

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

CWP No.2313 of 2016 (O & M)

Date of Decision: 01.11.2019

Om Kanwar and others

.....Petitioners

Versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present: Mr. V.B. Aggarwal, Advocate
for the petitioners.

Mr. Praveen Bhadu, Assistant Advocate General, Haryana
for respondents No. 1 to 5-State

Mr. Neeraj Gupta, Advocate
for respondent No.6.

Mr. Vishal Gupta, Advocate
for respondent No.7.

ARUN KUMAR TYAGI, J.

The petitioners have filed the present petition for issuance of a writ in the nature of certiorari to quash the notification No.LAC(G)NTLA-2013/1229 dated 06.02.2013 (**Annexure P-10**) under section 4 of the Land Acquisition Act, 1894 (for short the 1894 Act), the Notification No.LAC(G)NTLA-2013/ 2928 dated 27.12.2013 (**Annexure P-11**) under section 6 of the 1894 Act and notice dated 04.12.2015 (**Annexure P-12**) issued under section 9 of the 1894 Act and for issuance of a writ in the nature of mandamus directing the respondents not to interfere/demolish the residential houses of the petitioners over 100 square yards plots allotted/gifted to them.

The State of Haryana evolved policy called the Mahatma Gandhi Gramin Basti Yojna, as conveyed by the Financial Commissioner and Principal Secretary, Government of Haryana, Development and Panchayat Department to all the Deputy Commissioners in the State of Haryana vide letters No.S-1-2007/3864-84 dated 01.02.2008, S-1-2008/16743-62 dated 29.05.2008, S-1-2008/22073-92 dated 11.07.2008, S-1-2008/27469-489 dated 27.08.2008 and S-1-2008/30369-389 dated 25.09.2008, for allotment of 100 square yards plots to the persons belonging to the scheduled castes/backward classes/economically weaker sections residing in the villages for construction of their residential houses.

Respondent No.6-Gram Panchayat Dharampur, Block Gurgaon, Tehsil and District Gurgaon (which has been now re-named as Gurugram but for the sake of convenience is hereinafter referred to by its earlier name) passed resolution dated 18.02.2009 for gifting of 100 square yards plots as shown in rough site plan (**Annexure P-2**) under the Mahatma Gandhi Gramin Basti Yojna to the petitioners and other persons belonging to the scheduled castes/backward classes/economically weaker sections residing in the village for construction of their residential houses out of land comprised in rectangle No. 27, Khasra No. 6 (8-0), 7(8-0), 14(8-0) and 15(8-0) total measuring 32 Kanals 0 Marla situated within the revenue estate of the above said village which was owned by respondent No.6-Gram Panchayat as per jamabandi for the year 2008-2009 (**Annexure P-3**). On approval by Government, allotment letters were issued to the petitioners and other allottees by SDO (Civil) and respondent No.6-Gram Panchayat passed resolution No. 2 dated 08.08.2011 and

executed and got registered gift deeds under Section 5-A of the Punjab Village Common Lands (Regulation) Act, 1961 (for short “the 1961 Act”) in favour of the petitioners and other allottees and got the same registered by the Joint Sub-Registrar, Gurgaon in accordance with the provisions of the Registration Act, 1908. The mutations regarding the said gift deeds were also sanctioned in favour of the petitioners and other allottees.

Acquisition proceedings were initiated vide Notification No.LAC(G)NTLA-2013/1229 dated 06.02.2013 (**Annexure P-10**) under section 4 of the 1894 Act and Notification No.LAC(G)NTLA-2013/ 2928 dated 27.12.2013 (**Annexure P-11**) under section 6 of the 1894 Act regarding land comprised in rectangle No.27 Khasra no.15 min (4-6), 16 min (7-11), 17 min (0-18), 25 min (1-3), rectangle no.28 Khasra no.11 Min (1-10), 19//1 min (0-01), 20 min (6-11), 21min (0-19) and Khasra No. 199 (0-5) total measuring 2.95 acres situated within the revenue estate of village Darampur for the development and utilisation of land for 66 KVA and 220 KVA Electric Sub station sites in sectors 69 to 76 and 99 to 115 at Gurgaon as provided in the development plan by the Haryana Urban Development Authority (hereinafter referred to as HUDA) under the Haryana Urban Development Authority Act, 1977.

