

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) CWP No.5863 of 2013 (O&M)

Date of Decision: 07.11.2016

Brahm Dev @ Balbir Singh & Ors.

... Petitioners

VS.

State of Haryana & Ors.

... Respondents

(2) CWP No.9700 of 2013 (O&M)

Raj Singh Rana

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

(3) CWP No.6059 of 2013 (O&M)

Raj Singh & Ors.

... Petitioners

VS.

State of Haryana & Ors.

... Respondents

(4) CWP No.7502 of 2013 (O&M)

Sudesh & Ors.

... Petitioners

VS.

State of Haryana & Ors.

... Respondents

(5) CWP No.5860 of 2013 (O&M)

Narinder Singh Rana & Anr.

... Petitioners

VS.

State of Haryana & Ors.

... Respondents

(6) CWP No.6655 of 2015 (O&M)

Himanshu (*minor through guardian*) & Ors.

... Petitioners

VS.

State of Haryana & Ors.

... Respondents

(7) CWP No.12704 of 2015 (O&M)

Pramila

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

(8) CWP No.7497 of 2015 (O&M)

Ompati & Anr.

... Petitioners

VS.

FC & PS to Govt. Haryana & Ors.

... Respondents

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

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| 1. Whether Speaking? | 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 |
| 5. Whether the judgment should be reported in the Digest? | Yes / No |

Present: Mr. ML Sharma, Advocate;
 Mr. Ramesh Hooda, Advocate;
 Ms. Anita Balyan, Advocate for the petitioners
 Mr. BR Mahajan, Advocate General, Haryana with
 Ms. Palika Monga, DAG Haryana
 Mr. Girish Agnihotri, Senior Advocate with
 Mr. Arvind Seth and Mr. Bhuwan Vats, Advocates
 Mr. Sudeep Mahajan, Advocate;
 Mr. Lokesh Sinhal, Advocate for HSIIDC
 Mr. Akashdeep Singh, Advocate for NCRPB

SURYA KANT, J.

(1) This order shall dispose of the above-captioned writ petitions as the petitioners in these cases have laid challenge to the notifications dated 01.04.2010 and 04.04.2011 issued under Sections 4 & 6 of the Land Acquisition Act, 1894 (in short, 'the Act'), respectively, as well as the subsequent proceedings including the award passed pursuant thereto. Vide the impugned acquisition, 3302 acres 3 kanal and 12 marla land comprising revenue estate of various villages in Tehsil Kharkhauda, District Sonapat has

been acquired for its development as an Industrial Model Township (IMT) at Kharkhauda having Industrial, Residential, Commercial and Institutional areas. The lands/properties of the petitioners also form part of the subject acquisition, hence this challenge. As the facts of each case are distinct, we deem it appropriate to make a brief reference to each case separately.

CWP No.5863 of 2013

(Brahm Dev @ Balbir Singh & Ors. vs. State of Haryana & Ors.)

(2) There are 42 petitioners in this case, all residents of village Kundal. They are owners of the agriculture land fully described in para-8 of the writ petition measuring about 159 acres, situated within the revenue estate of their village. Since the petitioners' land was included in the proposal for acquisition under Section 4 of the Act, they filed objections under Section 5-A primarily on the ground that but for this agriculture land, they have no other source of livelihood and keeping in view the fact that it is a fertile land, there is no justification in acquiring it for non-agricultural purposes. They alleged the acquisition to be a colorable exercise of power as there was notable deficiency in the supply of electricity power even to the existing industries and therefore how could then be further expansion of industrial activities through the proposed IMT. The petitioners allege that the acquisition was meant for the benefit of big companies. They further allege discrimination as the land of Gram Panchayat of Village Saidpur comprising Rect.No.56 was released from acquisition only because plots had been carved out on that land.

(3) The objections filed by the petitioner did not find favour with the Land Acquisition Collector or the State Government and their land was included in the declaration notified under Section 6 of the Act. The aggrieved petitioners have thus challenged the subject acquisition *qua* their lands.

