

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

C. W.P. No.14772 of 2019

Date of Decision:- 26.08.2019

Mohinder Yadav

....Petitioner

vs.

State of Haryana and others

....Respondents

**CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present:- Mr. Vijay Pal, Advocate,
for the petitioner.

SUDHIR MITTAL, J.

The petitioner alleges to be co-owner of land measuring 16 kanal, 9 marlas situated in the revenue estate of village Kadipur, Tehsil and District Gurugram. The said land was acquired vide Notification dated 8.3.1989 issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') and Notification dated 7.3.1990 under Section 6 of the Act. Award No.16 dated 18.3.1991 and award No.11 dated 5.3.1992 were passed in respect of the acquisition. Through the present writ petition, the petitioner seeks quashing of the acquisition proceedings and for the issuance of appropriate directions to the respondents to release the land of the petitioner, primarily in view of the fact that land on three sides of the land of the petitioner already stands released. Order dated 14.5.2014 passed by the Secretary-cum-Director General, Urban Estate Department, Haryana,

is also sought to be quashed.

2. The predecessor-in-interest of the petitioner and the proforma respondents, namely, Kishan Chand son of Mohan was allegedly owner of 249/329 share in the land measuring 16 kanal and 9 marlas. He allegedly raised construction in the year 1967 on a large part of the said land. After issuance of notification dated 8.3.1989 under Section 4 of the Act, said Kishan Chand filed objections under Section 5-A of the Act, but despite the same, notification dated 7.3.1990 was issued under Section 6 of the Act. Some co-owners of Kishan Chand challenged the acquisition vide CWP No.14468 of 1990 and an interim order staying their dispossession was passed therein. It appears that nine years later, on 24.5.1999, the petitioner and the proforma respondents filed an application for impleadment in the said writ petition. On 27.7.1999, the writ petition namely CWP No.14468 of 1990 filed by the co-sharers of the petitioner was dismissed as withdrawn and the petitioner and proforma respondents were given the liberty to establish their independent rights in an appropriate forum while dismissing the application for impleadment. Consequently, CWP No.13277 of 1999 was filed and vide order dated 17.09.1999, this Court stayed dispossession of the petitioners therein. Finally, vide order dated 03.10.2013, CWP No.13277 of 1999 was disposed of with direction to reconsider whether any public purpose would be achieved by retaining the land of the petitioner keeping in view the fact that land on three sides of the land of the petitioner already stood released. Thereafter, the District Town Planner, Gurugram submitted a report dated 13.02.2014 *inter alia* stating that no planning has been done in respect of the land of the petitioner as stay of dispossession had been granted by this Court and that land on three sides stood released and there is a sector dividing road on the fourth side. Despite the said report, the

Secretary-cum-Director General, Urban Estate Department, Haryana passed order dated 14.05.2014 refusing the release of land of the petitioner. This led to filing of CWP No.24804 of 2014 on 2.12.2014. A representation dated 24.2.2015 was submitted by the petitioner to the Hon'ble Chief Minister, Haryana, requesting release of his land whereupon report dated 10.6.2015 (Annexure P-16) was submitted by the District Town Planner, Gurugram to Administrator, Haryana Urban Development Authority, *inter alia*, stating that the land of the petitioner does not affect any planning/use of the sector. The petitioner further alleges that CWP No.24804 of 2014 was mistakenly withdrawn by his counsel on 20.12.2017 and an application was filed for its restoration. Vide order dated 8.3.2019, instead of restoring the said writ petition, liberty was granted to the petitioner to file a fresh writ petition and consequently, the present writ petition has been instituted.

3. Learned counsel for the petitioner submits that order dated 14.5.2014 is illegal and deserves to be quashed because the land of the petitioner cannot be utilized for the purpose for which it was acquired as is evident from report dated 13.2.2014 of the District Town Planner, Gurugram, which unequivocally states that land on three sides of the land of the petitioner stands released and no planning has been done for the land of the petitioner. Report dated 10.6.2015 of the District Town Planner, Gurugram, strengthens the case of the petitioner as it states that the land of the petitioner does not affect the planning/use of the land of the sector. Since, the land on three sides of the land of the petitioner already stands released and release of the land of the petitioner is not going to affect the planning/lay out of the concerned sector, the same should be released. The impugned order dated 14.5.2014 (Annexure P-13) is perverse and deserves to be quashed.

4. We have carefully perused the impugned order dated 14.5.2014.

The operative part thereof is as follows:-

“ 3. Thus in compliance of the order of Hon'ble High Court the case of the petitioners has been reconsidered. Major part of the land is lying vacant because at the site only one room with tin roof has been constructed and the petitioners are not using it for own residential purpose. HUDA can gainfully utilize this piece of land for notified public purpose ie. Commercial use as it is abutting sector dividing road of Sector 10-10A and the planable size of more than 1.5 acres. Therefore, the request of the petitioners to release the land does not get covered under the land release policy dated 26.10.2007 and is dated 24.01.2011 cannot be considered and the same is declined. C.A. HUDA is directed to take action immediately for allotting residential plot to the petitioners' as per the R & R policy in compliance with the orders of Hon'ble High Court. The petitioners are also informed.”

5. The reason for refusing the release of the land of the petitioner is that the site is lying vacant and is not being used for residential purposes and that HUDA can gainfully utilize this piece of land measuring about 1.5 acres for commercial purposes as the land is abutting the sector dividing road.

6. The aforementioned reasoning does not suffer from any infirmity. Report dated 13.2.2014 submitted by the District Town Planner,

Gurugram specifically mentions as follows:-

“Since, this land is slightly more than 1.5 acres and is situated on the Gurugram Pataudi Road, hence it could be used for commercial purpose.”

7. It may be that release of the land will not affect the planning of the sector concerned but the land can be put to public use by developing it for commercial purposes. The area is large enough for commercial exploitation and just because land on three sides of the land of the petitioner has been released, it may not be said that the land of the petitioner is not suitable for the public purpose for which it was acquired.

8. For the aforementioned reasons, we do not find any merit in the present writ petition and the same is dismissed.

(DAYA CHAUDHARY)
JUDGE

(SUDHIR MITTAL)
JUDGE

August 26, 2019

poonam

Whether speaking/reasoned

Yes

Whether reportable

Yes