

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

CWP No. 19997 of 2009 (O&M)

Date of decision : 25.7.2017

Mahabir Prasad

.. Petitioner

versus

State of Haryana and others

.. Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Gurvinder Singh Gill**

Present: Mr. Sandeep Kumar Yadav and Mr. P. R. Yadav, Advocates,
for the petitioner (s).

Mr. Ankur Mittal, Additional Advocate General, Haryana
and Mr. Manoj Dhankar, Asstt. Advocate General, Haryana.

Mr. Sanjay Vij, Advocate, for respondent no. 6 in all cases.

Rajesh Bindal, J.

This order will dispose of thirteen writ petitions bearing CWP Nos.19997 of 2009, 1290, 1448, 1449, 1482, 2078, 2079, 2080, 2082, 2083, 3725, 6091 of 2010, 18858 of 2014, as common questions of law and facts are involved therein.

CWP No. 1482/2010

Challenge has been made to the acquisition of land owned by the petitioner. Notification bearing no. LAC(G) NTLA-2007/1373, under Section 4 of the Land Acquisition Act, 1894 (for short, 'the Act') was issued on 23.2.2007, for acquisition of land situated in the revenue estates of village Mahendergarh, Hadbast No. 87, Village Khayra, Hadbast No. 89, village Payga Hadbast No. 88, Tehsil and District Mahendergarh, for public

purpose, namely, for the development and utilization thereof for the residential, commercial, institutional, sector roads and green belt Sector-10, Mahendergarh. It was followed by notification bearing no. LAC(G)NTLA-2008/1450 issued under Section 6 of the Act on 20.2.2008. The award was announced by the Land Acquisition Collector on 19.2.2010.

Learned counsel for the petitioner submitted that the petitioner was owner in possession of land in the revenue estate of village Payga, Tehsil and District Mahendergarh. The land was sought to be acquired for which notification under Section 4 of the Act was issued on 23.2.2007. For part of the land on which there was no construction, no award was passed by the State, as the petitioner in collaboration with respondent no. 6- M/s Baderwal Infrastructure Projects Private Limited applied for license to develop the same as a colony and the same was granted. The present writ petition pertains to small portion of land measuring 1 kanal, on which the petitioner had raised construction of his house. As per the policy of the Government, constructed portion, which was existing prior to the issuance of notification under Section 4 of the Act, are not to be acquired as this is the only house with the petitioner to live in. The acquisition deserves to be quashed.

Learned counsel for the petitioner further submitted that though part of the land sought to be acquired is stated to be forming part of a road, however, when the site plan produced by the State in Court is perused, major portion of the land close to the small portion of land of the petitioner has already been released from acquisition. The land of the petitioner falls on a revenue *rasta*. In fact, the small portion of land of the petitioner will not be of any use to the department, as it could not be fruitfully utilized. At

the place where *rasta* is sought to be shown, there is no requirement as such.

Learned counsel for the petitioner further submitted that it is the admitted case of the respondents that the construction on the land was existing prior to issuance of notification under Section 4 of the Act. Lot of land located at different places which either form part of the road network or green belt has either been left out from acquisition or released later on. As the only house of the petitioner has been acquired, the same deserves to be released from the acquisition.

It was further submitted that in case land in question is released from acquisition, the petitioner will pay whatever development charges the State will demand, so as to enable him to use the infrastructure provided there.

On the other hand, learned counsel for the State submitted that the petitioner owned substantial piece of land in the area, wherever it suited him, he entered into an agreement with the builder to develop the same as a residential area and wherever it suited him, he has challenged the acquisition. Even as per the terms of agreement between the petitioner and the builder, the petitioner is to be given plots in a developed residential area, hence the argument that the land should not be acquired, deserves to be rejected. In fact, in the revenue record the area has been shown as a well where no construction can be raised but still the petitioner may have constructed some rooms. It was not a kind of house. He further submitted that in the case in hand, the petitioner did not file any objection under Section 5-A of the Act, which was the first opportunity granted to him to raise the issue regarding acquisition of land. It is too late to challenge the

acquisition now just prior to the announcement of award by the Collector.