(4) Separate written statements have been filed by respondent Nos.1&2, 3, 4&5 and 6. The Land Acquisition Collector – respondent No.6 has explained that out of a total 42 only 26 petitioners had filed objections under Section 5-A and that before deciding their objections, spot inspection was made. All the 26 objectors were heard and thereafter it was recommended not to release the land as fell in the middle of the planning of proposed IMT. The petitioners' allegation that Section 4 notification was not published as per law has been refuted explaining that the said notification was duly published in the Official Gazette as well as in two daily newspapers having circulation in the locality. Rest of the allegations have also been controverted.

(5) The State Government in its written statement has claimed that vacant agriculture land was acquired for the conforming land use as per the development plan of the area. It has been denied that the land was good quality agriculture land as there were more than 70 brick kilns operating in the acquired land. It is further claimed that majority of the landowners were in favour of acquisition as only 150 objections involving acquisition of about 380 acres of land were filed which amounts to 11.25% of the total acquired land measuring about 3300 acres. As regard to the petitioners' village Kundal, total 34 objections involving about 153 acres land were received against the total land of about 822 acres of that village which forms part of the acquisition. An objection against *locus standi* of such petitioners who did not file objections under Section 5-A, has also been raised. The maintainability of the writ petition is also questioned on the ground that much before this Court issued notice of motion on 12.04.2013, the award had already been announced on 01.04.2013. As regard to the public purpose of acquisition, it is claimed that State of

Haryana is witnessing a major economic transition from being an agrarian State to becoming a strong manufacturing and growing services sector. As per the State's Economic Survey, the agriculture sector accounts for 16% whereas manufacturing sector accounts for 29.4% and the remaining 54% comes from services sector. It is claimed that Haryana State has emerged as a preferred investment destination for various reasons, therefore, a new Industrial and Investment Policy, 2011 to set up more than one Industrial Model Townships near the National or Express Highways has been formulated. The development work has been entrusted to the State-run Haryana State Industrial and Infrastructure Development Corporation (HSIIDC). In para-14 of the written statement, the objections filed by 23 petitioners have been separately dealt with to explain that the only claim raised by them was for the release of agriculture land which was not feasible owing to the nature of the public purpose and also the fact that such release would have completely jeopardized the acquisition process.

(6) HSIIDC – respondent No.3 has filed its separate written statement depicting the location of the petitioners' land in the revised layout plan of IMT Kharkhauda. The alleged discrimination in the release of land has been explained, pointing out that only the *abadi deh* area of the village or existing running industries which are in conformity with the purpose of acquisition have been released. As regard to the petitioners' land, it is averred that except for a few scattered structures, rest of the land under litigation is lying vacant. The defence taken by the State Government in its written statement has also been reiterated.

(7) The District Town Planner, Sonapat in his separate written statement filed on behalf of respondent No.4&5 has clarified that since the land of the petitioners falls within the 'Controlled Area' and provisions of the Punjab Scheduled Roads and Controlled Area (Restrictions of Unregulated Development) Act, 1963 are applicable, the nature of such land cannot be changed without getting permission for Change of Land Use. No such application for grant of CLU or licence was ever submitted by the petitioners.

CWP No.5860 of 2013

(Narinder Singh Rana & Anr. vs. State of Haryana & Ors.)

(8) The petitioners are two brothers, who owned the land measuring 29 bighas 2 biswas (approximately 29333 sq.yards), fully described in para-1 of their writ petition situated within the revenue estate of village Kundal, Tehsil Kharkhauda, District Sonapat. They are said to have set up an industrial unit to manufacture card-board boxes in the name and style of M/s Surya Fluorescents over their land measuring 29040 sq.yards (48 kanals). Since the petitioners' land alongwith the industrial unit was proposed to be acquired, they filed objections under Section 5-A of the Act but the same are alleged to have been mechanically rejected. Their land and factory has thus been included in the declaration notified under Section 6 of the Act, hence this writ petition.

(9) Besides reiterating all the contentions raised in the lead case, the petitioners have taken an additional plea that their industrial unit is in existence since 01.04.2005. The vacant land is stated to be reserved for workers' quarters and future expansion of the factory. It is claimed that since the acquisition is for industrialization and the petitioners are already using the substantial part of their land for that very purpose, the acquisition of their running unit is *per se* illegal and arbitrary.

