

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

Sr. No.234

**CWP No.10781 of 2018
Date of decision : 11.9.2019**

Azad Singh Duhan

..... Petitioner

VERSUS

State of Haryana and others

..... Respondents

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

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

Mr. Ankur Mittal, Addl. AG, Haryana

SUDHIR MITTAL, J.

The petitioner is aggrieved because although, the constructed area of his house has been released from acquisition but proportionate open space has not been left.

Vide Notification dated 7.7.2011, issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act'), land was notified for acquisition for Residential Sector-8, Jhajjar. About seven and half kanals of land owned by the petitioner was included therein inclusive of three kanal land on which the residential house of the petitioner was in existence. Accordingly, the petitioner submitted his objections dated 4.8.2011 under Section 5A of the Act requesting for release of his residential house. The Land Acquisition Collector recommended release of the constructed area in his report, but without taking the same into consideration, Notification dated 6.7.2012 was issued

under Section 6 of the Act. Aggrieved the petitioner challenged the acquisition through CWP No.2240 of 2014 titled as Azad Singh Vs. State of Haryana and others, which was disposed of vide order dated 6.2.2014 with a direction to the respondents therein to ascertain whether the house of the petitioner was in existence on the date of notification under Section 4 of the Act and in case it was so, an appropriate decision be taken in accordance with policy dated 26.10.2007. Although, the respondents were directed to pass appropriate order within four months from the date of receiving a certified copy of the order, the petitioner was constrained to move a representation dated 8.10.2014, requesting the Land Acquisition Officer to take an appropriate action in accordance with directions in the writ petition. Thereafter, order dated 28.1.2015 was passed by the Secretary-cum-Director General, Urban Estate Department, Haryana, directing release of 848 sq. mtr. of land (wrongly mentioned as 848 sq. yards in the copy of the order annexed as Annexure P-8). This comprised 424 sq. mtr. of the constructed area and equivalent open space to the extent of 424 sq. mtr. Still aggrieved, the petitioner submitted a representation dated 29.7.2015 to the State Government and no action having been taken thereupon the present writ petition has been filed.

In the written statement, it has been averred that a residential house with boundary wall existed at the spot on the date of issuance of notification under Section 4 of the Act and hence, the Government has decided to release the constructed area alongwith proportionate open space. The rest of the land of the petitioner affects the planning of the Sector in as much as it interferes with the widening of the 60 mtr. wide

Badli-Jhajjar, Road 30 mtr. green-belt, 12 mtr. wide service road and site of sewerage treatment plant of Sector-8, Jhajjar and cannot be released. Reference in this regard is made to lay out plan, which has been annexed as Annexure R-1.

Learned counsel for the petitioner submits that the petitioner has no objection in case land required for widening of the road, green-belt etc is acquired. Only a small portion measuring about 65 sq. mtrs. falls within the 30 mtr. wide green-belt and no other part of his land is required for any other essential service. The Government is at liberty to acquire the area of 65 sq. mtr., but the rest of the open space, apart from the open space already released, is essential for the enjoyment of his property by the petitioner as is evident from photographs annexed as Annexure P-12. Thus, only 65 sq. mtr. of the land of the petitioner falling within 30 mtr. wide green-belt may be acquired and the remaining land should released.

Learned State counsel has not been able to justify the acquisition of the open space apart from 65 sq. mtr. required for 30 mtr. wide green-belt.

A perusal of the site plan Annexure R-1 alongwith written statement filed on behalf of respondents No.1, 3, 4 and 5 makes it abundantly clear that only a small portion of the land of the petitioner is required for the 30 mtr. wide green-belt. Learned State counsel has confirmed that this area is approximately 65 sq. mtr. The rest of the open land is so integral to the constructed area that its release is essential for the proper enjoyment of the constructed area. Even, if it is acquired, it cannot be effectively utilized for the purpose of acquisition. Learned

counsel for both the parties have confirmed that the total land comprising the house of the petitioner is three kanals out of which two kanals have been released. Thus, we direct the respondents to release the remaining one kanal land as well subject however, to acquisition of an area measuring approximately 65 sq. mtrs. which is required for 30 mtr. wide green-belt. It is ordered accordingly and Notifications dated 7.7.2011 and 6.7.2012 pertaining to the land of the petitioner, which we have now released, are quashed.

The writ petition is partly allowed.

(DAYA CHAUDHARY)
JUDGE

(SUDHIR MITTAL)
JUDGE

11.9.2019

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No