

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CM-12489-CWP-2016 in/and
CWP No.26139 of 2015 (O&M)**

Date of Decision: 07.12.2016

Mohan Singh

... Petitioner

VS.

Union of India & Ors.

... Respondents

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

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

Present: Mr. Shailendra Jain, Senior Advocate with
Mr. Sahil Nayyar, Advocate for the petitioner

Mr. Sunil K Sahore, Advocate for NHAI

Mr. RKS Brar, Addl. AG Haryana

Mr. Jayender Singh, Advocate for applicant
(in CM-15574-76-CWP-2016)

SURYA KANT, J. (Oral)

(1) The petitioner has laid challenge to the notifications dated 04.12.2009 & 29.11.2010 issued under Section 3-A(1) and 3-D(2) of the National Highways Act, 1956 as well as the award dated 04.02.2013 vide which the land described in para 2 of the writ petition measuring 17 kanal 8 marla situated in the revenue estate of village Ramgarh, Tehsil and District Panchkula in which he is a co-owner has been acquired for widening/four-laning of National Highway No.73 from Panchkula to Yamuna Nagar (KM 70.700 to KM 179.285).

(2) The instant writ petition has been filed on December 15, 2015 after more than 2½ years of the passing of award. There is no explanation

whatsoever given by the petitioner for the inordinate delay and in the light of

specific objection having been taken by the National Highway Authority of India in its written statement, the writ petition deserves to be dismissed on this score alone, more-so when the construction work for the widening of NH-73 has admittedly commenced.

(3) Be that as it may, keeping in view the issues raised by the petitioner, we have heard learned counsel for the parties on merit at a considerable length and gone through the record.

(4) Learned senior counsel has raised three-fold contentions. Firstly, he contended that the acquired area falls within the Development Plan of Panchkula Extension and the drawing approved by the Town and Country Planning Department of Haryana State, reveals that they have conceived a 60 meter M-2 road leading from Sector 2/21 to Sector 23/24. The said 60 meter wide M-2 road is shown to be running along and inclusive of NH-73. There is sufficient land owned by the State of Haryana or its agency, namely, Haryana Urban Development Authority for construction of the road as per the Development Plan of State Government. Learned counsel made a pointed reference to the plan (P10) showing the notified alignment of NH-73 by NHAI and of M-2 road (60 meter wide) to contend that if National Highway is widened on the land already earmarked as “60 meter wide M-2 road”, in that event, most of the acquired area of the petitioner and his co-owners would not be required as there is sufficient land available with the Government authorities. The impugned acquisition is thus detrimental to public interest. Secondly, the objections filed by the petitioner against the notification issued under Section 2-A(1), have not been considered and decided in accordance with law *inasmuch* as Section 3-C

mandates to afford an opportunity of hearing to the aggrieved person but no such opportunity was accorded to the petitioner.

(5) Thirdly, the impugned action would lead to demolition of a part of the Heritage Building which is now run as a hotel under the name and style of “Fort Ramgarh” since 2003. The Building has been recognized as a Heritage Hotel by the Ministry of Tourism, Government of India on 20.04.2011.

(6) Learned counsel for NHAI, on the other hand, urges that the acquisition has been carried out following the mandatory procedure as prescribed under the National Highways Act, 1956. He points out that the detailed project report including the alignment of road was finalized after adequate deliberations with the Government of Haryana including HUDA and Town and Country Planning Department. It is explained that the vacant land pointed out by the petitioner is not suitable for the four-laning as the existing road is passing through the peacock neck of which there is a Veterinary hospital on the west and Ramgarh Fort on the eastern side.

(7) As regard to the petitioner’s objections, he submits that the same were duly considered in accordance with law and rejected. He further explains that even according to the petitioner, only the vacant portion in front of the Fort Ramgarh is to be utilized which would entail minor demolition and not the Heritage Building as claimed by the petitioner.

(8) Learned counsel for the State of Haryana representing the Competent Authority-cum-District Revenue Officer also contends that the objections filed by the petitioner were duly considered and he was also given opportunity for personal hearing which he failed to avail.

(9) Having given our thoughtful consideration to the rival submissions, we are satisfied that no case to interfere with the impugned acquisition is made out.