(10) State of Haryana has in its written statement questioned the ownership claim of the petitioners for the entire land measuring 29 bighas 2 biswas. It is averred that as per the jamabandi, they have 1/8th share each which comes to 7 bigha 5 biswa and 10 biswansi. It is further averred that the Land Acquisition Collector considered the objections filed by the petitioners and reported *“that a factory, namely, M/s Surya Fluorescents existed over khasra No.322 (2-11) manufacturing cardboard boxes. But no industrial activity was being carried out and the factory was lying closed at site and the remaining land was lying vacant which was being used for agricultural purposes”*. According to the State Government, the petitioners’ land cannot be released as it falls in the centre of the IMT Project. The Land Acquisition Collector also recommended to acquire the entire land and the State Government accepted also those recommendations. Rest of the averments made in the written statement are the same as have been made in the written statement filed in the lead case.

(11) HSIIDC – respondent No.3, District Town Planner, Sonapat – on behalf of respondents No.4&5, Land Acquisition Collector – respondent No.6 and Town and Country Planning Department – respondent No.7 have also filed their respective written statements, more or less reiterating the stand which they have taken in the lead case except controverting the claim of the petitioners regarding existence of the running industrial unit. It has also been alleged that with a view to seek release of their land, the petitioners have raised unauthorized construction after publication of Section 6 notification without seeking permission for change of land use or licence. The Land Acquisition Collector has categorically averred that the defunct industrial unit of the

petitioners has been set up on an area measuring 2 bigha 11 biswa only and their remaining land is vacant and is used for agriculture purposes.

CWP No.6059 of 2013**(Raj Singh & Ors. vs. State of Haryana & Ors.)**

(12) There are 65 petitioners in this case – all residents of village Nizampur Khurd, Tehsil Kharkhauda, District Sonapat. Their land fully described in para 8 of the writ petition and situated within the revenue estate of their village, measuring 2024 kanal 2 marla (about 253 acres), is also subject matter of the acquisition under challenge.

(13) The case of the petitioners is broadly similar to the lead case as their land is also agriculture land in nature which they claim to be the only source of their livelihood. Owing to the alleged food shortage in India and State of Haryana being one of the major producers, it is claimed that acquisition of fertile agriculture land is detrimental to the public interest.

(14) State of Haryana (respondents No.1&2), HSIIDC – respondent No.3, District Town Planner, Sonapat (on behalf of respondents NO.4&5) and the Land Acquisition Collector respondent No.6 have filed their respective written statements. The Land Acquisition Collector has in preliminary submission No.2 explained that not all the petitioners filed their objections under Section 5-A of the Act and those who filed the same (details given), their sites were inspected and having found that each objector was seeking release of vacant agriculture land which otherwise falls in the middle of the planning of IMT, it was recommended to acquire such lands. The plea of discrimination taken by the petitioners has been controverted, explaining that the area of Rect.No.6 of Gram Panchayat Village Saidpur has been released as the Gram Panchayat had carved out plots and allotted these to BPL families who have

constructed their houses. The petitioners being not similarly placed persons thus cannot complain discrimination.

(15) The other respondents have also reiterated their stand as has been taken by them in the lead case.

CWP No.7502 of 2013

(Sudesh & Ors. vs. State of Haryana & Ors.)

(16) The first petitioner is a widow of late Dharambir and petitioners No.2&3 are her minor daughters. Their predecessor-in-interest purchased land measuring 1 kanal 18 marla in village Nizampur Khurd, Tehsil Kharkhauda, District Sonapat, as fully described in para-2 of the writ petition, vide registered sale deed dated 20.03.2001.

(17) Soon thereafter, the predecessor-in-interest of the petitioners set up a plastic industry in the year 2001 but due to his unfortunate demise, the industry had to be closed and the building was being used as a godown. The fact that there is an industrial structure-cum-godown at the site constructed much before the commencement of the acquisition process is sought to be established on the basis of the Survey report of the Municipal Area dated 17.11.2005 (P2) vide which the District Town Planner, Sonapat has acknowledged the existence of a single storey building at the site. In the revenue record also, the land in question is recorded as factory. There are other industrial units in the adjoining area as well.

(18) Since the above-stated property of the petitioners is also under acquisition, they have challenged the same primarily on the ground that the public purpose of acquisition is industrialization and the land in question is already being used by them for that very purpose. The photographs (P2) are also relied upon.

