival submissions, we find that the following issues fall for determination:-

- (i) Whether the impugned acquisition is an outcome of colorable exercise of power and is meant to facilitate and promote the business interest of private builder(s) and to enable them to purchase the land under acquisition on their terms and conditions?
- (ii) Whether the acquired land can be utilized for the notified or any other *bona fide* public purpose?
- (iii) Whether the impugned policies including dated 26.10.2007 are unconstitutional and contrary to the scheme of Land Acquisition Act?
- (iv) Whether the petitioners are entitled to seek release of their houses/structures in terms of the Government policy or otherwise?

CONCLUSIONS:

Whether the impugned acquisition is an outcome of colorable exercise of power and is meant to facilitate and promote the business interest of private builder(s) and to enable them to purchase the land under acquisition on their terms and conditions?

(37) On point No.(i), learned counsel for the petitioner(s) heavily banked upon the decision of this Court in Sant Singh's case as affirmed by Hon'ble Supreme Court in Uddar Gagan Properties Ltd. (with modification in the relief clause). That was a case where a huge chunk of land was notified under Section 4&6 of the Act and the last date to announce the award was 07.04.2005. Soon before that in March, 2005 a private builder suddenly surfaced and entered into various agreements with the landowners and got the land released from acquisition. The landowners who were duped by the State apparatus as well as by the private builder themselves came forward questioning such unholy nexus. This Court found merit in their allegations and concluded thus:-

“[69]. From the facts noticed above, there can be no different conclusion but to infer that though the proposal to acquire land for the development of Urban Sectors at Rohtak was mooted, approved and was taken to a logical conclusion for a bona-fide public purpose. However, during the interregnum and before passing the Award, an unholy nexus to promote the private interest of respondent No. 11 sprouted which de-railed the public purpose of acquisition and led to the misuse of power under [Section 48](#) of the 1894 Act. Respondent No. 11 exploited the moments of suspense and succeeded in entering into distress-sale agreements with the desperate owners who were sandwiched and had no other choice but to give in for a comparatively better offer.

[70]. To say that the landowners entered into varied contracts with Respondent No.11 voluntarily, willingly or without undue pressure is too farcical to be believed. There is a natural and conventional bondage between the land and its tiller. A farmer seldom sells the land save for the compelling reasons. Agricultural being their only source of survival, the loss of land is a terrible nightmare for any farmer. The Land Acquisition Collectors never assess the compensation as per actual market value of the land and the only yardstick to be followed is the Collector's rate fixed for the purpose of registration charges. The farmer can not sell the land in open market as on issuance of [Section 4](#) notification all sale transactions are invariably banned. These moments of fear and anxiety must have prompted respondent No. 11 to indulge in the best bargain. For the farmers the offer was like 'better you give the wool than the whole sheep'. There was no free trade for the farmers. Their choice was limited: to accept the State compensation at the Collector's rate or a better offer given by State sponsored private builder. There was inequality of bargaining power. The determination of land value was not at all in the control of farmers. They were groping in the dark. They had no clue that the land will be released. They accepted the unreasonable and unfair unilateral terms and lost their land.”

(38) This Court further held that:-

“[79]. The Vendors and the Vendee both had full and informed knowledge of the fact that the transacted land had since been acquired and Award also passed. The Vendee was aware of the fact that the Vendors did not possess a clean title, yet the Sale Deeds were presented and got registered, after about two years of the passing of the Awards, on 06th April, 2005. Every such transaction in respect of the acquired land was indeed null and void having no existence in the eyes of law.”

(39) The Hon’ble Supreme Court in **Uddar Gagan Properties Ltd.**

(supra) affirmed these findings and held that:-

“13. We have given serious thought to the rival contentions. We have found no reason whatsoever to disagree with the finding recorded by the High Court that present case is a gross abuse of law on account of unholy nexus of the concerned authorities and the builder to enable the builder to profiteer. The land could either be taken by State for a compelling public purpose or returned to the land owners and not to the builder.

14. There could be no objection to acquisition of land for a compelling public purpose nor to regulated development of colonies, but entertaining an application for releasing of land in favour of the builder who comes into picture after acquisition

notification and release of land to such builder tantamounts to acquisition for a private purpose. It amounts to transfer of resources of poor for the benefit of the rich. It amounts to permitting profiteering at the cost of livelihood and existence of a farmer. This is against the philosophy of the Constitution and in violation of guaranteed fundamental rights of equality and right to property and to life. What cannot be done directly cannot be done indirectly also.”

