

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.11388 of 2014.

Date of Decision: July 05, 2016

Mehar Chand

.....Petitioner

versus

State of Haryana and others

.....Respondents

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

Present: Mr.Mehar Chand-petitioner-in-person.
Mr.Anil Dabas, District Town Planner, Faridabad and
Mr.Jai Narayan Patwari, O/o LAO, Faridabad.

-.-

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Surya Kant, J. (Oral)

The petitioner is a resident of village Bhatola, Tehsil and District Faridabad. He seeks quashing of the notifications dated 07.02.2008 and 06.02.2009 issued under Sections 4 & 6 of the Land Acquisition Act, 1894, respectively (hereinafter referred to as 'the Act') as well as the Award dated 04.02.2011 to the extent these pertain to acquisition of his land measuring 1 kanal comprised in khewat No.441/387 min, khatoni No.581, Rect. No.34//4/1 (0-10), 3/1 (0-10), situated within the revenue estate of village Bhatola, District Faridabad.

[2] The primary grievance of the petitioner is that he has constructed a double storey residential house, a temple, kitchen, toilet-bathroom, cattle shed, 10 shops and a tubewell on the subject land. The construction was statedly raised more than 20 years ago and the

photographs, electricity bills coupled with the revenue record supporting such averment have also been appended. The petitioner also relies upon a decision of this Court dated 10.12.2013 passed in CWP No.9085 of 2009 (Raj Singh and others versus State of Haryana and others) wherein the land under acquisition pertained to the adjoining village of Faridpur, District Faridabad and the said land was also, like the petitioner's land, acquired for the development of residential and commercial Sectors 76, 77 & 78 at Faridabad under the Haryana Urban Development Authority Act, 1977. In Raj Singh and others' case (supra), this Court dealt with the issue re: release of residential house/structures in the light of the binding precedents of the Hon'ble Supreme Court as well as the Policy of the State Government and allowed the writ petition in the following terms:-

“.....[13] For the reasons afore-stated, we allow this petition and quash the acquisition of petitioners' houses and/or other structures alongwith sufficient open space. The petitioners shall be entitled to the release of their residential houses with structures and open space, the total area of which shall not be less than 1500 square yards. Needless to say that the release of the petitioners' houses and structures will be without prejudice to their right to claim compensation and/or allotment of plots under the Rehabilitation Policy for the acquisition of their remaining land.....”

[3] Similar view was again taken by this Court in CWP No.24113 of 2011 (Dharamveer versus State of Haryana and others) decided on 22.07.2013.

[4] Somewhat similar situation arose before the Hon'ble Supreme Court in Vinod Kumar versus State of Haryana and others (Civil Appeal Nos.973-974 of 2014) (P-23), where the controversy pertained to acquisition of land measuring 5 marla where 'A' Class construction had been raised before the acquisition. The Apex Court rejected the State's contention that it being an unauthorized construction could not be protected. The appeal was allowed and acquisition qua the appellant's land was quashed.

[5] The Land Acquisition Collector, Fariabad has filed his written statement explaining *inter-alia* that the mandatory procedure contained in the 1894 Act was followed and objections filed under Section 5-A of the Act were duly considered. It is alleged that the petitioner did not file any objections, hence the writ petition is not maintainable. In para No.6 of the written statement, it is averred that “there was some construction over the acquired land in question and the Government can acquire any land for public purpose irrespective of the fact whether there is some construction on the land or not”. Para No.4 of the written statement on merits further reads as under:-

“....4. That in reply to para No.4 of the writ petition, it is submitted that as per report of District Town Planner, there was a construction in khasra No.34//3, 4. It is further submitted that the land in question has been acquired for public purpose as per development plan. Rest of the contents are denied for want of knowledge...”

[6] It is thus an undeniable fact that the petitioner had raised the construction over the acquired land much before the acquisition process started. The photographs placed on record need no room to doubt that the

construction is fairly old and possibly was raised more than 20 years back.

[7] The subject land has been acquired predominately for the development of a regulated residential area. The petitioner is also using the acquired land primarily for residential purposes though he is running ancillary activities like temple, shops and cattle shed too.

[8] In the above-cited decisions of this Court and the Hon'ble Supreme Court, there was indeed a similar situation as the land was acquired for regulated development of urban sectors and the affected land-owners had constructed their residential houses/structures. Following the past precedents and the consistent view on the subject, the acquisition qua the residential houses and other structures was quashed with a further direction to release such structures alongwith sufficient open space. The view has been, in a way, approved by the Hon'ble Apex Court in the cited decision.

[9] We have heard the petitioner in person and the departmental officials including Mr.Anil Dabas, District Town Planner, Faridabad. He points out that a part of the petitioner's land is required for construction of 'service road' and that some residential plots carved out there would also be affected.

[10] The petitioner does not object to the acquisition of a part of his land to the extent it is required for the public purpose of constructing the 'service road'. As far as carving out of plots is concerned, since the petitioner himself is using the subject-site primarily for residential purposes and the construction was raised more than two decades back, we see no reason either in law or equity to uproot him and give his land to others for the same very purpose. The petitioner is thus entitled to the same benefits

as have been granted by this Court to the similarly placed land-owners in the cited decision in Raj Singh and others' and Dharamveer's case or by the Hon'ble Supreme Court in Vinod Kumar's case (supra).

[11] For the reasons afore-stated, we allow this writ petition; quash the impugned notifications as well as the Award to the extent of acquisition of the petitioner's land measuring 1 kanal, except a part which need for the construction of 'service road'. While releasing the petitioner's land alongwith structures, the respondents shall be at liberty to impose such restrictions as may be required to ensure that the released site/structure will be used strictly in accordance with the Zoning Plan of the area so that the regulated development of the area may not be affected. The necessary order in this regard shall be passed within a period of three months from the date of receiving a certified copy of this order.

[12] Ordered accordingly.

[13] Dasti.

**[SURYA KANT]
JUDGE**

July 05, 2016
mohinder

**[DARSHAN SINGH]
JUDGE**