(19) State of Haryana and HSIIDC have in their respective written statements taken the plea that the use of the land “for warehousing activities” is a non-conforming use as per the Punjab Scheduled Roads and Controlled Area (Restrictions of Unregulated Development) Act, 1963. Reliance is placed on the survey report to urge that the building is lying abandoned as admittedly there are no industrial activities at the site.

(20) HSIIDC has also taken a somewhat same plea and has fortified its averments with photographs of the site (R3).

CWP No.9700 of 2013

(Raj Singh Rana vs. State of Haryana & Ors.)

(21) The petitioner is a resident of village Nizampur Khurd, Tehsil Kharkhauda, District Sonapat. His land measuring 20 kanal 13 marla situated in the revenue estate of his village and fully described in para-1 of the writ petition is also under acquisition. The petitioner alleges that it's a fertile agriculture land and it being the only source of his livelihood, the impugned acquisition is unsustainable on the grounds as have been pleaded by the petitioners in the lead case.

(22) State of Haryana (respondent No.1&2), HSIIDC – respondent No.3, District Town Planner, Sonapat (on behalf of respondents No.4&5) and the Land Acquisition Collector – respondent No.6 have in their respective written statements, opposed the petitioner's claim. The Land Acquisition Collector has averred that the petitioner's objections were duly considered; spot inspection was made and since it was found to be a vacant land which falls in the middle of the IMT planning that he made recommendations to acquire the same and the State Government has accepted such recommendations.

(23) HSIIDC has also reiterated its stand and has further appended photographs (R3) of each khasra No. of the petitioner's land to show that it is absolutely lying vacant and is being used for agriculture purposes. The other respondents have also taken the same very stand.

CWP No.6655 of 2015

(Himanshu (minor through guardian) & Ors. vs. State of Haryana & Ors.)

(24) The petitioners in this case are also residents of village Kundal, Tehsil Kharkhauda, District Sonapat. In para 2 of the writ petition, they have averred as follows:-

“That the petitioners are filing the present writ petition on the ground that a joint writ petition bearing CWP No.5863 of 2013 was filed on 18.03.2013 which came up for hearing before this Hon’ble Court and the same was admitted on 20.05.2014. A copy of the order dated 20.05.2014 is annexed herewith as Annexure P-1 but inadvertently the name of the present petitioners could not be written in the memo of parties though the details of their land was mentioned in the body of that writ petition and the jamabandies were also annexed but the names of the petitioners could not be written because one of the petitioners was minor. He was to be represented by his father Susheel Kumar as natural guardian in the name of Himanshu but his name could not be written inadvertently. Similarly, the name of other petitioners also could not be written inadvertently because the name was not mentioned in the power of attorney and therefore the writ petition was not filed qua present petitioners.”

(25) It may thus be seen that the claim of the petitioners is identical to their co-sharers who have filed the lead case i.e. CWP No.5863 of 2013. The grounds taken by the petitioners as well as the stand of the respondents in their respective written statements is identical to the averments made in the writ petition or the written statements filed in the lead case.

CWP No.7497 of 2015

(Ompati & Anr. vs. FC & PS to Govt. Haryana & Ors.)

(26) The two petitioners in this case have not questioned the acquisition of their land comprising 100/150 sq.yard plots. Rather they seek a direction to consider their claim in the light of the decision of this Court dated 08.08.2014 passed in **Om Parkash vs. State of Haryana & Ors. 2014 (5) RCR (Civil) 816.**

It may be mentioned here that the petitioners seek the release of their plots in terms of the cited decision on the ground that the first petitioner has constructed her house over the site whereas petitioner No.2 intends to raise such construction.

(27) State of Haryana and HSIIDC have in their respective written statements pointed out that the petitioners did not file objections under Section 5-A of the Act. It is further averred that the claim of petitioners for allotment of alternative sites can be considered as per the State Government policy dated 07.12.2012 and 09.11.2010 or any such policy issued subsequently. As regard to plea of discrimination raised by the petitioners, following stand has been taken by HSIIDC:-

“That contents of para 3 are admitted to the extent that land falling in Khasra No.13/1/1(1-12) had been released under Section 48 of the Land Acquisition Act on account of existing structures considering representations filed by the other co-

sharers (i.e. Sh. Naresh & Sh. Angrej). However, land comprised in khasra No.4//12/3(1-11) is concerned, the same was not released as same was lying vacant and falls under the area reserved for Housing purposes and its contiguous to the acquired land of HSIIDC.”

