

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4699 of 2015 (O&M)

Date of Decision: 19.12.2016

Sarupi & Anr.

... Petitioners

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE SUDIP AHLUWALIA

1. *Whether Speaking?*

Yes

2. *Whether Reportable?*

No

3. *Whether Reporters of local papers may be allowed to see the judgment?*

No

4. *To be referred to the Reporters or not?*

Yes / No

5. *Whether the judgment should be reported in the Digest?*

Yes / No

Present: Ms. Anita Balyan, Advocate for the petitioners

Ms. Palika Monga, DAG Haryana

Mr. Munish Gupta, Advocate for respondent No.5

SURYA KANT, J.

(1) The petitioners are legal heirs of Shri Chand @ Chand resident of village Garhi Bohar, Tehsil & District Rohtak. They have laid challenge to the notifications dated 28.03.2012 and 18.03.2013 issued under Section 4&6 of the Land Acquisition Act, 1894, followed by notice dated 23.02.2015 issued under Section 9 of the said Act, vide which their land comprising Khasra No.343/24 min (6-0) and 343/25 min (2-0) situated in the revenue estate of their village has been acquired.

(2) The solitary contention of the petitioners is that the real motive behind the impugned acquisition is to extend undue benefit to the private builder – respondent No.5 and not to achieve any ‘public purpose’. It is explained that for the development of residential Sector 26, Rohtak, land was acquired in the year 2009. Respondent No.5 – a private builder meanwhile got licence to develop

its land as has been shown in 'red' colour in the site plan (P6 & P8). The small piece of land owned by the petitioners is abutting the land of private builder on both sides of 45 meter wide road. It is further averred that while State of Haryana and its agency HUDA have no plan to develop the land adjoining that of the private builder yet vide impugned acquisition, land measuring 7.51 acre (claimed to be the left out pocket) has been acquired and meanwhile award has also been announced on 17.03.2015. The purpose of this acquisition, as alleged by the petitioners, is to facilitate the private builder to whom the State Government is most likely to transfer the acquired land. On this premise, the petitioners contend that the purpose of acquisition is not to serve any public cause but to expand the area of private builder parallel to the 45 meter wide road.

(3) It may be seen from the contents of the impugned notifications that the State Government has acquired the above-stated piece of land measuring 7.51 acre *"for development of left out pocket in residential Sector 26 Part, Rohtak by the Haryana Urban Development Authority..."*.

(4) Written statement has been filed by the Administrator, HUDA-cum-Additional Director, Urban Estate, Rohtak Zone for and on behalf of the State of Haryana. A preliminary objection has been taken that since the writ petition has been filed after the announcement of the award, the same is not maintainable. The allegation of the petitioner that the acquisition has been made to provide amenities and public utilities to the builder has also been controverted. It has been further averred that *"the present land is acquired for general public welfare and the present land/plot is effects the planning of 14 marla plots."*

(5) It is also explained that the adjacent land which has been developed by the OMAXE builder was not acquired because CLU of the land was taken by

them. It is thus claimed that the subject-land has been acquired for a public purpose, namely, for carving out residential plots by HUDA.

(6) Respondent No.5 – the private builder has also filed its separate written statement taking a stand different than that of the official respondents. The private builder has averred that the land of the petitioner has been acquired *“for the purpose of Sector road 45 meters wide, which includes two service roads of 12 meter on both the sides...”*

(7) We have heard learned counsel for the parties and gone through the record.

(8) The solitary question which falls for determination is whether the impugned acquisition has been made for a *bona fide* public purpose or the power of *eminent domain* has been invoked for value addition in the project of the private builder?

(9) From the two site plans appended by the petitioners with the writ petition, it appears that their acquired land consists of two parcels, one measuring 6 kanal and the other measuring 2 kanal. There is a 45 meter wide road dividing the petitioners' land as also of the private builder and Sector 26, Rohtak. If the petitioners' site plans are to be believed, HUDA has neither carved out any plots at the acquired site nor does it has any plans to develop the said site for any other public purpose. One gathers an impression that the petitioners' land has been acquired so that no private property remains between the 45 meter wide road and the Builder's project. Unfortunately, the Administrator, HUDA though has made sweeping averments that the acquired land of the petitioners is affecting the planning of 14 marla plots but has chosen not to attach any layout plan of the Sector. On the other hand, the private builder claims that the petitioners' land

had been acquired for the 45 meter wide road, which in fact is already in existence.

(10) The selective information furnished by the official respondents and the averments made in their written statement though give credence to the petitioners' allegations but no definite opinion regarding the purpose for which their land has been acquired can be formed on the basis of the scant material available on record. It goes without saying that the petitioners' land cannot be permitted to be acquired for the private benefit of the Builder as the existence of 'public purpose' for acquisition is a *sine qua none*. This has been so held by this Court in **Devdutt & Ors. vs. State of Haryana & Ors. 2014 (4) RCR (Civil) 94.**

(11) In the given circumstances, it is imperative upon the authorities to determine the nature of public purpose for which the acquired land of the petitioners would be utilized. If the acquisition is meant for carving out plots by HUDA – a Government agency, the purpose of acquisition can be safely termed as *bona fide* and in public interest. However, if the site is to be surrendered to a private builder on the pretext of exchange or otherwise, it would amount to colorable exercise of power to serve the private interest of the builder.

(12) In the light of the above discussion, we dispose of this writ petition with a direction to the Principal Secretary to Government of Haryana, Department of Urban Estate, to decide whether the petitioners' land is proposed to be utilized by HUDA for carving out plots or any other genuine public purpose. In that event, the impugned acquisition would call for no interference. However, if the acquisition has been made for the direct or indirect benefit of respondent No.5, in that case, the acquisition cannot sustain. We thus do not express any final opinion and direct the above named authority to take a final

decision within three months from the date of receipt of certified copy of this order. The decision shall be conveyed to the petitioners by way of reasoned order.

(Surya Kant)
Judge

19.12.2016
vishal shonkar

(Sudip Ahluwalia)
Judge