

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.3219 of 2016.

Date of Decision: February 26, 2018

Krishna Devi

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.

HON'BLE MR.JUSTICE SHEKHER DHAWAN.

Present: Mr.Gaurav Singla, Advocate, for the petitioner.

Mr.Ankur Mittal, Additional AG, Haryana.

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Surya Kant, J. (Oral)

The grievance of the petitioner in the instant writ petition is against acquisition of her land measuring 2 kanal 5 marla 6 Sirsai which is 411/8532 share out of total land measuring 47 kanal 8 marla, comprising of Khewat/Khata No.14/28/30 situated within the revenue estate of village Khairpur, Hadbast No.79, Tehsil and District Sirsa. The above-mentioned land was part of the acquisition carried out by State of Haryana vide notifications dated 15.01.2008 and 14.01.2009 issued under Sections 4 & 6 of the Land Acquisition Act, 1894, respectively, for the development of residential Sectors 21 and 22-Part, Urban Estate, Sirsa.

[2] The petitioner filed objections under Section 5-A of the Act and has averred that she had constructed a residential house on the site well before issuance of Section-4 notification. Her objections, however, did not find favour and her land was included in the Award passed on 12.01.2011.

[3] It is true that the instant writ petition has been filed by the petitioner in the beginning of year 2016 and there is as such delay on her part in questioning the acquisition. However, in view of plea taken by the petitioner, the delay cannot come in her way. It is averred that some properties, constructed or otherwise, adjoining to her land have been

land of private builders to whom CLU/licences have been granted, have also been later on released. The details of the released properties have been depicted in the lay-out plan of Sectors 21 and 22-Part, Sirsa, which is appended as Annexure P-10. The petitioner has further averred that as soon as she came to know about the release of these properties, she made a representation. She alleges discrimination and claims parity with those who are the beneficiaries of exemption from acquisition.

[4] Learned State counsel, on the other hand, maintains that the instances relied upon by the petitioner are of the years 2010-11, i.e., before passing the Award. He further avers that no construction was found at the time when survey was conducted before issuance of Section-4 notification and as such the petitioner cannot claim parity.

[5] Learned counsel for the petitioner counters the above-stated plea as he relies upon the information sent by the authorities including the District Town Planner in a prescribed format (P-5) where it is acknowledged that “Yes. Construction made before Section-4.....”

[6] We have heard learned counsel for the parties at a considerable length and gone through the record.

[7] Though it may be difficult for this Court to form a definite opinion whether the construction raised by the petitioner, as depicted in the photographs, was in existence before issuance of Section-4 notification, nevertheless, one of the official documents on record does support her claim in this regard. We are thus of the view that a deeper fact-finding enquiry is required to be conducted by the Land Acquisition Collector to determine as to whether or not petitioner had raised the construction before issuance of Section-4 notification? There is no gain saying that in a case where an

exappropriated owner has constructed residential house before issuance of Section-4 notification and his land is sought to be acquired for a residential sector, such constructed area deserves to be exempted from acquisition in terms of the Haryana Government Policy.

[8] Similarly, the plea of discrimination raised by the petitioner requires consideration at the hands of the respondent-authorities. If properties of similarly placed persons located in the same area have been subsequently released, the petitioner is well justified in seeking similar treatment. The respondents ought to have considered the petitioner's representation on merits and taken a reasoned decision in this regard.

[9] In the light of the above discussion, the instant writ petition is disposed of with a direction to the Land Acquisition Collector, Hisar to hold a fact-finding enquiry and consider the desirability of releasing the petitioner's land fully or partially keeping in view the instances relied upon by her. The Land Acquisition Collector shall submit his report to the State Government within a period of three months from the date of receiving a certified copy of this order, whereupon the Competent Authority in the State Government shall take final decision within two months thereafter. Till then *status-quo* re: possession of the residential house be maintained.

[SURYA KANT]
JUDGE

February 26, 2018

mohinder

Whether speaking/reasoned
Whether Reportable

:
:

[SHEKHER DHAWAN]
JUDGE

Yes/No
Yes/No