CWP No.12704 of 2015

(Pramila vs. State of Haryana & Ors.)

(28) The petitioner is a resident of village Nangal Kalan, Tehsil & District Sonapat. She claims to be the owner in possession of land measuring 3 kanal 4 marla situated in village Saidpur, Tehsil & District Sonapat, the revenue particulars whereof are given in para 1 of the writ petition. The subject land was purchased by Ashok Kumar s/o Net Ram vide registered sale deed dated 11.08.2010 for the purpose of setting up a petrol pump as the land is abutting the road leading to Kharkhauda town. The said Ashok Kumar has statedly gifted the land to his wife, namely, the petitioner vide gift deed dated 05.10.2011. Since the above-stated land is also included in the acquisition in question, the aggrieved petitioner has approached this Court reiterating those very grounds which have been pleaded by the petitioners in the lead case.

(29) State of Haryana (respondent No.1&2), HSIIDC – respondent No.3 and District Town Planner, Sonapat (on behalf of respondents No.4&5) have in their respective written statements taken a preliminary objection against the *locus standi* of the petitioner to file the instant writ petition as her husband purchased the land after the issuance of notification under Section 4 dated 01.04.2010. The land was gifted to the petitioner much after the publication of Section 6 notification on 04.04.2011. They not being the owners at the relevant time, obviously no objections under Section 5-A were filed. On merits, the

respondents have repeated their stand as has been taken in the lead case. HSIIDC has further averred that the subject acquisition was challenged in a bunch of writ petitions on identical grounds and it has been upheld by a Division Bench of this Court in the case of **Om Parkash vs. State of Haryana & Ors.** reported as **2014 (5) RCR (Civil) 816** though with certain directions.

COMMON ISSUES:

(30) It may be seen from the cumulative reading of the individual averments made by the petitioners that their land/properties have been acquired for the 'public purpose' of setting up IMT at Kharkhauda. The major chunk of the land under acquisition is vacant agriculture land and a few structures, allegedly lying abandoned or closed, are also sought to be acquired.

(31) These cases can thus be broadly classified in two groups, namely, (i) those where vacant agriculture land is under acquisition; and (ii) where industrial structures along with running or closed units are being acquired.

(32) During the course of hearing, it was candidly acknowledged by counsel for the parties that this very acquisition, on almost identical grounds, was challenged in a bunch of writ petitions and a Division Bench of this Court to which one of us (Surya Kant, J) was a member, vide judgment dated 08.08.2014 in **Om Parkash's** case (supra) approved the 'public purpose' of acquisition and held as follows:-

“[33]. In the fast changing economic scenario where the State wants its transition from 'agrarian' to a hub of manufacturing and growing services sector so as to generate employment and revenue and meet with today's socio-economic challenges, the public purpose of

acquisition for setting up IMT, Kharkhoda can not be faulted with. The acquisition of more than 3000 acre land, unequivocally suggests the seriousness and importance given to the project. The subject acquisition, thus, can not be interfered with for want of a defined or categoric 'public purpose'.

[34]. Similarly, the petitioners have failed to make out a case of any illegality or procedural lapse, prejudicial to their rights. Their objections under Section 5-A were duly considered. No instance to depict hostile discrimination in the matter of exemption/release of land/properties has been brought on record. The respondents are categoric to say that only the residential houses forming clusters, running industries, religious or other places of common usage have been released on the basis of a uniform pattern.”

(33) This Court thereafter dwelled into the issue as to whether the Rehabilitation and Resettlement Policy of the State, as was being pressed into service by the respondents, was an effective measure to provide a source of sustenance to the expropriated owners. A direction was thus issued to release the land of the actually running industries (except the vacant land or the land needed for public utilities like roads or common facilities etc.).

