

CWP No. 28346 of 2013

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

CWP No. 28346 of 2013 (O&M)

Date of decision: 6.11.2017

Dushyant and others

.. Petitioners

vs

State of Haryana and others

.. Respondents

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

Present: Mr. Sudhir Aggarwal, Advocate, for the petitioners.

Mr. Ankur Mittal, Additional Advocate, General, Haryana and
Mr. Manoj Dhankhar, Assistant Advocate General, Haryana.

Ms. Manjit Saini, Advocate for
Mr. Sudeep Mahajan, Advocate, for respondent no. 2.

Rajesh Bindal, J.

Writ petition qua petitioner no. 1- Dushyant was dismissed as
withdrawn vide order dated 20.12.2013.

The petitioners have approached this court challenging the
acquisition of land owned by them, where notification under Sections 4 and
6 of the land Acquisition Act, 1894 (for short, the 1894 Act') were issued
on 19.1.2012 and 20.1.2013, respectively.

Learned counsel for the petitioners submitted that after the
notification under Section 4 of the 1894 Act was issued, the petitioners filed
objections claiming that the land in question was sought to be acquired

earlier also but was released from acquisition. The petitioners had raised construction on the plots purchased by them. Number of plots on which construction had been raised, were released from acquisition but the petitioners were discriminated. The objections were rejected without consideration. Notification under Section 6 of the 1894 Act, was issued on 20.1.2013. The petitioners filed CWP No. 4764 of 2013, challenging the acquisition, which was disposed of by this court vide order dated 11.3.2013, directing the official respondents to re-consider the claim made by the petitioners that the plots already constructed were sought to be acquired whereas the some were released in the cases of other similarly situated persons. The claim was re-considered by the Director General, Urban Estate, Haryana and recommendations were made for exclusion of certain portions on which constructions were existing at the time of issuance of notification under Section 4 of the 1894 Act, from acquisition. The petitioners were still discriminated. Hence, the present writ petition has been filed.

It was further submitted that vide order dated 28.7.2016, while referring to letter dated 23.11.2015, from the Chief Administrator, HUDA, to the Director General, Town and Country Planning, Haryana, where recommendations had been made for dropping the acquisition, except for the area required for laying of roads and service lane, affidavit was to be filed regarding the final decision taken thereon. Despite the aforesaid order, now the decision is that the land cannot be released from acquisition. It was change of view, which was not permissible.

On the other hand, learned counsel for the State submitted that vide notification dated 19.1.2012 a small portion of 2.21 acres of land was

notified for acquisition. It was the areas which were left out pockets in Sector 2, Bahadurgarh for which the land was acquired way back in the year 1995 (Section 4 notification dated 26.5.1995). Entire sector is already developed. In the case in hand, award is yet to be announced as there was interim stay. He further submitted that wherever constructions were existing at the time of issuance of notification under Section 4 of the 1894 Act, the matter was reconsidered in terms of directions issued by this Court and those portions of land were left out from acquisition. Though it was done in the case of petitioner nos. 3, 4, 8, 9 and 11, but still they filed the writ petition which has been withdrawn only by filing the application now. The recommendations made by the Chief Administrator, HUDA, for acquisition of land which was lying vacant at the time of issuance of notification under Section 4 of the 1894 Act, has been approved by the Government on 10.1.2017. The same was even conveyed to the petitioners.

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

The undisputed facts on record are that the acquisition in the present case has been made of small portion of land measuring 2.21 acres, which was left out portion of the acquisition of land carried out earlier for development as Sector-2, Bahadurgarh. Earlier notification for acquisition of land for Sector-2, Bahadurgarh, was issued under Section 4 of the 1894 Act on 26.5.1995. The petitioners pleaded that they filed objections under Section 5-A of the 1894 Act claiming construction on the land proposed to be acquired and without objectively considering the same, notification under Section 6 of the 1894 Act was issued. The same was challenged by filing CWP No. 4764 of 2013. The writ petition was disposed on 11.3.2013,

noticing the aforesaid contention raised by the petitioners at that time. The matter was remitted back to the authorities for re-consideration regarding plea of construction raised before issuance of notification under Section 4 of the 1894 Act. The matter was re-considered. Vide order dated 22.7.2013, the Director General of Urban Estates found that there were residential houses existing in the case of five petitioners, whereas in the case of one petitioner, temple was already constructed. Those areas were recommended for release. Despite the aforesaid order, all the petitioners again filed writ petition in this Court challenging the order passed by the Director General, Urban Estate. On the very first date of hearing, petitioner no.1, whose land was recommended to be released from acquisition, withdrew the writ petition and notice was issued qua petitioner nos.2 to 19. Though the petitioners claimed that they had raised construction before issuance of notification under Section 4 of the 1894 Act, however, as per the report of the Collector, inhabited construction existed only in the case of petitioner nos. 1, 3, 4, 8, 9 and 11. In rest of the cases, it was merely some dilapidated boundary walls. The same were not recommended for release. Petitioner nos. 3, 4, 8, 9 and 11 in whose cases vide impugned order, recommendations were made for release of land from acquisition, still filed the present writ petition and the same has been withdrawn only by filing Civil Misc. No. 15694-CWP of 2017, which was allowed vide a separate order passed today. Award is yet to be announced by the Collector.

The plea raised by the petitioners that they have been discriminated is not made out, as in terms of the record there was no inhabitable construction on the plots/ land owned by the petitioners, which could be considered for release. Once the plea of discrimination is not made

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out, we do not find any reason to interfere in the present writ petition. The same is accordingly dismissed.

(Rajesh Bindal)
Judge

6.11.2017
vs

(Gurvinder Singh Gill)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No