(40) It was also found as a matter of fact in the cited case(s) that the builder did not own an inch of land before notifications under Sections 4&6 were issued. The Apex Court thus reiterated that “*State’s power of compulsory acquisition cannot be used to enable a private entity to acquire title even if private person offers more compensation than the State.*”.

(41) For applying these principles to the facts of the case in hand, it was imperative upon the petitioner(s) to place on record the material to prove that the private builder entered into agreements with the affected landowners and forced them to execute distress sales. No such instance has unfortunately been pleaded or proved. Unlike **Sant Singh**, no landowner has come forward to allege undue influence, coercion or fraud by the State machinery or a private builder.

(42) As against it, the official respondents have explained that 20.75 acres land was excluded from Section 6 notification as it was a part of the licensed area for which Licence No.LC-419 dated 05.05.2004, LC No.416 dated 03.06.2004, LC No.498 dated 05.05.2007 had been granted. These licences stood granted much before Section 4&6 notifications were issued

(except one granted after issue of Section 4 notification). The other released area was 11.19 acres in favour of Information Technology Department of State Government. The major chunk of land measuring 99.21 acre was released as it was thickly populated area and not the land of a private builder. It thus emerges out that less than 25 acres of land was released in favour of the private builder which was owned by it well before Section 4&6 notifications were issued. The release of an area to this limited extent cannot be termed as a wholesome surrender of acquisition process in favour of private entity as was the case in **Sant Singh's** case. Since more than 175 acres of acquired land is lying with the State for its regulated development through State agency, namely, HUDA and it has been time and again stated through different affidavits that such acquired land has been planned for its utilization for varied common facilities, it is difficult to hold that the impugned acquisition is meant to promote the cause or interest of a private builder.

Whether the acquired land can be utilized for the notified or any other *bona fide* public purpose?

(43) It was vehemently urged on behalf of the petitioner(s) that since the acquired land is scattered and is without contiguity, the State or its agencies will not be able to utilize the same for the notified public purpose. On the other hand, learned State counsel urged that no part of the acquired land would be released in favour of any private builder and HUDA will carry out development of each site. She explained that the entire area of Sectors 24 & 25A does not belong to the private builder nor the amenities to be provided by State Government would be meant for the exclusive use of private builder's colony. In our considered view, so long as the State or its agencies can ensure that the acquired land shall not be handed over to the

private builder to promote its business interest and such sites will be utilized for amenities meant for all the residents of township without restricting to cater to a class of residents, it is not necessary for this Court to travel into non-existent issues except to direct that it shall be imperative upon the State or its agencies to utilize the acquired sites for *bona fide* public purposes and not to subserve the cause of any private entity including the private builder. The area under acquisition being more than 175 acres, it can be safely inferred that the State or its agencies will be able to utilize it for residential, commercial or institution purposes as per the notified public purpose of acquisition. In the event of any deviation or circuitous method adopted to divert the acquired property for a private purpose, the petitioner(s) or for that matter any vigilant citizen can always question such action of the State.

(44) It is not out of place to mention here that the subject acquisition was impugned by similarly placed owners including Parul Lohia, co-owner of Duli Chand – petitioner in the first case. Parul Lohia challenged the acquisition in CWP No.15117 of 2009, which was disposed of on 23.09.2013 by this Court in following terms:-

“9. Since the site is earmarked for a bona fide public purpose, namely, health services and also keeping in view the Government Policy dated 9.11.2010 coupled with the fact that the dispossession of the petitioner was stayed by this Court from the constructed area on September 25, 2009, we allow this writ petition to the extent that the petitioner is held entitled to the allotment of an alternative site as per the afore-stated Govt. policy, either at the same site where the construction is

already raised and or in the nearby area of the same Sector. Since the State Executive failed to implement the policies dated 26.10.2007 or 9.11.2010 for years and their inaction has been seriously viewed vide order dated 4.9.2013 passed in CWP No. 21572 of 2011 (Rohtas & Ors. vs. State of Haryana & Ors.), we direct that the petitioner shall not be dispossessed unless the alternative plot of admissible size is allotted to him. We also direct that for the purpose of Rehabilitation Policy, the petitioner shall be deemed to be eligible for all intents and purposes.”

(45) This very acquisition was challenged in another set of writ petitions including **CWP No.19374 of 2007 (Rajpal Yadav & Ors. vs. State of Haryana & Ors.)** which were dismissed by a Co-ordinate Bench on 01.04.2015 holding as follows:-

“However, before parting to the judgment, we may notice that though the land is not being acquired for the benefit of M/s DLF Limited, as the land is in fact ancillary road to National Highway and serves larger public interest, but even if the same is intended to be acquired for the benefit of HUDA, the policy framed by the State Government on 07.08.1991 and modified on 05/09.06.2006 permits the State Government to acquire land wherever small pockets are left out within a licensed area or on the fringes of the colony...”