(34) As regard to the acquisition of the agriculture land, this Court further held as follows:-

“[37]. Coming to the 2nd category of cases of the agriculturists who are left with no source of sustenance if

their fertile agricultural land is taken away, it appears to us that the R&R policy formulated by the respondents vide notification dated 9.11.2010 is no solace for them. The policy does not provide any effective modicum of alternative livelihood. The policy is neither pragmatic nor practical. What is paid to a landowner as compensation for his acquired land, is snatched from him through this policy on the pretext of 'allotment price' of the plot, yet to be developed or offered as a part of the rehabilitation package. None of these plots exist at the site for immediate utilisation and it will concededly take some years to create the basic infrastructure. Even if an uprooted landowner agrees to take a plot and pays the entire amount of compensation [rather more than that] for getting a plot in future whose possession would be delivered after years, how can he or his family survive till then? The payment of 'annuity' is totally a farce and a mirage to be believed. The policy makers have not understood and addressed the plight of a poor farmer who is suddenly robbed of his land. It is totally false and rhetoric to profess 'inclusive growth' of those whose only known and hereditary source of survival is suddenly taken away. The State has no right whatsoever to take away the source of livelihood of its citizen without reciprocal guaranteed alternative means of self-sustenance to such affected family. The conscious-keeper of our Constitution - Article 21 commands so.

[38]. It has to be realised that an illiterate farmer whose land has been acquired can not run Pizza Huts or PVRs. He must be given alternative means of livelihood, of which he is capable to manage, maintain and run. The State can not skip or hide from this responsibility on the pretext of payment of adequate compensation. The 'adequacy of compensation' has to be seen from the angle of the affected family and on the premise whether such family will be able to earn a reasonable livelihood and sustain itself, keeping in view the current market forces. The absence of such a guarantee, indeed renders the State action as a brazen violation of Articles 21 and 14 of the Constitution."

(35) Thereafter this Court considered the question as to what alternative means of livelihood be provided to the uprooted agriculturists and thus issued the following directions:-

"[41]. We are of the considered view that following the cited instances, it would be fair, just and reasonable to direct the respondents including HSIIDC to release the land of the petitioners in CWP Nos. 14365 of 2012 [Om Parkash Vs. State of Haryana], 8549 of 2013 [Mahinder Singh Vs. FC & PS, Government of Haryana & Ors.], 11132 of 2013 [Bejai Singh & Ors. Vs. FC&PS, Government, Haryana & Ors.] and 14294 of 2013 [Sunil Kumar & Ors. Vs. State of Haryana & Ors.] equivalent to industrial plots not below the size of 30x60 square meters as depicted in the Revised Layout

Plan or one commercial site out of “105 Meter Wide Commercial Pocket” duly earmarked in that plan. Where there are more than one owner [major co-sharers in the acquired land which is five acres or more], each one of them shall be considered for allotment of a separate plot but in their case the size of the industrial plot can be less than 30x60 square meter also. The industrial plot of 30x60 square meter or above or the commercial site, as the case may be, shall be allotted to the affected landowner only if his acquired land is one acre and above. The land-losers of less than one acre be given alternative site as per the R&R Policy dated 09th November, 2010. The above mentioned plot[s] may be given any where as per the revised layout plan but the same shall be treated to have been carved out on the 'released land' of the affected landowner. In other words, the total area of the acquired land of such allottee shall be reduced to the extent of the size of the plot given to him and while the affected landowner shall not pay any allotment price [except the development charges], the compensation of his acquired land shall also stand reduced proportionately. The aforesaid exercise shall be undertaken by the Corporation and State Government within a period of four months and the possession of the developed plots of released land shall be given to the petitioners in these cases at the earliest and in the first opportunity. No allotment of developed sites shall be

made unless the affected petitioners are firstly accommodated.”

(36) The cases in hand are in fact the left out cases (except those filed in the year 2015) which could not be disposed of along with the **Om Parkash's** case. Consequently, on July, 11, 2016 when these cases came up for hearing, we directed learned counsel for the petitioners to have instructions as to whether or not the partial relief granted in **Om Parkash's** case was acceptable to them. Counsel for the respondents were also asked to have instructions in this regard.

(37) In deference thereto, HSIIDC filed an affidavit dated 29.07.2016 (in CWP No.6059 of 2013) to the effect that in compliance to directions dated 08.08.2014 in **Om Parkash's** case, “*a commercial site out of 105 mtrs. wide commercial belt with sufficient parking in case the acquired land is more than one acre and alternate site as per R&R policy for the land losers of less than one acre has been earmarked in the revised layout plan*”. It is further urged that “*this has been approved as a special case with a further prayer to direct not to treat this as a precedent...*”.