CWP Nos. 1290/2010 and 18858/2014

Challenge has been made in the present writ petitions to the acquisition of land owned by the petitioners. The notification bearing no. LAC(G) NTLA-2007/1373, under Section 4 of the Act, was issued on 23.2.2007, for acquisition of land situated in the revenue estates of village Mahendergarh, Hadbast No. 87, Village Khayra, Hadbast No. 89, village Payga Hadbast No. 88, Tehsil and District Mahendergarh, for public purpose, namely, for the development and utilization thereof for the residential, commercial, institutional, sector roads and green belt Sector-10, Mahendergarh. It was followed by notification bearing no. LAC(G)NTLA-2008/1450 issued under Section 6 of the Act on 20.2.2008. The award was announced by the Land Acquisition Collector on 19.2.2010.

Learned counsel for the petitioners submitted that out of the land owned by the petitioners, land measuring 1 kanal 10 marlas was released earlier as construction existed thereon. The petitioners had earlier filed CWP No. 24365 of 2011 Bansi Singh vs State of Haryana and others, challenging the acquisition where this Court though had upheld the acquisition, however, on the argument raised by the petitioners that the portion of the land which has been released, is not required by the State for construction of road, etc., this Court directed that State may carry out the exercise and if it is found that some part of the land of the petitioners is not required for construction of road or green belt, it may be considered for release. It was further submitted that if remaining part of the land is released from the acquisition, which according to the State falls within the green belt, the petitioners undertook not to raise any construction thereon and

maintain the same as a green belt as they have already planted fruit bearing trees thereon. It was further submitted that the land was acquired for the purpose of widening of existing State Highway No. 17 from Mahendergarh to Narnaul, however, just opposite the land of the petitioners, the land of other landowners was either not acquired or released from the acquisition, as a result of which widening of road is not possible as the road will have not different width at different-different locations or the green belt cannot be of different width at different locations.

On the other hand, learned counsel for the State submitted that the land in question was lying vacant at the time of issuance of notification under Section 4 of the Act. Wherever construction was there, the same was not acquired. The petitioners should be satisfied with that. The land along with the road is required for widening thereof to cater to the increasing traffic. The petitioners are being too greedy. The land being acquired for infrastructure development, there is nothing wrong with the acquisition.

CWP Nos. 19997/2009 and 1448/2010

Challenge has been made in the present writ petitions to the acquisition of land owned by the petitioners. The notification bearing no. LAC(G) NTLA-2007/1373, under Section 4 of the Act, was issued on 23.2.2007, for acquisition of land situated in the revenue estates of village Mahendergarh, Hadbast No. 87, Village Khayra, Hadbast No. 89, village Payga Hadbast No. 88, Tehsil and District Mahendergarh, for public purpose, namely, for the development and utilization thereof for the residential, commercial, institutional, sector roads and green belt Sector-10, Mahendergarh. It was followed by notification bearing no. LAC(G)NTLA-2008/1450 issued under Section 6 of the Act on 20.2.2008. The award was

announced by the Land Acquisition Collector on 19.2.2010.

Learned counsel for the petitioners submitted that the petitioners had raised construction on the part of the acquired land, which was released from the acquisition. Part of that is located on the main road for widening of which the land is sought to be acquired. There is small portion of land left out of the acquisition on both sides of the land already released and located on the main road whereas some portion is behind that. Keeping in view its size and shape, it will be of no use to the State. It was further submitted that the land was acquired for the purpose of widening of existing State Highway No. 17 from Mahendergarh to Narnaul, however, just opposite the land of the petitioners, the land of other landowners was either not acquired or released from the acquisition, as a result of which widening of road is not possible as the road will not have different width at different-different locations or the green belt cannot be of different width at different locations.

It was further submitted that just opposite of the land of the petitioners on the other side of the road, the builder has been granted license to develop that area as a colony. Part of that land also falls within the portion required for widening of main road and green belt. Close to the land of the petitioners is located Government College, Mahendergarh. Land abutting the main road was acquired, however, finally the acquisition was dropped. Once complete clear strip of land is not available for widening of road or maintaining the green belt, there is no use of acquiring scattered portions of land. The house had been constructed by the petitioners much prior to the issuance of notification under Section 4 of the Act.

On the other hand, learned counsel for the State submitted that as per the policy of the Government, the constructed area was released from the acquisition. The petitioners are being greedy and have now filed the writ petitions seeking release of left out portion, which was lying open at the time of acquisition, the land can very well be put to use by the State. The petitioners are concerned with receipt of compensation, that has already been determined.

