

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-21709-2016 (O&M)
Date of Decision: October 20, 2016

Advance India Project Ltd. and another

.....Petitioners

Versus

Union of India and another

.....Respondents

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

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| 1. | Whether speaking/reasoned ? | Yes/No |
| 2. | Whether reportable ? | Yes/No |
| 3. | Whether Reporters of local papers may be allowed to see the judgment? | Yes/No |
| 4. | To be referred to the Reporters or not? | Yes/No |
| 5. | Whether the judgment should be reported in the Digest? | Yes/No. |

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Present: Mr.B.S.Bedi, Advocate
for the petitioners.

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SURYA KANT, J.

[1] The petitioners are two private Builder-cum-Developers. They own some land within the municipal limits of Khanna, District Ludhiana, abutting the National Highway No.1, Delhi to Amritsar, which passes through Khanna town.

[2] Government of India vide Notification dated 23.02.2010 (Annexure P-2) issued in exercise of its powers under Section 3A(1) of the National Highways Act, 1956 (for brevity, 'the Act 1956') notified that the land "*the brief description of which is given in the Schedule below.*" was required for building "*widening, six-laning etc.*" maintenance, management and operation of National Highway No.1, on the stretch of land from Km

212/161 to Km 241/2000 (Panipat-Jalandhar Section). The Notification

invited objections from any person interested in the land within 21 days. The schedule of the Notification describes all possible particulars of the property which was proposed to be acquired.

[3] The petitioners do not dispute the fact that they were the owners of the part of property described in the Schedule. They admittedly do not file any objections.

[4] Government of India issued final Notification dated 12.10.2010 (Annexure P3) in exercise of its powers under Section 3D of the 1956 Act declaring that the land specified in the Schedule of that Notification be acquired for the purpose mentioned in the earlier Notification issued under Section 3A(1) of the 1956 Act. The Schedule-3(D) appended with Notification again describes the particulars of the land decided to be acquired to the following effect:-

Schedules-3(D)

Serial No.	Name of the District	Name of the Taluka	Name of village	Survey number	Type of land	Nature of land	Area in square meters	Name of the land owner/ entrusted person
1	2	3	4					
	LDH	(1) Khanna	(1) Bulapur	27//6/2/1	Private	Agriculture	255.906	Advance India Project Ltd. New Delhi
				27//6/2/2	Private	Agriculture	98.944	Ambuja Reality, Development Ltd. & M/s Advance India Project Ltd., New Delhi
				27//6/1	Private	Non-agriculture	90.348	JK Steel Industries Pvt.Ltd. G.T.Road, Khanna, ½ share, M/s Advance India Project Ltd., New

								Delhi.
				27//7/2	Private	Agriculture	1207.358	Ambuja Reality, Development Ltd. & M/s Adwani India Project Ltd.

[5] It may be seen that particulars like District, village within whose revenue estate the acquired land is located, the description and the nature of land, area under acquisition in square meters as well as names of the owners are duly described in the notification (including of petitioners).

[6] The petitioners chose not to challenge the Notification under Section 3D also within a reasonable time.

[7] The petitioners are said to have submitted their revised building plans to construct a Commercial Market at the site and the Municipal Council, Khanna, `approved' such plans, followed by the alleged construction raised at the site.

[8] The Competent Authority-cum-Land Acquisition Collector-cum Sub Divisional Magistrate, Khanna, issued public notice in daily newspapers on 20.11.2015 inviting claims for determination of amount payable as compensation under Section 3G of the 1956 Act. It is at this juncture that the petitioners woke up and filed their objections. A plain reading of their objections (Annexure P5) reveals that nowhere they have denied their knowledge re: Notifications dated 23.02.2010 or 12.10.2010 (Annexures P2 & P3). They have also not questioned the lack of description of the acquired land. In fact, the only plea taken was that the land under acquisition was no longer required by National Highway Authority of India (NHAI) and that they have got Revised Building Plan sanctioned from the Municipal Council and if acquisition is carried out, the front portion of the Commercial Market

constructed by them will be affected.

[9] Since those objections have not been entertained in the manner the petitioners wanted, they have chosen to challenge the acquisition through these proceedings.

[10] We have heard learned counsel for the petitioners at a considerable length, who has placed great reliance on the decision of the Hon'ble Supreme Court in Competent Authority vs Barangore Jute factory and others 2005(13) 477. That was a case where the acquisition made under the 1956 Act was set aside primarily for the reason that in the Notification under Section 3A(1) of the 1956 Act, description of the land sought to be acquired was totally vague and misleading and it gave no clue to the owners to identify whether their land was under acquisition, due to which they were deprived of the most valuable right to submit objections. The Supreme Court thus held that the failure to file objections was inconsequential and since the authorities themselves had failed to comply with the statutory procedure, the delay in challenging the acquisition was also liable to be ignored. It was observed that when only a small portion out of a big chunk of land was acquired, it was imperative upon NHAI to append the site plan depicting the area which it intended to acquire.

[11] We have given our thoughtful consideration to the submissions and are of the view that writ petition is devoid of any merit and deserves to be dismissed.

[12] We say so for the reason that firstly the Notifications issued under Sections 3A(1) and 3D of the 1956 Act, have given full description of the petitioners' property which was declared for acquisition for the widening

of National Highway No.1. Not only this, the area to be acquired has been described in square meters and names of both the petitioners are duly recorded in the column of ownership.

[13] Except that the writ petition appears to have been drafted on the strength of above-stated decision, the petitioners have not even murmured that they were denied the right to submit objections under Section 3C of the 1956 Act either for want of correct description of their land or due to lack of publicity of the Notifications. Had it been so, the petitioners would have approached this Court as soon as declaration under Section 3D was notified on 12.10.2010. Their long silence is sufficient to invoke the doctrine of acquiescence and turned down their belated objections on this count.

[14] The petitioners themselves have disclosed their informed knowledge re: the entire acquisition process in their objections filed under Section 3G of the 1956 Act. Such objections have not been rightly entertained by the Competent Authority on the premise that these were submitted under Section 3G, which are maintainable only in respect of assessment of compensation. The petitioners have thus lost opportunity to question the notification under Section 3A(1) of the 1956 Act due to their failure to avail the remedy under Section 3C of the 1956 Act.

[15] The fact that the petitioners have got the Revised Building Plan sanctioned from Municipal Council, Khanna, does not impress us as this cannot be a valid ground to jeopardize the acquisition meant for a Project of paramount importance, namely, widening of National Highway No.1.

[16] Firstly, the Municipal Authority ought not to have entertained the building plans in respect of a land which had been notified for acquisition by

NHAI. Secondly, even if the petitioners secured the sanctioned order through questionable means, it does not bound down the NHAI, who is not a party to these proceedings.

[17] Adverting to the cited decision of Hon'ble the Supreme Court, it may be further seen from the facts of the case that the owner-company was at the relevant time under liquidation and it was only after its re-constitution when it regained legal entity that the objections were filed, questioning the acquisition. Such is not a fact in the case in hand where petitioners were fully aware about the acquisition of their land. From the very inception they were not under any disability to question the acquisition within some reasonable period. The writ petition, besides on merit, is thus liable to be dismissed on the ground of delay and laches also.

[18] Ordered accordingly.

(SURYA KANT)
JUDGE

October 20, 2016
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(SUDIP AHLUWALIA)
JUDGE