(38) Even before the above-stated stand taken by HSIIDC could be considered, learned counsel for the petitioners made a statement on 31.08.2016 that as per the renewed decision of the State Government the Industrial Model Township is not to be developed by HSIIDC and the entire acquired land has been decided to be transferred to a private company. It was thus stated that the tall claims made before this Court in **Om Parkash's** case, on the basis of which this Court upheld the acquisition have been proved to be false and the revised ‘public purpose’ of acquisition is nothing but a ruse to extend undue benefit to a

private entity. This Court thus passed the following order (relevant extracts) only:-

“Does it not amount to unjust enrichment of the State or its agency by misusing the power of eminent domain? Having regard to the aforestated contentions raised on behalf of the petitioners, we direct the Principal Secretary, Industries and Commerce Department, Government of Haryana and the Managing Director, HSIIDC to file their respective affidavits explaining (i) whether any development works have been executed at the acquired site, if so, what is the nature thereof?; (ii) whether further development works will be carried out before the land is sold to a private company?; (iii) how much expenditure has been incurred on the development works, if any, already executed and how much is total budget sanctioned for such development works?; (iv) whether it is a fact that major chunk of the acquired land is being sold to a private company and if so at what rate?; (v) what is the rate of compensation paid to the farmers-cum- land owners alongwith additional expenditure incurred on the acquisition process?

We also request learned Advocate General Haryana and senior counsel for the HSIIDC to firstly address these issues.

Adjourned to 23.09.2016 for arguments.

Meanwhile dispossession shall remain stayed.”

(39) In deference to the above-reproduced directions, State Government as well as HSIIDC have filed self-explanatory affidavits dated 22.09.2016. The State Government has categorically stated on oath that:-

“2. That at the very outset, it is humbly submitted that the purpose of acquisition of the land under challenge was for public purpose i.e. for the development of Industrial Model Township (IMT) at Kharkhauda having industrial, residential, commercial, institutional area etc. It is emphatically stated that the purpose/usage and nature of the development of land will remain the same as originally envisaged.

3. That the draft Development Plan was prepared and published in the year 2008 and accordingly notification U/S 4 of the Land Acquisition Act, 1894 was issued on 01.04.2010 for acquiring land at Kharkhoda for development of Industrial Model Township having “industrial, residential, commercial, institutional areas etc.”

4. That the proposal to set up an industrial model township at Kharkhauda was conceptualized with preparation of draft plan for the area. The peripheral sectoral plan was also made and approval for the same was accorded by the appropriate authority. Accordingly, the process of acquisition of land was initiated in 2010.

5. That the acquired land is proposed to be developed by HSIIDC. The HSIIDC, as per its existing practice, develops

the acquired land by laying the necessary infrastructure required for an industrial estate, divides the land into plots and common areas and thereafter the plots are sold off to private parties by HSIIDC. However due to changing economic scenario, it was felt that the enterprise and ability of quick decision making of private sector could be leveraged for a rapid development of this acquired piece of land for purpose of developing a world class industrial park. It is in this context that HSIIDC is now contemplating private participation in development of the area and is exploring the possibility of development of infrastructure through private sector. It is being proposed that the land will be allotted through Swiss Challenge Bidding Method and the successful bidder will thereafter develop World Class infrastructure and sell the plots on the developed area.”

(emphasis applied)

(40) The affidavit further explains that a decision to explore private participation for setting up infrastructure project was taken in the light of Haryana Enterprises Promotion Policy, 2015 and that ‘Swiss Challenge Bidding Method’ shall be adopted for price discovery in a transparent manner. To remove any sort of doubts, paras 12 & 13 of the affidavit say as follows:-

“12. That importantly, the aforesaid MOU has been entered into for setting up of the proposed ‘industrial township by a private developer such that there may be rapid industrialization and employment generation for the

area and includes identifying the contiguous piece of land with built up land area of approximately 3000 acres of land at Kharkhauda site. That as per the MOU, Wanda is only to submit a Concept Business Plan/Project Report which is in line with the process of the Swiss Challenge Method which will govern the award of the Project.

13. That the basis of the MOU entered into between the Government and Wanda is the State's desire to build World Class Industrial Infrastructure to promote industrial and infrastructure development thereby creating employment opportunities wherefore Foreign Direct Investment will be attracted in the State for Haryana overall economic development of the State generating thousands of jobs."

