

CWP No. 2776 of 2013 (O&M)

(1)

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

CWP No. 2776 of 2013 (O&M)

Date of decision : 19.7.2017

Mohinder Singh and others

.. Petitioners

versus

The State of Haryana and another

.. Respondents

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

Present: Mr. Sandeep Sharma and Mr. Lokesh Vohra, Advocates,
for the petitioners.

Ms. Palika Monga, Deputy Advocate General, Haryana.

Rajesh Bindal, J.

The petitioners have approached this Court impugning the acquisition of their land.

Learned counsel for the petitioners submitted that the petitioners are owners of 30 kanals 4 marlas of land falling within the revenue estate of village Patli Hajipur, District Gurgaon (Now Gurugram). They have applied for change of land use on 31.10.2008 for the purpose of construction of a warehouse. While the application filed by the petitioners was still pending, the State issued notification under Section 4 of the Land Acquisition Act, 1894 (for short, 'the Act') on 5.2.2010 seeking to acquire the land for the purpose of development as an integrated complex for

Industrial, Storage space, Railway siding, Industrial, Public, Semi Public use and other public utilities in villages Babra-Bakipur, Patli-Hazipur, Tehsil Farukhnagar, District Gurgaon and village Dhana, Tehsil and District Gurgaon. The petitioners had also applied for change of land use for the same purpose. Prior to the issuance of notification under Section 4 of the Act, the petitioners had been responding to the queries raised by the department for grant of change of land use certificate, however, finally when notification under Section 4 of the Act had been issued, the application for grant of change of land use certificate was rejected on 8.6.2010, conveyed to the petitioners on 18.6.2010. The petitioners preferred appeal against that order to the competent authority, which has been adjourned sine die on 21.4.2014 to come up after the decision of the present writ petition.

Challenging the acquisition, learned counsel for the petitioners submitted that the land of number of other landowners, which was acquired vide same notification, was released from acquisition after they were granted change of land use permission, however, the petitioners have been discriminated. As per the site plan produced by the respondents, major part of the land of the petitioners falls in the 45 meters wide road, however, some part of the land falls in plot no. 14. In case the petitioners can be given land in exchange in that area, the petitioners would be satisfied and will have no objection to the acquisition of their land required for construction of road. The petitioners will also pay requisite development charges, if asked for.

On the other hand, learned counsel for the State submitted that there were number of deficiencies in the application filed by the petitioners

for change of land use. Despite repeated requests, the same were not complied with. When the petitioners had applied for CLU, the land was located on 16½ feet *rasta*, which was not sufficient for construction of a godown. Besides this, the petitioners had failed to submit a comprehensive project report along with supporting documents showing their financial capacity, land utilization plan, etc. The requisite conditions having not been complied with till such time the notification under Section 4 of the Act had been issued, the application was liable to be rejected. In fact, the petitioners were satisfied with the rejection of application for grant of change of land use on 8.6.2010 conveyed to the petitioners on 18.6.2010, however, they preferred belated appeal in the year 2013. It has been kept pending by the Appellate Authority to await the decision of the present writ petition. Major part of the land is required for infrastructure purpose, namely, for roads or green belt. Even the writ petition is also belated as the award by the Collector was announced on 8.2.2013, but till date the same has not been produced on record by the petitioners. The petitioners very well knew the date of announcement of award as the writ petition was filed in this Court on 7.2.2013, a day prior to the announcement of the award. The plea of discrimination is not made out even as the land owned by the other persons, to whom the licenses have been granted, have also been acquired wherever the same was required for road or any other public purpose. A small portion of land of the petitioners forming part of plot no. 14 if released, will disturb the size of the plot, as a consequence land on both sides of that portion cannot be used for any purpose. It was further submitted that even if change of land use permission is granted and the land is required, the same can very

well be acquired.

It was further submitted that on acquisition of land, the landowners can apply for allotment of a plot in terms of Rehabilitation and Resettlement Policy for the oustees. The petitioners can very well apply in terms of that policy, if eligible, their case will be considered and final decision will be taken thereon. No case is made out for setting aside the acquisition of land.

Heard learned counsel for the parties and perused the paper book.

The petitioners herein owned 30 kanals 4 marlas of land. On 31.10.2008, they applied for issuance of change of land use permission, however, the same could not be granted to the petitioners as the requisite documents were not furnished by them, till such time the notification under Section 4 of the Act was issued on 5.2.2010. The objections on account of which CLU permission of the petitioners was rejected were that the proposed site was approachable only from 16½ feet wide revenue *rasta*, which was inadequate; a comprehensive project report along with the supporting documents, financial capacity to execute the project, land utilization plan, etc. had not been furnished. As during the pendency of the application filed by the petitioners, notification under Section 4 of the Act was issued on 5.2.2010, the application of the petitioners was rejected. The rejection was conveyed on 18.6.2010. The petitioners being satisfied did not challenge the same for three years as the appeal was filed only in the year 2013. It has been now kept pending to await the decision of the present writ petition.

As per the site plan produced in Court, major part of the land of the petitioners is required for road and green belt. It is only small portion of land which falls in plot no. 14. Though learned counsel for the petitioners sought to argue, that the land which is not required for infrastructure development may be left out from acquisition so as to enable the petitioners to apply for change of land use permission for that small portion of land, however, we do not find any merit in the submissions made for the reason that the small portion of land owned by the petitioners which is not required for road or green belt, in fact, forms part of plot no. 14, measuring 1.29 acres. If a small portion of land owned by the petitioners just in between that plot is left out of acquisition, the size of the entire plot will be disturbed and it will be of no use.

Even the plea of discrimination is also not made out for the reason that part of the land owned by M/s Umang Leasing & Credit Company to whom change of land use permission has been granted, was also acquired wherever required for road or other infrastructure.

As submitted by learned counsel for the State, in case the petitioners fulfill the conditions laid down in Rehabilitation and Resettlement Policy for oustees, they can apply for allotment of a plot and their application shall be considered.

In our opinion, there is no merit in the present writ petition and the same deserves to be dismissed. Ordered accordingly. However, in case the petitioners apply for allotment of plot in terms of Rehabilitation and Resettlement Policy for oustees and fulfill the conditions laid down therein,

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their application shall be considered within three months from the date of receipt thereof.

(Rajesh Bindal)
Judge

19.7.2017
vs

(Gurvinder Singh Gill)
Judge

Whether speaking/ reasoned
Whether Reportable

Yes/No
Yes/No