

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.18744 of 2013.

Date of Decision: September 16, 2016

Mangal Singh and others

.....Petitioners

versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.

HON'BLE MR.JUSTICE DARSHAN SINGH.

Present: Mr.Ram Lal Gupta, Advocate, for the petitioners.

Ms.Palika Monga, Deputy Advocate General, Haryana.

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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.

The petitioners have laid challenge to the Notifications dated 26.03.2012 and 20.03.2013, issued under Sections 4 & 6 of the Land Acquisition Act, 1894 (for short, 'the 1894 Act'), respectively, whereby their land measuring 24 kanal 16 marla situated within the revenue estate of Farruknagar, Tehsil and District Gurgaon, is sought to be acquired for the Transport Department, Haryana, "for the construction of Bus Stand at Farrukhnagar". The description of the land has been given by petitioners in para No.3(a) of the writ petition.

[2] According to petitioners, the subject acquisition is bad in law as

- (i) it is violative of Articles 14, 19 and 300-A of the Constitution of India;
- (ii) they have constructed some shops on a part of the land and the vacant land is used for agricultural purposes;
- (iii) the land is not a suitable site for construction of the bus-stand;
- (iv) the ideal site for the construction of bus-

stand is Ferruknagar-Jhajjar Road and not the Wazirpur Road where their

land is situated, and (v) various stake-holders including the local Member of Parliament have strongly recommended that the bus-stand of Farruknagar Town should be constructed on Farruknagar-Jhajjar Road.

[3] When the writ petition came up for preliminary hearing on 27.08.2013, this Court after hearing learned counsel for the petitioners, passed the following order:

“.... Since the impugned acquisition is for construction of the proposed Bus Stand at Farukh Nagar, the *bona fide* of its public purpose is thus beyond doubt. The petitioners, however, contend that the acquired land that the acquired land is not a suitable site for construction of the Bus Stand and the Transport Department also recommended some other site for that purpose. It is their case that such an objection was raised by them under Section 5A of the Land Acquisition Act, 1894 but the same has been mechanically rejected by the respondents.

Let notice of motion be issued only on the limited issue as to whether the respondents considered suitability of the other site suggested by the petitioners and/or the Transport Department, and if so, what decision was taken thereon....”

[4] The respondents were further directed to produce the original record pertaining to the decision on the objections filed under Section 5-A of the 1894 Act.

[5] On September 24, 2015 also, it was urged during the course of arguments that the objections filed under Section 5A of 1894 Act were not

appropriately considered and the issue regarding inconvenience which was likely to be faced by the general public if the bus-stand was constructed at the chosen site, have not been dealt with at all. It was further contended that a big residential house has also been constructed on the acquired land.

[6] During the course of hearing, learned counsel for the petitioners reiterated that (i) their objections under Section 5-A of the 1894 Act have not been considered in accordance with law; (ii) hardly two acres land is required for the construction of bus-stand, whereas their 4 Acres land is being acquired; (iii) every stake-holder has objected to the location of Bus-Stand at the acquired site, for Farruknagar-Jhajjar road is the most convenient site for a bus-stand; (iv) the shops and residential house constructed at the site deserve to be exempted as per Government Policy; (v) the Land Acquisition Collector has not performed his duties impartially and fairly. He sent his report to the Transport Department instead of State Government.

[7] Learned State counsel, on the other hand, vehemently opposed the petitioners' claim and urged that neither the acquired land falls in residential area nor there exists any residential house. She urged that three sites were short-listed, out of which the Transport Department found the site in question as the most suitable for construction of bus-stand. She explained that the Land Acquisition Collector also sent his report to the Additional Chief Secretary, Government of Haryana and that the petitioners' objections were duly considered and decided by way of a reasoned order.

[8] We have gone through the original record containing decision(s) on the objections filed under Section 5-A of the 1894 Act. It reveals that the Land Acquisition Collector has briefly gone into the

objections filed by petitioners and also measured the size of shops constructed on the front side of the land and observed that such like construction won't cause any impediment against the construction of bus-stand. He further observed that the entire land is lying vacant and thus it can be acquired for the notified public purpose. No residential house was reported on the acquired land.

[9] It cannot thus be said that the petitioners' objections under Section 5-A of the 1894 Act have been rejected mechanically or there is unfair consideration of such objections.

