IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-7063-2014 (O&M)
Date of Decision: July 25, 2016

Sunil Kumar and others

.....Petitioners

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Gaurav Mohunta, Advocate
for the petitioners.
Mr.RKS Brar, Addl.A.G.Haryana.
Mr.Amar Vivek, Advocate
for HUDA.

.....

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

SURYA KANT, J.

(1) The petitioners are said to have purchased plots measuring different sizes but mostly 100 square yards or so, in an unauthorised and illegal Residential Colony carved out within the revenue estate of villages Basai, Gurgaon and Kadipur, Tehsil and District Gurgaon. Most of them have constructed their residential houses also, of course without getting the building plans sanctioned from Municipal Authorities.

(2) It also appears correct that some of the petitioners purchased the

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plots after the notifications under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short, `the 1894 Act') were issued but before passing of the award. Majority of them had purchased such plots well before the process of acquisition started. Since, in the peculiar facts and circumstances of the case stated here to after, we are unable to draw any distinction between the two sets of owners, we do not deem it necessary to refer to the dates of execution of their respective sale-deeds.

(3) Vide notification dated 08.03.1989 issued under Section 4, followed by declaration under Section 6 of the 1894 Act dated 28.11.1990, land measuring 818.3 acres comprising the revenue estate of aforesaid three villages was acquired for Development of Residential and Commercial Sectors 9, 9A and 10 in the Urban Estate of Gurgaon. The land/plots/houses of the petitioners were also included in the acquisition.

(4) The subject acquisition was challenged in a bunch of writ petitions filed in the year 1991 including CWP No.4999 of 1991. These writ petitions were dismissed by this Court on 21.03.2011.

(5) Regardless of the fact that the acquisition was upheld by this Court, the Land Acquisition Officer, Gurgaon, while forwarding the draft award for approval of the State Government, *suo motu* recommended the release of such land where unauthorised residential colonies, namely, Ravi Nagar, Devi Lal Nagar, Krishan Nagar and Surya Vihar etc. had come into existence. The Chief Administrator, HUDA, also endorsed that the land of

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these unauthorised colonies deserved to be released from acquisition.

(6) The State Government accepted those recommendations and passed the orders dated 20.04.2012 releasing land measuring 73.51 and 58.446 acres of two villages which was otherwise the subject matter of writ petitions dismissed by this Court on 21.03.2011.

(7) The petitioners are not amongst those fortunate owners who were benefited with the favourable recommendations made by the Land Acquisition Officer or the Chief Administrator, HUDA. Their small residential houses too are integral part of the above named colonies where they are living for the last over two decades. Most of them statedly belong to marginal sections of society who have no other shelter for their families.

(8) The petitioners allege that Land Acquisition Officer, Gurgaon, or Chief Administrator, HUDA, neither invited any claim for release of properties nor any physical survey to identify the actual construction was made. They, thus, claim that the benefit of *suo motu* Government decisions like dated 20.04.2012 be extended to them as well.

(9) The principal objection taken on behalf of the respondents is that some of the petitioners are not *bona fide* purchasers as they bought the plots after issuance of Sections 4 and 6 notifications under the 1894 Act. This may be true in literal sense. But can the State authorities be heard to say so when despite dismissal of writ petitions and approval of acquisition by this Court, the authorities themselves chose to release about 150 acres of land in

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favour of similarly placed persons who had constructed their houses over the acquired land? If the State Government could show compassion and extend its helping hand to save the houses which were built before issuance of Section 4 notification, there is hardly any standout reason to justify the tailor-made classification, especially when many of the petitioners also bought the plots before Section 4 notification.

(10) It is significant to mention that Section 4 notification was issued on 08.03.1989 whereas the decision to release the properties based upon that cut-off date was taken after more than 22 years. The State Government Policies issued from time to time to release houses/structures from acquisition must have induced the poor or lower middle class persons to risk their entire savings and invest in an unauthorised colony which was setup, grew and flourished in front of their eyes.

(11) Had the State authorities ever invited claims from affected persons after conducting survey before making wholesome release of the plots or properties in favour of those chosen one, who in turn could secure their inclusion in the recommendations of the Land Acquisition Officer or Chief Administrator, HUDA, probably the petitioners also would not have been compelled to rush this Court.

(12) Equally important is to keep in mind that the acquisition was made for development of a regulated Residential Area and the petitioners are also utilising their respective plots for residential purposes only. We are

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informed that the Municipal Corporation has meanwhile provided basic amenities to these unauthorised colonies. If that is so, we fail to understand as to what public purpose can possibly be achieved by demolishing the houses of the petitioners and allotting such sites to other perspective allottees?

(13) In the light of above discussion, we are satisfied that in those cases where (i) even if the plots are lying vacant and are meant to be utilised for the residential purpose only; (ii) a person or his family does not own manifold plots like a real estate developer or promoter, for his unjust enrichment through such plots/properties; (iii) the development plan of the area is not seriously affected; (iv) the owners are willing to part with the open spaces wherever required for public utilities like roads etc. (v) owners are also willing to pay the development charges as may be proportionately quantified, then all such owners/petitioners deserve the same concession and compassion which the State Government has shown in their neighborhood.

(14) The writ petitions are accordingly allowed in above terms and houses/structures/plots of the petitioners are ordered to be released subject to the conditions illustrated in Para No.13 above. The Director General, Town and Country Planning, Urban Estate, is directed to constitute a team of officers who shall carry out the survey and spot inspection and identify the house/plots/structures of petitioners and or other similarly placed persons and subject to the conditions, referred to above, shall release such properties

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in the same manner as was done by the order dated 20.04.2012 etc.

(15) The needful shall be done within a period of six months.

(16) The parties shall continue to maintain status quo till such decision is taken.

(17) All other contentions raised on behalf of the petitioners shall be taken to have been rejected.

(SURYA KANT)
JUDGE

July 25, 2016 **(DARSHAN SINGH)**
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