

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) CWP No.12175 of 2015 (O&M)

Date of Decision: 11.08.2016

Anand Bajaj & Ors.

... Petitioners

VS.

State of Haryana & Ors.

... Respondents

(2) CWP No.12176 of 2015 (O&M)

M/s Mahadev Solvent P.Ltd.

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

(3) CWP No.15115 of 2015 (O&M)

Inder Pal Singh & Ors.

... Petitioners

VS.

State of Haryana & Ors.

... Respondents

(4) CWP No.17833 of 2015 (O&M)

VR Aggarwal & Ors.

... Petitioners

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE SUDIP AHLUWALIA

1. *Whether Speaking?*
2. *Whether Reportable?*
3. *Whether Reporters of local papers may be allowed to see the judgment?*
4. *To be referred to the Reporters or not?*
5. *Whether the judgment should be reported in the Digest?*

Yes
Yes
Yes
Yes / No
Yes / No

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

Mr. Ravi Dutt Sharma, DAG Haryana

SURYA KANT, J. (Oral)

(1) This order shall dispose of the above-captioned writ petitions in which the petitioners have laid challenge to the notifications dated 06.12.2004 and 05.12.2005 issued under Sections 4&6 of the Land Acquisition Act, 1894 (in short, 'the 1894 Act') as well as the composite order dated 17.03.2015 whereby the claims for the release of their respective acquired lands have been rejected by the State Government.

(2) The facts which are common to all the cases are briefly noticed hereto-after:-

(3) State of Haryana vide impugned notifications proposed to acquire 12.8 acres of land situated within the revenue estate of Ratgal, Tehsil Thanesar, District Kurukshetra **“for the development and utilization of land as residential, transport and communication zone for Sector-7, Kurukshetra...”**. The development works were to be carried out by Haryana Urban Development Authority (HUDA).

(4) The land of the petitioners also formed part of the proposed acquisition. They filed objections under Section 5-A and so did the other affected owners. On consideration of those objections, a substantial part of the proposal was dropped and declaration under Section 6 was published in respect of land measuring 4.66 acres only. It appears that the award was finally passed for the land measuring 4.51 acres which included the land of petitioners as well.

(5) The aggrieved owners approached this Court by way of a bunch of writ petitions filed in the year 2006-2007 in which the parties were directed to maintain *status quo re*: possession. Those writ petitions came up for final hearing on 30.01.2014 before a Division Bench to which one of us (Surya Kant, J) was a member. The moot contention raised on behalf of the petitioners and as

noticed by this Court in the lead case i.e. CWP No.11924 of 2006 (Inderpal Singh & Ors. vs. State of Haryana & Ors.) was to the following effect:-

“One of the principal contention raised on behalf of the petitioners is that the small patches of land acquired by the respondents would not serve the notified public purpose as the acquired land is not a compact piece and is scattered at least in three pockets. Reference is made to the site plan (Annexure P-4) to demonstrate that with the release of land shown in 'Yellow' colour, the acquired land is no longer contiguous to serve any purpose. It is also pointed out that in the written statement it is averred that constructed portion of the petitioners has already been released. In other words, it is contended that most of the area in and around the acquired land has been developed as residential or commercial establishments and to a large extent has been released.”

(6) Those writ petitions were thus disposed of in the following terms:-

“It may be true that a small piece of land measuring 4.51 acres would be insufficient to develop it as a residential sector or a transport zone etc. However, it may not be expedient for this Court to form any final opinion as to whether or not the acquired land can be utilized for a definite public purpose. Suffice it to observe that the contention raised on behalf of the petitioners that the acquired land is not likely to serve any bonafide public purpose, does require a dispassionate and objective consideration by the authorities after giving due opportunity of hearing to the affected parties and if the respondents are of the view that the acquired land need not be utilized for the notified public purpose, the same can be returned to its owners subject to the condition that they shall have to utilize it in conformity with the zoning plan and on depositing the statutory charges etc. However, if the authorities are of the view that the acquired land can be utilized for a public purpose, then such a decision shall be taken though a speaking order. In that event, the petitioners

and other land owners shall be entitled to seek the release of their constructed portions alongwith equivalent portion of open space in terms of the Government policies issued from time to time. An appropriate order in this regard shall be passed by the authorities after conducting fresh survey of the acquired land and, as observed above, after hearing the petitioners and other land-owners.