The petitioners have averred in the petition that some of the petitioners have constructed their houses and houses of some of the petitioners are under construction. If land in dispute is taken away from the petitioners the whole scheme would be frustrated and would become non-practicable. Other land was already reserved as per master plan for the above said power-houses. The Gram panchayat Dharampur is ready to give other land for the installation of said

powerhouses. The land is being acquired with mala fide intention at the instance of respondent No. 7 who has constructed residential apartments and basti of poor persons belonging to backward classes/scheduled castes/economically weaker sections/BPL card holders would damage, diminish and lower down the price of the flats in the apartments constructed by respondent No. 7. The petitioners submitted representation dated 08.12. 2015 to the respondents but to no effect. Hence the petition.

The writ petition was contested by the respondents in terms of their respective written statements.

Written statement was filed by Mr. Kulbir Singh Dhaka, Land Acquisition Collector, Urban Estate Department, Haryana, Gurgaon on behalf of respondents No. 1, 2 and 4 pleading that the acquisition proceedings are legal, valid, constitutional and fully in accordance with law. The acquisition is a bona fide one made by the State government for the public purpose. The petitioners were given opportunity to file objections under section 5A of the 1894 Act but they did not file any objections and therefore are not entitled to file the writ petition. The land in question was vacant at the time of award dated 24.12.2015 and possession of the acquired land was handed over to the representative of HUDA vide report No. 300 dated 24.12.2015. Out of the total compensation of Rs.23,32,64,456/-, compensation of Rs.18,63,15,001/-has been disbursed in the account of the landowners and amount of Rs.4,25,01,612/- is pending in the account of the Land Acquisition Collector, Gurgaon. No pick and choose policy has been adopted by the respondents. No legal right of the petitioners has been infringed by way of the present acquisition and no discrimination has

been made against the petitioners. The process of acquisition is transparent, fair, regular, legal, reasonable, non-discriminatory, based on uniform approach, principles of natural justice, equity, law and provisions contained in the 1894 Act.

Written statement was filed by T.L. Satyaparkash, IAS, Deputy Commissioner, Gurgaon on behalf of respondents No. 2, 3 and 5 pleading that only one of the beneficiary had constructed his house in acquired land who is not petitioner in the present writ petition. Only killa No. 27//15 has been acquired on which 16 plots had been gifted to the beneficiaries. Out of them only 9 petitioners No. 2, 6, 7, 8, 16, 18, 27, 35 and 42 have challenged the acquisition and rest of the 7 beneficiaries have not challenged the acquisition. Out of 43 petitioners the plots of 34 petitioners have not been acquired by the Government. Sh. Raj Kumar @ Raju, the then Sarpanch of Gram Panchayat Dharampur submitted undertaking that the Gram Panchayat is ready to give other land for the construction of the Sub Station but no resolution for this purpose was passed by the Gram Panchayat. The representations submitted by the petitioners were not traced in the office.

In its written statement filed by way of affidavit of Ved Parkash, Panch, respondent No. 6-Gram Panchayat pleaded that the Gram Panchayat passed resolution dated 18.02.2009 for allotment of 100 square yards plots and on approval by the authorities, resolution dated 08.08.2011 was passed by the Gram Panchayat for execution and registration of gift deeds. Gift deeds were executed and got registered and mutations were sanctioned in favour of the allottees.

The land was acquired for Power-houses vide notification dated

06.02.2013 under section 4 and notification dated 27.12. 2013 under section 6 of the 1894 Act and award had been passed on 24.12.2015 whereby the land vested in the State. The present writ petition has been filed after passing of the award. Plots No. 45 to 60 fall in the acquired area which can be adjusted against the vacant land in the reserved area.

Respondent No. 7 filed written statement pleading that the Electric Sub Stations were approved as per the Master Plan prepared for the Gurgaon Manesar Urban Complex 2021 AD and are being set up for providing essential services to the residents of sectors No. 69 to 76 and 99 to 155 in Gurgaon as per the Master plan. The acquisition of the land has not been made at the instance of respondent No. 7 just for the sake of residential apartments being constructed by it. Respondent No. 7 was granted license by the Department of Town & Country Planning Haryana Government vide license number 38 of 2010 and 57 of 2013 for setting up of residential group housing colony at village Dharampur in land measuring 120 Kanals 4 Marlas i.e. 15.025 acres. In pursuance to the notifications dated 06.12.2013 and 27.12.2013 Dakshin Haryana Bijli Vitran Nigam Ltd. had vide letter dated 24.12.2050 sanctioned the Load of 6673.25 KW for 7.304 MVA load against the ultimate load of 7358 KW for 8.175 MVA for Group Housing to M/s Experion Developers Private Limited Village Dharampur Gurgaon vide A&A No. 211442/BS (Domestic) dated 17.03.2015 under New Palam Vihar, Sub-Division Dakshin Haryana Bijli Vitran Nigam Ltd. Gurgaon. The acquisition is legal and for legitimate public purpose and will benefit the petitioners also by ensuring uninterrupted electricity supply. Mere execution of the gift

deeds in favour of the petitioners would not bar acquisition of the land. The petition has been filed at the behest of persons having vested interests who are indulging in property dealing.

