

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

**CWP No.14704 of 2015 (O&M)
Date of decision : 24.10.2019**

Lal Chand Lohia and others

..... Petitioners

VERSUS

State of Haryana and others

..... Respondents

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

Present: Ms. Sangeeta Kumari, Advocate, for the petitioners.

Mr. Ankur Mittal, Addl. AG, Haryana

Mr. Deepak Balyan, Advocate, for respondent No.2.

Mr. Jagjot Singh, Advocate for

Mr. Kunal Dawar, Advocate, for respondent No.4.

SUDHIR MITTAL, J.

The petitioners are aggrieved by the acquisition of their land and pray for quashing the notifications issued for acquisition and also directions to restore the vacant possession of their land.

The land of the petitioners is situate in village Sikandarpur Ghosi, Tehsil & District, Gurgaon. It is averred that the petitioners are owner in possession of 100 sq. yards each and such plots were allotted to

them vide allotment letter dated 8.12.1976, being landless labourers. The plots were allotted for the purposes of raising a residential house only, whereupon, their respective residential houses had been constructed and were in existence on the date of issuance of respective notifications under the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act'). Notification dated 24.11.2006, was issued under Section 4 of the Act and Section 17 of the Act, was invoked. Thus, filing of objections under Section 5-A of the Act was dispensed with and this was followed by declaration dated 27.11.2006, under Section 6 of the Act. The purpose of acquisition was development and utilization of the land for alignment of the Delhi Metro Rail Corporation Project in Gurgaon as per the development plan. Award dated 25.1.2007 was passed in respect of 11.56 acres of land comprised in village Sikandarpur Ghosi and Rapat No.6 of even date was entered regarding taking over of possession. The petitioners preferred CWP No.1314 of 2007 inter alia on the grounds of wrongful invocation of the urgency provisions of the Act and the publication of the notifications not being in accordance with the provisions of the Act. The writ petition was dismissed vide judgment dated 18.5.2007 and Special Leave Petition against the said judgment was also dismissed. The petitioners preferred a review application, which also came to be dismissed on 30.1.2009. Vide letter dated 23.6.2009, the Administrator, Haryana Urban Development Authority (for short 'HUDA'), Gurgaon, communicated the approval of the Chief Administrator, HUDA for allotment of 02 marlas plots in Sector 42, Gurgaon, which resulted in issuance of allotment letters dated 21.1.2010.

The petitioners, meanwhile, preferred CWP No.16625 of 2009 seeking direction for allotment of plots as oustees. This writ petition was disposed of vide order dated 4.11.2009, granting liberty to the petitioners to file a detailed representation for the purpose. It is apparent that the filing of the writ petition was, in fact, not necessary as letters of allotment had already been issued. It appears that thereafter, the petitioners sought some information from the office of the District Town Planner, Gurgaon, under the Right to Information Act, 2005 (for short 'the RTI Act') and information was supplied vide letter dated 14.9.2010, according to which the land of khasra No.416 was planned for setting up of a medical college. It is pertinent to note that the acquired land of the petitioners was also situate in khasra No.416. Thereafter, information was sought from the Delhi Metro Rail Corporation (for short 'the DMRC'), which supplied the information vide letter dated 5.10.2010, according to which the DMRC had not prepared any plan for khasra No.416. Thereafter also, the petitioners kept on seeking one information or the other from the authorities concerned and ultimately, preferred the present writ petition in the year 2015 once again seeking quashing of the notifications issued under the Act and also for a declaration under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013 (for short 'the 2013 Act'). The writ petition was dismissed vide order dated 13.8.2015 and a perusal of the said order reveals that the only argument raised was that the public purpose of acquisition had been changed to user of the land for setting up of a medical college. This order was challenged through a Special Leave