(10) The petitioner's foremost contention is that the Town and Country Planning Department of Haryana/HUDA has kept reserved land for 60 meter wide road at the site where NH-73 is to be widened and since the land reserved for the 60 meter wide road is sufficient for the four-laning, there is no legal necessity to acquire his property at the cost of public Exchequer. Such a plea carries no weight in the light of the specific stand taken by the NHAI in para 6 of the written statement, the relevant part whereof reads as follows:-

“As the detail project report, an alignment of the project was finalized according to which the land in being acquired. The development/widening process of the project highway started in the year 2009-10. Adequate deliberations with the State Govt. of Haryana including HUDA and District Town and Country Planning Department, were held while formulating DPR of this project. Moreover, it is relevant to mention here that the vacant land mentioned by the petitioner is not suitable for 4 laning as the existing road is passing through a peacock neck of which there is veterinary hospital on the west and Ramgarh Fort on the east side. So it was difficult for getting 60 meter Right of Way (ROW) as per IRC standard for four laning of the project. The road has been designed keeping in view of the safety of public

at large and also keeping in view the high speed traffic moving on the National Highway.”

(emphasis applied)

(11) It may be seen that the petitioner with a view to save his own property has suggested to acquire the land located on the opposite side. Further, if NH-73 is widened at the site proposed by him, it would lead to a steep curve and would be dangerous to the safety of general public keeping in view the high speed traffic movement on the National Highway. The very suggestion being contrary to the public interest has to be discarded.

(12) As regard to the petitioner’s complaint that his objections have not been decided in accordance with the prescribed procedure or that he has not been heard as per Section 3-C of the Act, it is useful to refer to the preliminary objection taken by the Competent Authority (LA)-cum-District Revenue Officer, Panchkula who has explained as follows:-

“That the petitioner filed the objection u/s 3-C of the National Highways Act, 1956 for releasing the land bearing khasra NO.41//22/2, 51//2/2 and 164/2 from the acquisition. The date for hearing of hearings was fixed 12.10.2010 and notice was published in the two daily newspapers i.e. ‘Amar Ujala’ (Hindi) dated 07.10.2010 and ‘Indian Express’ (English) dated 07.10.2010 as per provisions of the National Highways Act, 1956. The opportunity of hearing was given to the petitioner on 12.10.2010. But as a matter of fact the petitioner did not appear on the date fixed for hearing. After considering the objection filed by the petitioner,

report on the individual objection was made by the Competent Authority (LA) disallowing the claim of petitioner on the ground of larger public interest involved as the land is being acquired for public purpose i.e. for building (widening/four laning etc.), maintenance, management and operation of National Highways No.73.”

(emphasis applied)

(13) It stands proved on record that the Competent Authority (LA) gave an opportunity of personal hearing through public notices which were got published in two daily newspapers but the petitioner failed to avail the same for which he cannot blame the authorities. His objections were otherwise duly considered and rejected being without any merit.

(14) The petitioner's contention that the Heritage Hotel Building is being demolished is not substantiated from the categorical stand taken by the NHAI who has made a sincere endeavour to protect the Ramgarh Fort to the extent it is possible. It is apparent from the drawings of the project that mostly the open area is being utilized for the widening of the National Highway without causing any damage to the Building.

(15) Assuming in a given case where a building is obstructing the widening of National Highway, we have no reason to doubt that such Building must also pave way, for an individual interest is always outweighed by the larger public interest involved in the construction of National Highway. There is no gainsaying that NH-73 is one of the busiest highways and there is an overflow of heavy traffic. The necessity of its four-laning is unquestionable. The acquisition of land or property for the construction or

widening of National Highway deserves to be viewed keeping in view the wider public and national interest. This Court in **M/s AV Fasteners P.Ltd. & Ors. vs. Union of India & Ors. AIR 2014 (P&H) 178** viewed as follows:-

“National Highways are the backbone of the economy and lifeline of any developing nation. Road transportation is one of the fastest means of delivery of essential goods. Last about two decades have witnessed an accelerated vehicular growth in India, especially the commercial heavy vehicles resulting into long queues and unending traffic jams. The concern shown by the NHAI or other stakeholders to build new roads or widen the existing Highways is a too late wake-up call to be appreciated. Such like progressive initiatives should have been taken well in advance. Nonetheless, the construction of a National Highway is an enterprise in right direction and is indeed in larger public interest. The bona fide of the State action is thus beyond any pale of doubt. An individual's hardship, howsoever genuine it may be, has no place to stop or stall the construction of such like public utilities of paramount national importance.”

(16) For the reasons afore-stated, we do not find any merit in this writ petition and the same is accordingly dismissed.

(17) Ordered accordingly.

(Surya Kant)
Judge

07.12.2016
vishal shonkar

(Sudip Ahluwalia)
Judge