(7) In deference to the directions reproduced above, the State Government has passed the order dated 18.03.2015 (P12) rejecting the petitioners' claim, giving rise to this second round of litigation.

(8) The petitioners have placed on record the Revised Layout Plan of Sector-7, Kurukshetra issued by the Department of Town and Country Planning, Haryana (P4). It reveals that the land shown in 'yellow' colour abutting the main Pipli-Kurukshetra Road has been released in view of the existing constructions mostly comprising commercial establishments or petrol-pump. Immediate behind the released land (yellow colour), there are three compact parcels of land crossed with 'green' lines, comprising the land in dispute owned by petitioners. Behind and adjoining to parcel No.1&2 of the petitioners' land, there is residential Sector developed by the Haryana Housing Board and HUDA. As regards parcel No.3, it is surrounded on three sides by the released land (yellow colour) but on rear side it abuts a Higher Secondary School site allotted by HUDA.

(9) The residential Sector-7 at Kurukshetra has been fully developed and it also includes village Ratgal as well as the land of Agriculture Department.

(10) In this factul backdrop, we may now analyze the reasons assigned by the State Government while declining to release the land of the petitioner(s).

(a) **CWP No.12175 of 2015 (Anand Bajaj & Ors. vs. State of Haryana &**

Ors.) – The petitioners in this case raised two-fold pleas before the State Government, namely, that:-

- (i) their land is a part of the hotel run by them (a released property) and;
- (ii) there is no independent access to their land from any independent passage/road.

Both these contentions did not find favour with the State Government for the following reasons:-

“DTP Kurukshetra informed that the land in the CWP is located adjoining HUDA’s tube-well (TW) site and it is possible to utilize this land by extending the nearby 9 m wide road through the tube-well site. The site is vacant, except one room measuring 39 sq. m.

The committee of the officers observed that the existing restaurant of the petitioner has already been excluded from acquisition proceedings and the claimed pocket can be planned by connecting it to the already existing 9m wide road through HUDA’s TW site. Hence, it was decided not to release any land in favour of the petitioners.”

(b) **CWP No.12176 of 2015 (M/s Mahadev Solvent P.Ltd. vs. State of**

Haryana & Ors.) – The petitioner claimed the release of its land on the plea that most of it is already constructed after getting the building plans approved from the competent authority. This plea has been turned down by the State Government saying that:-

“DTP, Kurukshetra informed that that the land in the CWP is located adjoining HUDA’s tube-well site and it is possible

to utilize this land by extending the nearby 9 m wide road through the school site. The petitioners have erected two shed on the land having covered area of 187.6 sq. m. As per site, the size of the plots owned by the petitioner is 215.64 sq. m. The committee of the officers asked the counsels to produce any proof regarding approval of the building plan by MC, Kurukshetra and occupation certificate of the construction erected on the land. But they failed to produced the same. In view of these facts, the committee of the officers decided not to release any land in favour of the petitioners.”

(c) CWP No.15115 of 2015 (Inder Pal Singh & Ors. vs. State of Haryana

& Ors.) – The contention of the petitioners before the State Government was that:-

- (i) their land is surrounded by released land on two sides; and
- (ii) it does not have any approach from existing public passage/public road and the Department cannot utilize it for any public purpose. The State Government has rejected both the pleas for the following reasons:-

“DTP, Kurukshetra informed that that the land is located adjoining housing board site and it is approachable from 6 m wide road provided by Housing Board. The land is lying vacant.

The Committee of the officers observed that the pocket can be integrated with already planned development of sector 7 and this pocket can be considered for allotment to Housing Board, Haryana. Accordingly, it was decided by the Committee of the officer not to release any land in favour of the petitioners.”

(d) CWP No.17833 of 2015 (V.R. Aggarwal & Ors. vs. State of Haryana &

Ors.) - The petitioners sought release of their land on the grounds that

- (i) they have developed an orchard on the land;

(ii) the fresh survey report by the Department shows that their land is not approachable from any public road/passage; and

(iii) it cannot be integrated with rest of the planning of Sector-7.

Though the District Town Planner in his report acknowledged the fact that no access is possible to the pocket of land owned by petitioners as it is surrounded by the released land on three sides and a school site allotted by HUDA, on the other side. Yet the State Government thought it appropriate not to release the land for the following reasons:-

“The Committee of the officers observed that although no approach is available to this pocket at present. However, it adjoins school site, allotted by HUDA and it can be allotted to the school owners in exchange of equivalent land from school site on front side having approach from the road. Hence, it was decided not to release any land in favour of the petitioners.”