Petition in which leave was granted and the petition was converted into Civil Appeal No.513 of 2016. Order dated 13.8.2015, was set aside and the matter was remanded for a fresh decision as the argument raised was that a medical college cannot be set up in 1000 sq. yards of land, which was the area of the petitioners that had been acquired. After remand an application for amendment was filed, which was allowed vide order dated 15.7.2016. The prayer clause was amended to confine the challenge to quashing of the notifications under Section 4 and 6 of the Act as the public purpose had been changed for setting up of a medical college which purpose could not be achieved as the land of the petitioners was inadequate. Mala fides have also been alleged. Thus, we are seized of the matter. With reference to the written statement filed on behalf of respondent No.2-HUDA and affidavit dated 19.9.2019 of Sh. Chander Shekhar Khare, Administrator, HSVP, Gurugram, learned counsel for the petitioners has argued that initially, the public purpose of the acquisition was for the alignment of the DMRC Project, but the stand of the State/HUDA authorities has kept on wavering. In the written statement of HUDA, it has been stated that land is required for setting up of a 66 KVA power sub station, whereas in the affidavit dated 19.9.2019, it has been stated that the land is not required for the power sub station, but is to be utilized for the green belt along Gurugram-Mehrauli road. The green belt has been reserved for future road widening and laying down services whenever required. Thus, it has been argued that the land has been acquired with mala fide intention of handing it over to private builders.

This is apparent from the fact that a five star hotel is situated in the

vicinity and large commercial complexes have also been established in the area. Such mala fide exercise of power by the State cannot be sustained especially where landless labourers have been uprooted from their residential accommodation on account of the acquisition. It is further argued that the area of the land of the petitioners is only 1000 sq. yards and no medical college can be set up in this area. This also substantiates the mala fides involved in the present case.

Learned counsel for the respondents, however, submits that no mala fides are involved in the present case. The land was acquired for alignment of the DMRC Project, but the alignment was shifted due to certain technical considerations. By then, the award had already been passed and possession had been taken. Since, the land had vested in the acquiring authority free from all encumbrances, a request received from Haryana Vidyut Prasaran Nigam Limited (for short 'the HVPNL') was examined for the purposes of setting up of a 66 KVA sub station. However, the proposal could not be finalized and presently, the land has been reserved for a green belt and future widening of the Gurugram-Mehrauli road. It is not as if the public purpose had been changed in a mala fide manner as suggested by the petitioners. Once, the acquired land had vested in the acquiring authority, free from all encumbrances, the acquiring authority is at liberty to utilize the same as deemed fit and the land owners cannot object to such utilization. Further, it is incorrect that the land in dispute is required for setting up of a medical college. That may have been the purpose as per the draft development plan and this is revealed from the letter dated 14.9.2010. In the final development plan,

the land in dispute was earmarked for the alignment of the DMRC and thus, averment of the petitioners that a medical college is being set up on the land of the petitioners is patently incorrect. It is further stated that challenge to the acquisition process has become final with dismissal of CWP No.1314 of 2007 and the Special Leave Petition preferred against the same. Review application has also been dismissed and thus, the petitioners have no locus to maintain the second petition.

Since, the matter has been remanded by the Supreme Court, it would be appropriate to reproduce the operative part of the remand order dated 22.1.2016, which is as under:-

‘It has also been submitted that having regard to the size of the land which is only around 1000 sq. yards, no medical college can be established. The appellants were given small plots for rehabilitation and since this aspect does not appear to have been gone into by the High Court, we set aside the impugned order and remit the matter to the High Court. The civil writ petition is restored to its original number. The High Court shall re-examine the petition and take a decision afresh.’

The above has to be read in the context of order dated 13.8.2015, whereby the present writ petition was dismissed on the ground that it was legal to change the public purpose. The operative part of order dated 13.8.2015 is also reproduced below:-

‘Since the land in dispute is being utilized for a college which is a public purpose, therefore, we do not find any ground to interfere in the present writ petition.’

From a conjoint reading of aforementioned orders, it becomes clear that the Supreme Court had remanded the case for consideration of the argument of the petitioners that 1000 sq. yards of land was insufficient for setting up of a medical college and that the petitioners had been deprived of 1000 sq. yards of land allotted for the purposes of rehabilitation.