CWP Nos. 2078 and 2079/2010

Challenge has been made in the present writ petitions to the acquisition of land owned by the petitioners. The notification bearing no. LAC(G) NTLA-2007/1373, under Section 4 of the Act, was issued on 23.2.2007, for acquisition of land situated in the revenue estates of village Mahendergarh, Hadbast No. 87, Village Khayra, Hadbast No. 89, village Payga Hadbast No. 88, Tehsil and District Mahendergarh, for public purpose, namely, for the development and utilization thereof for the residential, commercial, institutional, sector roads and green belt Sector-10, Mahendergarh. It was followed by notification bearing no. LAC(G)NTLA-2008/1450 issued under Section 6 of the Act on 20.2.2008. The award was announced by the Land Acquisition Collector on 19.2.2010.

Learned counsel for the petitioners submitted that in the case in hand admittedly the construction existed prior to the issuance of notification under Section 4 of the Act, but still discriminating the petitioners the land owned by them was not released only for the reason that it falls within the area required for widening of road or maintaining green belt, whereas the land of other similarly situated persons was released.

On the other hand, learned counsel for the State submitted that

the petitioners had filed objections under Section 5-A of the Act, raising the issue regarding existence of construction on the acquired land, however, the same was acquired as it was required for widening of road and maintaining green belt.

CWP Nos. 2080 and 2083/2010

Challenge has been made in the present writ petitions to the acquisition of land owned by the petitioners. The notification bearing no. LAC(G) NTLA-2007/1373, under Section 4 of the Act, was issued on 23.2.2007, for acquisition of land situated in the revenue estates of village Mahendergarh, Hadbast No. 87, Village Khayra, Hadbast No. 89, village Payga Hadbast No. 88, Tehsil and District Mahendergarh, for public purpose, namely, for the development and utilization thereof for the residential, commercial, institutional, sector roads and green belt Sector-10, Mahendergarh. It was followed by notification bearing no. LAC(G)NTLA-2008/1450 issued under Section 6 of the Act on 20.2.2008. The award was announced by the Land Acquisition Collector on 19.2.2010.

Learned counsel for the petitioners in these petitions also while raising the plea of discrimination submitted that though in number of cases even vacant land was released from acquisition, whereas in the case of the petitioners, they were discriminated. The acquired land falls in Sector 10, where large area was released from acquisition while granting license to a builder. Even other areas located close to the acquired land of the petitioners, which was lying vacant was released from acquisition. Hence, the petitioners were discriminated.

On the other hand, learned counsel for the State submitted that the land of the petitioners falls in joint khewat. It is yet to be partitioned.

The petitioners have not even mentioned the extent of their ownership. Wherever the construction existed, in terms of the policy of the Government, the same was released. Vacant land was acquired. No case for discrimination is made out.

CWP No. 2082/2010

Challenge has been made in the present writ petition to the acquisition of land owned by the petitioners. The notification bearing no. LAC(G) NTLA-2007/1373, under Section 4 of the Act, was issued on 23.2.2007, for acquisition of land situated in the revenue estates of village Mahendergarh, Hadbast No. 87, Village Khayra, Hadbast No. 89, village Payga Hadbast No. 88, Tehsil and District Mahendergarh, for public purpose, namely, for the development and utilization thereof for the residential, commercial, institutional, sector roads and green belt Sector-10, Mahendergarh. It was followed by notification bearing no. LAC(G)NTLA-2008/1450 issued under Section 6 of the Act on 20.2.2008. The award was announced by the Land Acquisition Collector on 19.2.2010.

Learned counsel for the petitioners while reiterating the arguments, which have been raised in the other petitions regarding discrimination and the object for which the land is sought to be acquired having been defeated with haphazard release of land by the State submitted that inadvertently in the petition rectangle no. 33 has been mentioned, whereas the correct rectangle number is 31.

Learned counsel for the State also reiterated whatever contentions have been raised in response to the contentions raised in the above mentioned writ petition.

CWP No. 3725/2010

Challenge has been made in the present writ petition to the acquisition of land owned by the petitioner. The notification bearing no. LAC(G) NTLA-2007/1369, under Section 4 of the Act, was issued on 23.2.2007, for acquisition of land situated in the revenue estate of village Khayra, Hadbast No. 89, Tehsil and District Mahendergarh, for public purpose, namely, for the development and utilization thereof for the residential, commercial, institutional, sector roads and green belt Sector-9, Mahendergarh. It was followed by notification bearing no. LAC(G)NTLA-2008/1449 issued under Section 6 of the Act on 20.2.2008. The award was announced by the Land Acquisition Collector on 19.2.2010.

In this petition as well, the counsel for the parties reiterated the arguments raised in other writ petitions.