[10] The photographs (P-2) appended with the petition also indicate that the entire land is lying vacant except 2-3 small shops constructed on front side abutting the main road, which can be easily dismantled. As regard to the opinion given by some residents or the Member of Parliament, it is neither binding nor relevant for such like decision making process.

[11] As regard to the suitability of site, we are of the view that it has to be left to the wisdom of Transport Department. It has come on record that three sites were short-listed, out of which the Transport Department opted for the subject site being most suitable, keeping in view its overall proximity as well as scope of future expansion of the township.

[12] The larger public interest behind the purpose of acquisition or its *bonafide* are beyond any pale of doubt. The hardship caused to the petitioners has to bow before the decision taken in the interest of general public. In State of Haryana and others versus Vinod Oil and General Mills and another (2014) 15 SCC 410, the Supreme Court has ruled that:

“.... The High Court was not correct in observing that only development of infrastructure, railways or

irrigation, water supply, drainage, road etc., are primary public purposes. Public purpose includes a purpose involving general interest of community as opposed to the interest of an individual directly or indirectly involved. Individual interest must give way to public interest as far as public purpose in respect of acquisition of land is concerned.....”

[13] It was further held that:-

“..... While determining the question whether a requisition order is or is not for a public purpose, the facts and circumstances in each case are to be closely examined in order to determine whether a public purpose has been established. The requirement of land for residential and commercial purposes and for development of the sector involves in it an element of general interest of the community and whatever further the general interest must be regarded as a 'public purpose' as opposed to be particular interest of individual.....”

[14] In a recent decision in State of Haryana versus Eros City Developers Private Limited and others, 2016(1) RCR (Civil) 904, Hon'ble Supreme Court has reiterated that the concept of “public purpose” is wider than that of “public necessity”. It holds thus:-

“.....In *Sooraram Pratap Reddy and others versus District Collector, Ranga Reddy District and others, (2008) 9 SCC 552*, this Court has held that the project for which land is acquired should be taken as a whole and

must be judged whether it is in the larger public interest.

It cannot be split into different components and to consider whether each and every component will serve public good. A holistic approach has to be adopted in such matters. This Court further observed in said case that development of infrastructure is legal and legitimate public purpose for exercising power of eminent domain. In deciding whether acquisition is for “public purpose” or not, prima facie, the Government is the best judge. Although the decision of the Government is not beyond judicial scrutiny, normally, in such matters a writ court should not interfere by substituting its judgment for the judgment of the Government. In Sooraram Pratap Reddy (supra), this Court has further explained that the meaning of expression “public purpose” is wider than that of 'public necessity'.....”

[15] The principles laid down in the decisions relied upon by the petitioners are distinguishable. The ratio-decidenti of the decisions in: (i) Hindustan Petroleum Corporation Limited versus Darius Shapur Chenai and others (2005) 7 SCC 627; (ii) Raghubir Singh Sehrawat versus State of Haryana and others, (2012) 1 SCC 792; (iii) Surinder Singh Brar and others etc. etc. versus Union of India and others, (2013) 1 SCC 403; (iv) Gojer Brothers Private Limited and another versus State of West Bengal and others (2013) 16 SCC 660, is attracted where the objections under Section-5A are rejected with a casual approach and without application of mind. The facts of the case in hand, are all together different as the objections filed by

petitioners have been adequately dealt with.

[16] The decision of this Court in Jagat Singh and another versus State of Haryana and another, 2010 (3) RCR (Civil) 341, also does not apply to the fact situation of this case as in the cited case, *shamlat deh* land owned by Gram Panchayat was available for the same public purpose for which private agricultural land was acquired. No such alternative land owned by Government or its agencies and which might be equally suitable for the construction of bus-stand has been pleaded or proved on record.

[17] For the reasons afore-stated, we do not find any merit in this writ petition which is accordingly dismissed.

[SURYA KANT]
JUDGE

September 16, 2016
mohinder

[DARSHAN SINGH]
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No

CM No.3640 of 2015 in
CWP No.18744 of 2013

Mangal Singh and others versus State of Haryana and others.

Present: Mr.Ram Lal Gupta, Advocate, for the applicant-petitioners.
Ms.Palika Monga, Deputy Advocate General, Haryana.

For the reasons mentioned in the application, the same is
allowed subject to all just exceptions and the document (P-14) is taken on
record.

CM stands disposed of.

[SURYA KANT]
JUDGE

September 16, 2016
mohinder

[DARSHAN SINGH]
JUDGE