

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CM-3199-CWP-2016 in/and
CWP No.21935 of 2013 (O&M)**

Date of Decision: 25.07.2016

Smt. Santra (through LRs) & Ors.

... Petitioners

VS.

State of Haryana & Ors.

... Respondents

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

Present: Mr. JP Ahlawat, Advocate for
Mr. ND Achint, Advocate for the petitioners

Mr. RKS Brar, Addl. AG Haryana

SURYA KANT, J. (Oral)

(1) The grievance of the petitioners and the *pro forma* respondents is against the notices served on them for demolition of residential houses said to have been constructed on khasra No.540/2/3 in Village Islampur, Tehsil and District Gurgaon.

(2) The facts, as emerges out from the writ petition and the written statement of the Land Acquisition Collector, are that vide notification dated 22.03.1990, the State of Haryana proposed to acquire a big chunk of land including that of Village Islampur for its development and utilization for residential, commercial, institutional and for maintenance of open area of Sectors 38 to 41 in the Urban Estate of Gurgaon, under the Haryana Urban Development Authority Act, 1977 by HUDA. It appears that after considering the objections filed under Section 5A, the residential houses of only the objectors were ordered to be released. Out of Khasra No.540 also, land measuring 1 kanal was released as it was constructed area.

(3) The petitioners did not file objections and resultantly the area in question has been included in the acquisition.

(4) We have heard learned counsel for the parties and gone through the record especially the photographs of the residential houses of petitioners. On a bare perusal of the photographs it does appear that these houses are quite old and some of them might be more than 20 years old also. It is undeniable that State of Haryana has consistently followed its policy not to acquire the residential houses save where construction of road or any other public utility is obstructed. In the instant case also, the policy was given effect and residential houses have been ordered to be released.

(5) The acquisition in question is also admittedly for development of Residential and Institutional Sectors. It is obvious that the existing houses have also been released without compromising with the regulated development of the area or its 'zoning plan'.

(6) In this view of the matter, the only question that requires determination is whether the residential houses in question were constructed by the petitioners before notification under Section 4 was issued? Since such a factual issue can be re-determined by the authorities, despite failure of the petitioners to file objections as the old survey report and/or other documentary proof can be produced to find out whether these houses/structures were in existence prior to Section 4 notification? We thus dispose of this writ petition with a direction to the Land Acquisition Collector, Gurgaon to hold a fact-finding enquiry after giving reasonable opportunity to the petitioners to produce the proof of existence of their residential houses at the relevant time. Needless to say that if the houses do not cause obstruction in implementation of the development plan, namely. any road or vital public utility, the respondents would re-consider and

explore the desirability to release such houses in accordance with the Government policy.

(7) Let appropriate decision be taken as early as possible and preferably within six months from the date of receipt of a certified copy of this order. Till then dispossession and/or demolition of petitioners' house(s) shall remain stayed.

(Surya Kant)
Judge

25.07.2016
vishal shonkar

(Darshan Singh)
Judge