IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP No. 8124 of 2015. [O&M]
Date of Decision:15th July, 2016.

Ajay Kumar & Ors. Petitioners through
Mr. Sanjay Mittal, Advocate

Versus

State of Haryana & Ors. Respondents through
Ms. Palika Monga, DAG, Haryana.

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

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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?

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SURYA KANT, J. [ORAL]

The petitioners have questioned the notifications dated 01.07.2011 and 26.06.2012 issued under Sections 4 and 6 of the Land Acquisition Act, 1894 as well as Award No. 16 dated 08.11.2014 to the extent of acquisition of their respective land situated in village Piwara, Tehsil & District Rewari. The particulars of the land under acquisition are given in Para No. 2 of the writ petition.

[2]. The acquisition has been made for the development and utilisation of the acquired land for residential Sector 20 Part and Sector 21 in the Urban Estate of Rewari, to be developed by the Haryana Urban Development Authority.

[3]. The challenge of the petitioners to the subject acquisition is founded upon two grounds, namely, [i] they have constructed their residential houses over the acquired land and since the acquisition is for the same public purpose, they are entitled to retain the land; [ii] their objections under Section 5-A have been mechanically rejected as the issue of construction having been raised at the acquired site has not been effectively

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considered.

[4]. The respondents have controverted the petitioners' claim. It is pointed out that petitioner No. 1 is not owner of the acquired land. He has founded his claim on an agreement to sell dated 25.04.2011 [P-1]. As regard to other petitioners, it is maintained that petitioner No. 2 filed his objections for the release of his residential house and those objections were duly accepted. The writ petition, however, has now been filed in respect of some other Khasra Number. Similarly, residential houses of petitioners No. 3 to 5 who are father and sons have also been released. As regard to petitioners No. 6 to 8, it is stated that their land measuring 7 kanals 9 marlas has not been included in the acquisition.

[5]. The petitioners are still disputing the claim of the respondents and have placed reliance on certain photographs to assert that the land underneath those houses has not been released so far.

[6]. Having heard learned counsel for the parties at a considerable length and after going through the record, it appears to us that the writ petition has raised multiple disputed question of facts including ownership and identity of the houses in question. In the photographs there are one or two structures which seems to have been raised recently and were apparently not in existence when notification under Section 4 was issued [e.g. Hanumant Auto Works]. At the same time, there are a few houses [P-13] which must have been in existence at the time of notification under Section 4 of the Act. The question that arises is whether those houses belong to the petitioners and if so whether the same have already been released or that the petitioners have got released earlier some other property and now they have staked claim with regard to these residential houses?

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[7]. Similarly, it is apt to determine whether the houses in question were in existence at the time of issuance of Section 4 notification. The claim for release of such structures can arise only if these houses were constructed prior to issue of Section 4 notification.

[8]. As the factual issues can not be effectively determined by this Court in exercise of writ jurisdiction, we are satisfied that the ends of justice would be served if the petitioners are given one more opportunity to establish their claim except Petitioner No.1 before the Land Acquisition Collector.

[9]. As regard to petitioner No. 1, it is not in dispute that he thrives upon some agreement to sell allegedly executed a few months before issuance of notification under Section 4 of 1894 Act. We have gone through the said agreement to sell which is unregistered document. It is difficult to rely upon the same and that too for the purpose of releasing the acquired land. His claim is, thus, rejected.

[10]. As regard to petitioners No. 2 to 8, notwithstanding the fact that their residential houses are stated to have been released, there shall be liberty to them to represent the Land Acquisition Collector along with particulars and proof of constructed houses/structures which have not been allegedly released so far. On receipt of such representation to be submitted within one month from the date a certified copy of this order is received, the Land Acquisition Collector shall hold a fact finding inquiry and if satisfied that such residential houses/structures were indeed in existence before Section 4 notification but could not be released earlier, the LAC shall submit a report to the State Government who shall consider the matter sympathetically and in accordance with the government policy. However, if

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it is found that the structures/houses sought to be now released have already been released and/or have been built-up after Section 4 notification, the LAC shall be at liberty to reject the petitioners' claim. The aforesaid exercise shall be undertaken within three months from the date of submission of the representation. Till such exercise takes place, *status-quo* re: demolition and further construction shall be maintained by the parties.

[11]. Disposed of. Dasti.

(SURYA KANT)
JUDGE

July 15, 2016. ***(DARSHAN SINGH)***
dinesh ***JUDGE***

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