Whether the impugned policies including dated 26.10.2007 are unconstitutional and contrary to the scheme of Land Acquisition Act?

(46) As regard to the question of validity of Govt. policies including dated 26.10.2007, learned State counsel appears to be right in contending that identical issue is under consideration before the Hon'ble Supreme Court in **Kishore Chabra's** case. It would not be appropriate for this Court to express any opinion on this issue. We may however, hasten to add that assuming there is a valid policy formulated by the State laying down the guidelines for withdrawal from any acquisition within the meaning of Section 48(2) of the 1894 Act (since repealed), such policy cannot be abused to release the acquired land to such an extent that it defeats the very object of acquisition and in such an eventuality, the principles laid down by this Court in **Amita Banta & Anr. vs. State of Haryana & Ors. 2010 (1) PLR 413** would surely be attracted to annul the acquisition process.

Whether the petitioners are entitled to seek release of their houses/structures in terms of the Government policy or otherwise?

(47) As regard to the claim of those petitioners who have not challenged the policy and have sought release of their houses/structures taking advantage of the policy, it appears to us that such claim has to be examined on case-to-case basis.

✓ In **Duli Chand's case**, there is no residential house at the site and some labour-quarters have been unauthorisedly raised, apparently after issuance of Section 4 notification with a view to take undue advantage of Government policy. Such like construction cannot be saved more-so when the site is earmarked for a dispensary.

- ✓ In the case of Trishla Jain and Braham Singh and others, their lands are admittedly lying vacant, hence the policy decision is not attracted.
- ✓ In Paras Ram's case, the petitioner claims that he has constructed a residential house but the photographs do not support his claim. There is some construction like shops and the respondents appear to be right in contending that the site is being temporarily used as a taxi stand.
- ✓ In Rattan Lal's case the petitioners may be right in contending that they have constructed a residential house. The photographs on record (P8) are quite deceptive as only the gate of a house is prominently shown. The plea taken by the respondents that the land was vacant at the time of issuance of Section 4 notification cannot be brushed aside lightly. The house appears to be a newly constructed house of A-category. The petitioners are thus granted opportunity to produce material before the respondent-authorities and establish that such house was constructed before issue of Section 4 notification. In addition, the respondents would consider whether the house can be released irrespective of date of construction subject to payment of development and other statutory charges, provided further that it does not seriously affect the overall development plan.
- ✓ In Mohinder Singh's case, there is no residential house except a temporary shed which is being used as labour-quarters with tin roofing. Such like quarter does not fall within the ambit of the State policy.

✓ In Daya Chand's case, the petitioner has taken a categorical stand that the house in question was constructed by his ancestors. We have seen the photographs relied upon by him as well as the photographs appended by the District Town Planner with his affidavit. There appears to be merit in the petitioner's contention that their's is an old residential house. Since the release of that house would not affect the overall development as the site is stated to be reserved for settlement of oustees, we find no justification in not releasing the same as per the Government policy dated 26.10.2007. His claim is thus accepted and the house is ordered to be released except that the vacant area, if it is required for the purpose of any road etc. the authorities shall be at liberty to utilize the same.

(48) In the light of the above discussion, these writ petitions are disposed of in following terms:-

- (i) the acquisition of land vide notifications dated 03.10.2006 and 01.10.2007 followed by award dated 30.09.2009 is hereby upheld and the writ petitions challenging such acquisition are hereby dismissed;
- (ii) declaration at (i) above is subject to the caveat that the acquired land shall be used for the notified or any other *bona fide* public purpose and shall neither be transferred nor handed over for the benefit of private builder(s);
- (iii) the residential house of petitioner *Daya Chand* in CWP No.8560 of 2009 shall be released as it was admittedly constructed much before Section 4 notification was issued.

However, any vacant area, if needed for public road etc., can be utilized;

(iv) the authorities will reconsider the claim of Rattan Lal & Ors. in CWP No.16664 of 2008 for the release of their house in the light of the observations made in para-46 above;

(v) The claim of other petitioners for the release of their properties is hereby rejected but without prejudice to their claims under the Resettlement and Rehabilitation Policy.

(49) Ordered accordingly.

(Surya Kant)
Judge

16.09.2016

vishal shonkar

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(Darshan Singh)
Judge