So far as, the question regarding the land of the petitioners being insufficient for setting up a medical college is concerned, suffice to say that the record clearly reveals that the proposal to set up a medical college was part of the tentative lay out plan of Sector 26, Gurgaon. This is apparent from letter dated 14.9.2010, a copy of which is on record as Annexure P-7. The said letter had been issued by the State Public Information Officer-cum-District Town Planner, Gurgaon. It also states that presently, the land in dispute has been proposed for 30 meters wide green belt along both sides of the road from Delhi Border to village Sikandarpur Ghosi, Tehsil & District Gurgaon, in accordance with final development plan Gurgaon Manesar Plan Urban Complex 2012 AD. Clearly, reference to the proposal to set up a medical college is based on the tentative lay out plan of Sector 26, Gurgaon. Thus, the letter being relied upon by the petitioners itself falsifies their claim. Apart from this, the position is made clear by affidavit dated 19.9.2019 of Sh. Chander Shekhar Khare, Administrator, HSVP, Gurugram. Thus, the argument of learned counsel for the petitioners that the land in dispute is being shown as reserved for setting up of a medical college, although, the said public

purpose cannot be achieved considering the area of the acquired land, is rejected.

The record also reveals that after the acquisition, the petitioners have been allotted 02 marlas plots in Sector 42, Gurgaon, in lieu of their respective 100 sq. yards plots acquired. The allotment has been accepted and the money demanded has also been paid. Thus, the rehabilitation process is complete and the petitioners cannot raise the grievance that they have been deprived of land allotted to them by the Government for the purposes of rehabilitation. Moreover, acquired land can be utilized for any other public purpose also. Reference can be made to 'V. Chandrasekaran and Anr. Vs. Administrative Officer and Ors. 2012(12) SCC 133' and relevant part of this judgment is reproduced as under:-

'22. In view of the above, the law can be crystallized to mean, that once the land is acquired and it vests in the State, free from all encumbrances, it is not concern of the land owner, whether the land is being used for the purpose for which it was acquired or for any other purpose. He becomes persona non-grata once the land vests in the State. He has a right to only receive compensation for the same, unless the acquisition proceeding is itself challenged. The State neither has the requisite power to re-convey the land to the person interested, nor can such person claim any right of restitution on any ground, whatsoever, unless there is some statutory amendment to this effect.'

It is settled law that after passing of the award and taking over of possession, acquired land vests in the acquiring authority free from all encumbrances.

Thus, the argument of learned counsel for the petitioners that the user of the land in dispute for any other public purpose is illegal, has to be rejected.

Earlier, the petitioners had filed CWP No.1314 of 2007 seeking the relief of quashing of notifications issued under the Act as according to them the urgency provisions had been wrongly invoked and that the publication of the notifications had not been done in accordance with the statute. This writ petition was dismissed vide detailed judgment dated 18.5.2007 and the said judgment has become final inter-partes. Special Leave Petition against the judgment was dismissed and review petition was dismissed vide order dated 30.1.2009. Thus, the said judgment operates as res judicata so far as challenge to the acquisition on the ground of wrongful invocation of urgency provisions is concerned. We are thus, not inclined to go into submission of learned counsel for the petitioners that denial of opportunity to file objections under Section 5-A of the Act, is illegal. For this reason, we are not referring to the judgments cited by learned counsel for the petitioners.

Although, learned counsel for the petitioners has not raised any oral argument that possession of the plots allotted to them has not been given, an averment in this regard has been made in para No.9 of the petition.

If that is so, respondent-HUDA is directed to handover physical possession of the plots allotted to the petitioners within a period of four weeks from receipt of a certified copy of this order. The Chief Administrator, HUDA Gurugram, would also submit an explanation regarding the delay in handing over possession within the same period.

For the aforementioned reasons and with the observations hereinabove, the writ petition is dismissed.

(DAYA CHAUDHARY)
JUDGE

(SUDHIR MITTAL)
JUDGE

24.10.2019

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No