

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

[1] Civil Writ Petition No.15992 of 2016.
Date of Decision: October 20, 2016

Sandeep Singh and othersPetitioners
versus
State of Haryana and othersRespondents

[2] Civil Writ Petition No.16009 of 2016.

Smt.PopaPetitioner
versus
State of Haryana and othersRespondents

[3] Civil Writ Petition No.12683 of 2016.

Naresh Singh and othersPetitioners
versus
State of Haryana and othersRespondents

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

Present: Mr.Sanjiv Gupta and Mr.Nitin Goyal, Advocates,
for the petitioners.
Ms.Palika Monga, Deputy Advocate General, Haryana.
Mr.Deepak Balyan, Advocate, for HSIIDC.

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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. (Oral)

This order shall dispose of Civil Writ Petition Nos.15992,
16009, 12683 of 2016 as the same acquisition proceedings are under
challenge in all the cases. The facts are being extracted from CWP
No.15992 of 2016

The prayer in this writ petition is to release the land allegedly
under Orchard, which was acquired vide notifications dated 15.12.2008 and
18.12.2009 issued under Sections 4 & 6 respectively, of the Land

Acquisition Act, 1894 (for short, 'the Act') whereby the land in different villages of district Panchkula was acquired for its development by the Haryana State Industrial and Infrastructure Development Corporation (HSIIDC).

It is an admitted fact that the petitioners had earlier filed Civil Writ Petition No.1122 of 2010 challenging the acquisition of their entire land including the area under Orchard. There were other writ petitions also filed by similarly placed land-owners. The acquisition was challenged on various grounds. As regard to the Orchards, it was specifically noticed by this Court that; *“the Principal Secretary to Government of Haryana recorded his note on 16.12.2009 that the land on which orchard is existing should be retained as a green area. Such orchards were said to be in existence in two blocks measuring 40-50 acres subject to actual confirmation and were released from acquisition subject to the condition that the land owners will not raise any construction over the area of orchards and will maintain as such....”*

The petitioners' plea re: the existence of an Orchard or that a part of the site was meant for residential purposes, was also specifically noticed by the Division Bench as may be seen from the following averments:-

“.... Another argument raised by the learned counsel for the petitioner is that the land shown in the orange and parrot green colour in the site plan (Annexure P-11), has been reserved for the residential purposes in the development plan published under Section 5 of the Punjab Scheduled Roads and Controlled Area Restriction of Unregulated Development Act, 1963 (for short, 'the 1963 Act'), but in fact, such land has been purchased by the private

colonizers. It is alleged that the development plan has been tailor made to safeguard the interests of the colonizers....”

The Division Bench, however, rejected all the contentions and dismissed the writ petition on 20.10.2015. The aggrieved petitioners approached the Hon'ble Supreme Court but their SLP also stood dismissed on 18.03.2016 (R-2).

Thereafter, the instant writ petition has been filed seeking a direction for the release of land under Orchard on the basis of Government letter dated 01.08.2011 whereby it was decided to release the land under Orchard subject to an undertaking that the owners shall maintain the released land as Orchard only.

Learned State counsel submits that the petitioners did not give the categorical undertaking due to which their land, if any under the Orchard, could not be verified or released.

It can be seen from the plain reading of the instant writ petition that the petitioners have not appropriately disclosed their unsuccessful challenge to the entire acquisition including the land under Orchard. Having lost their claim upto the Hon'ble Supreme Court that this writ petition as a second attempt has been filed for the release of land under Orchard.

The petitioners' claim for the release of 'Orchard' is not based upon any fresh or subsequent cause of action. The Government letter dated 01.08.2011 had been issued during the pendency of their previous writ petition. They had ample time and opportunity for more than four years to take this additional plea in the pending writ petition. Moreover, they raised the claim for release of 'Orchard' in so many words and could substantiate their plea with the aid of Government Circular dated 01.08.2011. Having

failed to do so, their fresh writ petition is barred by principles like *res-*

judicata and Order 2 Rule 2 CPC.

Moreover, learned State counsel, on instructions from Raj Kumar, Deputy Superintendent, Department of Industries and Commerce, Haryana, who is present in Court, informs that no land under Orchard has been released though offer was made at one point of time.

In view of the above-stated categorical stand taken by learned State counsel coupled with the fact that acquisition has been upheld by the Hon'ble Supreme Court, we do not find any merit in these cases.

The claim of the petitioners re: release of their land under Orchard is thus declined. However, if the petitioners have constructed any residential house(s) before issuance of notification under Section 4 of the Act and if such house(s) was/were found in existence during survey, let their claim for its release in terms of the Government Policy dated 24.01.2011 be considered and appropriate order in this regard be passed within a period of three months from the date of receiving a certified copy of this order.

The writ petitions stand disposed of accordingly.

[SURYA KANT]
JUDGE

October 20, 2016
mohinder

[SUDIP AHLUWALIA]
JUDGE

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