(11) The aggrieved petitioner(s) have reiterated their grounds which they raised before the State Government. It is vehemently urged that their lands cannot be utilized for any public purpose and the insistence of State Government to retain it is only for unjust enrichment. They have further urged that the acquired properties are being utilized by them for various purposes as a source of their livelihood. The reasons assigned by State Government for not releasing their land have been attacked, one-by-one as according to petitioners, the so-called ‘passage’ shown to be in existence to approach their land is already encroached upon and the said road does not have the prescribed width. Similarly, the exchange of land with the allottee of the school site is a lame excuse. The allegation of colourable exercise of power is also made.

(12) In all fairness, it may also be noticed that the petitioners have

huge chunk of land owned by an influential politician of the area and which is on the opposite side of their land was not included in the declaration under Section 6 without any rhyme or reason, hence on that very analogy the petitioner(s) too are entitled to seek the release of their land(s).

(13) Yet another plea of rejecting objections under Section 5-A in a mechanical manner has been half-heartedly argued before us.

(14) The respondents have filed their written statements through the Land Acquisition Collector, Urban Estate, Panchkula. It is averred that 95% part of Sector 7, Kurukshetra has been fully developed and the subject-land shall also be utilized for one or the other *bona fide* public purpose. It has been further explained that the acquired land was lying vacant except an abandoned structure and that it affects (i) 12 meters wide road; (ii) a park; (iii) 12 plots of 6 marla size; and (iv) 33 plots of 4 marla. The reasons assigned in the impugned speaking order have thus been reiterated.

(15) Having heard learned counsel for the parties at a considerable length and after going through the record, we do not find any merit in these petitions. We say so for the reasons that the pleas like discrimination in the matter of release or for not acquiring the land of any influential person were very much available to the petitioner(s) in the previous cases but they did not press the same. The person(s) to whom the State is said to have shown undue favour are not impleaded as party respondents. The material particulars are also conspicuously missing. The plea of discrimination thus cannot be entertained at this stage.

(16) Similarly, the non-applicability of mind while rejecting the petitioners' objections filed under Section 5-A was a plea available to them in the previous round of *lis* and it has now lost its significance, for the State Government has duly considered the petitioners' claim objectively while passing

the impugned order. The decision of the Hon'ble Supreme Court in **Union of India & Ors. vs. Shiv Raj & Ors. (2014) 6 SCC 564**, reiterating that Section 5-A of the 1894 Act represents statutory embodiment of the rule of *audi alteram partem* and it confers a valuable right in favour of the persons whose land is sought to be acquired or that such right cannot be lightly taken away, is thus not attracted to the facts of the case in hand.

(17) The petitioners' plea that a major chunk of land proposed to be acquired was released and only a miniscule part of it has been expropriated, must be seen with reference to the total area which was sought to be acquired. The subject acquisition was initiated for the land measuring 12.8 acres out of which finally more than 5 acres has been acquired. The layout plan relied upon by the petitioners itself justifies the release of about 7 acres land as it was already constructed and was being used for authorized commercial activities. Viewing from this angle, the *ratio* of the decision of this Court in **Amita Banta & Anr. vs. State of Haryana & Ors. (2010) 1 PLR 413**, cannot be applied.

(18) As regard to the difficulties likely to arise in utilization of the subject-land which the petitioners have highlighted, we are of the opinion that the matter has to be left to the wisdom of Town Planners and Architects who are the experts to advice the State Government in this regard. Suffice it would be for this Court to put a caveat that the acquired land shall be utilized for a *bona fide* public purpose, be it by way of exchange or otherwise. There is no gainsaying that when a land is acquired at the cost of State Exchequer it can neither be abandoned nor left unutilized. No such adverse inference, however, need to be drawn against the State for the simple reason that authorities have got no breathing time to plan the utilization of the subject-land. The *ad interim* stay orders have been operating

since the year 2006 due to which the respondents cannot be blamed for non-utilisation of the acquired land.

(19) For the reasons afore-stated we do not find any merit in these writ petitions which are accordingly dismissed but without any order as to costs.

(Surya Kant)
Judge

11.08.2016
vishal shonkar

(Sudip Ahluwalia)
Judge