

CWP-5157-2014

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-5157-2014

Date of Decision: November 03, 2016

Bishamber Tyagi and others

.....Petitioners

Versus

The State of Haryana and others

.....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 |

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Present: Mr.Sandeep Sharma, Advocate
for the petitioners.

Ms.Palika Monga, DAG, Haryana.

Mr.Gaurav Gupta, Advocate
for respondent No.3.

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SURYA KANT, J.

The petitioners seek quashing of Notifications dated 03.09.2010 and 04.05.2011, issued under Sections 4 & 6 of the Land Acquisition Act, 1894 (for brevity, 'the 1894 Act'), as well as the award dated 27.01.2012 to the extent of acquisition of their share measuring 2K 13M in the land mentioned in para 2 of the writ petition, situated within the revenue estate of village Badshahpur, Tehsil and District Gurgaon.

[2] The principal contention of the petitioners is that they have constructed residential house in Killa No.106//4/2/4 and 5 and since such construction was in existence before issue of Section 4 notification, their land deserves to be released from acquisition as per the Government Policy, dated

26.10.2007 (Annexure P-6). The photographs of the houses have also been appended as Annexure P-8.

[3] The land Acquisition Collector in his written statement, dated 18.05.2014, has explained that acquisition was carried out in accordance with the procedure prescribed under the 1894 Act and the purpose of acquisition, namely, 'Development and Utilisation of the land for sector roads between Sectors 66 and 67 at Gurgaon' is a bonafide and genuine public purpose.

[4] Since the public purpose of acquisition is to construct roads for connecting various Urban Sectors of Gurgaon, the petitioners were directed to explain as to how their residential houses can be saved at the cost of public roads. They explained on October 18, 2016 that as per the site plan (Annexure P9) their houses are adjoining the Government School Building which has been released from acquisition and that none of their houses fall in the alignment of the road.

[5] Keeping that in view, the District Town Planner, Gurgaon, was directed to ascertain the correct facts and submit a report.

[6] In deference thereto, the District Town Planner has filed his reply-affidavit today in Court, which is taken on record. The following averments are made in para 4:-

“4 That site of petitioner has been marked on the shajra plan in red colour and annexed as Annexure R-1. The structures existing on ground are shown in red hatch on said plan. The site sketch highlighting the 60.0 mtr wide sector dividing road alongwith 12.0 mtr wide service road of sector 66/67 as per approved sectoral plan alongwith detailed status of construction on the petitioners land is enclosed herewith as Annexure -R/2. A perusal of the Annexure R/1 & Annexure -R/2 clearly indicate that the structures existing on the

petitioner's land are used as labour room and no part of the constructed portion of the petitioners land is affected by the sector dividing road of sector 66/67, Gurgaon. As already stated, in this case also, some minor changes in the alignment of the 60.0 mtr sector dividing road of sector 66 & 67 had to be made in order to avoid acquisition of the already existing Govt.School Building and Hospital and not to give any benefit to the builders.”

[emphasis applied]

[7] The site sketch of the structures raised in khasra No.106//5 Min alongwith lay out plan of roads, Annexure R-II, suggests that only a small part of the petitioners' vacant land as well as the 'shop' falls within the road alignment whereas rest of the plot area where houses are constructed fall in Sector 67, which is admittedly a residential sector being developed by private colonizer. While the land/property of the petitioners to the extent it is required for the proposed roads, including for the widening of Sohna-Gurgaon road, cannot be released as the same is needed for a public purpose of paramount importance, we see no legal impediment against the release of left out area measuring 848 sq.yds, as per site plan Annexure R-II, where the houses are constructed.

[8] The petitioners represent 5-6 families and release of 848 sq.yds means that each family will get a residential unit of approximately 141 sq.yds.. Since their houses/structures fall within the area being developed as a residential sector, release of petitioners' property would conform to the zoning plan of the area also.

[9] The Government Policy dated 26.10.2007 relied upon by the petitioners categorically contemplates that where a residential house is in existence prior to Section 4 notification, it can be released from acquisition.

The relief sought by the petitioners thus, falls within the four corners of the Government Policy.

[10] In the light of the above discussion, we allow this writ petition in part. While acquisition of the petitioners' vacant land as well as the shop which are needed for the widening or construction of the proposed roads is upheld, the left out area including residential houses measuring 848 sq.yds is ordered to be released.

[11] Since the released land/property of the petitioners falls in an area which is being developed as per Development/Sectoral plan of Gurgaon Urban Area, it is further directed that the petitioners shall be liable to pay the development charges as may be assessed in accordance with law so as to enable them to enjoy the urban amenities to be provided in the sector by Government/HUDA or private colonizer.

[12] Ordered accordingly.

**(SURYA KANT)
JUDGE**

November 03, 2016
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**(SUDIP AHLUWALIA)
JUDGE**

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| 1. | To be referred to the Reporters or not? | Yes/No |
| 2. | Whether the judgment should be reported in the Digest? | Yes/No. |