Discussions

In the case in hand, two notifications under Section 4 of the Act were issued bearing nos. LAC(G) NTLA-2007/1369 and LAC(G) NTLA-2007/1373, both dated 23.2.2007, seeking to acquire land as detailed below :-

Vide Notification No. LAC(G) NTLA-2007/1373 dated 23.2.2007 under Section 4 of the Act

<u>Name of the village</u>	<u>Area</u>
Village Mahendergarh, Hadbast No. 87	3.72 acres
Village Khayra, Hadbast No. 89,	133.525 acres
Village Payga Hadbast No. 88	45.64 acres

Vide Notification No. LAC(G) NTLA-2007/1369 dated 23.2.2007 under Section 4 of the Act

<u>Name of the village</u>	<u>Area</u>
Village Khayra, Hadbast No. 89,	80.73 acres

Vide Notification No. LAC(G) NTLA-2008/1450 dated 20.2.2008 under Section 6 of the Act

<u>Name of the village</u>	<u>Area</u>
Village Mahendergarh, Hadbast No. 87	3.72 acres
Village Khayra, Hadbast No. 89,	128.89 acres
Village Payga Hadbast No. 88	43.58 acres

Vide Notification No. LAC(G) NTLA-2008/1449 dated 20.2.2008 under Section 6 of the Act

<u>Name of the village</u>	<u>Area</u>
Village Khayra, Hadbast No. 89,	75.81 acres

The purpose of acquisition, as mentioned in the notifications, is for the development and utilization thereof for the residential, commercial, institutional, sector roads and green belt Sectors 9 and 10, Mahendergarh.

While issuing notification under Section 6 of the Act bearing nos. LAC(G) NTLA-2008/1449 and LAC(G) NTLA-2008/1450, both dated 20.2.2008, total land measuring 252 acres was notified. However, at the time of announcement of award by the Collector for some portion of land, the award was not announced as license had been granted to the builder either for the land purchased by him or where the landowners entered into agreement with him. As submitted in the Court, the agreement entitles the landowners allotment of developed plots. A perusal of the site plan produced by learned counsel for the State in Court shows that besides the area for which license was granted for development as a residential colony, at number of places the land had been released from acquisition. In the set of cases, except CWP No. 14828 of 2010, the issue pertains to acquisition of land abutting the State Highway No. 17- Mahendergarh-Narnaul Road. The primary stand taken by learned counsel for the petitioners is that as

major part of the land has already been released from the acquisition, the rest of the land cannot possibly be utilized for widening of existing road or for maintaining the same as green belt, as clear strip of land is not available. The site plan produced in Court establishes the fact that besides widening of road from Mahendergarh to Narnaul on both sides, 45 meters green belt has been proposed with 12 meters wide service road on one side. However, the plan shows that in the area upto Sector-10, substantial portion of land abutting the road has either been released from acquisition or award was not finally announced, as a result of which acquired strip of land for widening of road or for maintaining the green belt, as proposed, is not available. This fact could not be disputed even at the time of hearing of the cases. No one can imagine widening of road at some places or maintenance of green belt at some places wherever the land become available, whereas at some places it cannot be because of non-availability of required land. The released portion of land abuts the boundary of the existing road. What to talk of maintaining the green belt, there is no portion available even for widening of road. Nothing definite is available on record to show as to what use these portions of land will be put to in case these cannot be utilized for widening of road or maintaining green belt or it will be just left open for inviting encroachments.

In Sector-10, the total area for acquisition was 142.72 acres, whereas finally the State announced the award for 127.16 acres. Rest of the land was released from the process of acquisition as license was granted to a private builder for development as a colony. The land acquired by the State in Sector 10 is located at different places, where small-small portions have been acquired, which may be difficult to develop, if seen individually.

Considering the aforesaid factual matrix, in our opinion, issues

raised by the petitioners regarding release of their land from acquisition on various grounds including the ground of discrimination and the land being not required for widening of road or maintaining green belt deserves to be re-considered by the competent authority in the State.

Let that exercise be carried out within a period of three months from the date of receipt of copy of the order. As the petitioners are in possession of the land, which was permitted to continue in possession during the pendency of the writ petitions. Till the matter is finally decided by the competent authority, the interim stay granted by this Court will remain in force.

The writ petitions are disposed of accordingly.

(Rajesh Bindal)
Judge

25.7.2017
vs

(Gurvinder Singh Gill)
Judge

Whether speaking/ reasoned

Yes/No

Whether Reportable

Yes/No