(41) The Managing Director of HSIIDC has also made these very averments in his affidavit dated 22.09.2016 which are not being reproduced to avoid repetition.

(42) It is manifest from the contents of the affidavits dated 22.09.2016 that the respondents have not decided to transfer the land to any single private entity and the IMT shall be developed by the HSIIDC with or without the private partnership but in a transparent, fair and just manner. Suffice it is at this stage to direct that the respondents shall abide by the undertaking given before this Court and no attempt shall be made to deviate therefrom, directly or indirectly. The queries raised by this Court on 31.08.2016 thus stand fully explained.

(43) It may also be noticed at this stage that learned Advocate General, Haryana has stated at the bar that after re-visiting the whole issue, the State Government as well as HSIIDC have decided to implement the decision of this Court in **Om Parkash's** case and the petitioners' claim for different kind of reliefs shall also be considered in terms of the directions issued in the cited-case. He further states that the authorities are inclined to withdraw the SLP, if any, filed challenging the said decision.

(44) So far as the petitioners' contentions on merits are concerned, there can be no escape but to hold that such issues have been fully answered by this Court in **Om Parkash's** case. The instant writ petitions are thus allowed in part being squarely covered by the said cited decision.

(45) Adverting to the resultant relief admissible to the petitioners, it may be seen that in CWP Nos.5863, 6059, 9700 of 2013 and CWP Nos.6655 & 12704 of 2015 the land under acquisition is vacant agriculture land. All these petitioners are thus entitled to the same relief as has been granted to the agriculturists in **Om Parkash's** case.

(46) As regard to the petitioners in CWP No.7502 of 2013, the first petitioner and her two minor daughters are sustaining themselves by using the industrial structure set up by their predecessor-in-interest as a godown. The total area of the property is 1 kanal 18 marla only. The 'warehousing activities' are surely in the nature of commercial or allied to industrial activities. It cannot be said that a godown does not conform to the planning of an industrial area. It can also not be overlooked that the industrial unit had to be closed down due to the unfortunate demise of husband of the first petitioner. We are satisfied that the petitioners cannot be deprived of their property which appears to be the only

and effective source of their livelihood. Their writ petition is thus allowed and the acquisition *qua* their property is quashed except to the extent that if any part of the vacant land is needed for any public utility like road etc., it may be utilized.

(47) Similarly, in CWP No.5860 of 2013, though the petitioners have made an attempt to suggest that their almost entire land is being used or proposed to be used for the industrial unit known as M/s Surya Fluorescents Ltd. However, as per the stand taken by the respondents, such industrial unit was found in existence only on the land measuring 2 bigha 11 biswa. In this view of the matter, there is no rhyme or reason to acquire the land where the industrial unit still appears to be functional as per the photographs on record. Consequently, the area of the industrial unit measuring 2 bigha 11 biswa is directed to be released in such a manner that it does not affect the over-all planning of the surroundings and the public utilities like road etc. also remain unaffected. For this purpose, the respondents shall be at liberty to utilize the vacant part out of the land measuring 2 bigha 11 biswa so as to ensure that the regulated planning does not get affected. For the acquisition of their vacant agriculture land, the petitioners shall be treated at par with other agriculturists for the purpose of extending benefits in terms of **Om Parkash's** case.

(48) The petitioners in CWP No.7497 of 2015 apparently belong to a poor strata of society. They have been allotted or they purchased plots measuring 100 and 150 sq.yards, respectively. While the first petitioner has constructed her house at the site, the second petitioner purchased the plot for that very purpose. Since the IMT as a complete project, also includes for 'residential part', it is directed that if the petitioners' plots fall in the 'residential

area' as per the revised layout plan, then their house/plot shall stand released. However, if such house/plot are located at such part of the IMT where residential houses do not conform to the approved development plan, then both the petitioners shall be allotted a plot of 100 sq.yards each in the 'residential area' in lieu of their acquired plots and the first petitioner shall be paid separate compensation for the structure of residential house so as to enable her to reconstruct the same at the new site. The residential house of the first petitioner shall not be demolished until the plot is allotted, compensation for the house is paid and six months' time is given to her to construct the new house at the allotted site.

(49) The writ petitions stand disposed of in above terms.

(Surya Kant)
Judge

07.11.2016
vishal shonkar

(Sudip Ahluwalia)
Judge