We have heard learned Counsel for the parties and have perused the record.

Vide order dated 21.08.2017 passed by this Court, the State Government was directed to explore the possibility of constructing Power Sub-Station at the open space where Gram Panchayat is proposing to carve out alternative plots. The State Government was also directed to explore and identify any other site for the purpose of construction of Power Sub-Station. Relevant part of the order dated 21.08.2017 reads as under :-

“The land where the petitioners have been allotted 100 sq.yards plots under Mahatma Gandhi Gramin Basti Yojna is said to have been acquired by the State of Haryana for construction of Power Sub-Station. The land was earlier owned by the Gram Panchayat and after carving out plots, gift deeds have been executed in favour of the petitioners.

Learned counsel for the Gram Panchayat states that the Gram Panchayat is willing to carve out alternative plots at the same site out of the area which was earlier left as ‘open space’ after accommodating the affected plot holders. We have seen the site plan (R6/1).

It appears that if the ‘open space’ is also used for the plots, there will hardly be any open space left in between two rows of the houses and thus the living conditions of the residents would be severely affected.

Let the State Government explore the possibility of constructing Power Sub-Station at the open space where Gram Panchayat is proposing to carve out alternative plots. The State Government shall also explore to identify any other site for the purpose of construction of Power Sub-Station. Let a report to this effect be submitted on the next date of hearing. Interim orders to continue.”

In compliance with the above referred order of this Court, Status report cum affidavit dated 31.10.2017 of Sh.Vinay Partap Singh,

IAS, Deputy Commissioner, Gurugram was filed. The relevant paras of the same are reproduced as under:-

“2. That the fact of the case is that the Gram Panchayat Dhjarampur had allotted 100-150 sq. yards residential plots to the eligible persons under “Mahatma Gandhi Gramin Basti Yojna” in Mustil & Killa No.27//6, 7, 14 & 15. The land nearby the above mentioned plots has been acquired by the Govt. for the installation of Power Sub Station in the Village Dharampur and some portion of Mustil & Killa No.27//15 min (4-6) is also included in the acquired land. So, some of the beneficiaries of residential plots in Mustil & Killa No.27//15 min whose plots fall in acquired land have approached to the Hon’ble High Court by way of this civil writ petition for releasing their residential plots.

3. That the above titled Civil Writ Petition was fixed on 21-08-17 for hearing, the Learned State Counsel sought time to verify the status of land in dispute. The Hon’ble High Court has passed the following orders “**Let the State Government explore the possibility of constructing Power Sub Station at the open space where Gram Panchayat is proposing to carve out alternative plots. The State Government shall also explore to identify any other site for the purpose of construction of Power Sub State. Let a report to this effect be submitted on the next date of hearing.**”

4. That in compliance of the above order passed by the Hon’ble High Court the deponent has called a report from the Administrator HUDA, Gurugram and Executive Engineer, HVPN, Gurugram, vide letter no.2150-51 dated 04-10-2017. As per report dated 06-10-2017 sent by District Town Planner, Gurugram, vide Endst. No.9638-39 dated 06-10-2017 that there is no acquired land in and around section 108, Gurugram where the Electric Sub Station site can be proposed. Copy of letter no.9638-39 dated 06-10-2017 is annexed as **ANNEXURE R-1**. The District Town Planner, Gurugram further suggested seeking report from Estate Officer HUDA and Land Acquisition Officer, Gurugram. The answering deponent sought report from Estate Officer HUDA, Gurugram and the Estate Officer HUDA sent report vide letter no.8932 dated 06-10-2017 in which the Estate Officer stated that there is no alternate site/acquired land available in and around Sector-108, Gurugram. Copy of letter no.8932 dated 06-10-2017 is annexed as **ANNEXURE R-2**.

5. That the answering deponent also sought report from Block Development & Panchayat Officer, Gurugram. The Block Development & Panchayat Officer sent the report vide letter no.1939 dated 26-10-2017 in this office. As per report dated 26-10-2017 the Gram Panchayat Dharampur is ready to give alternative site for Power Sub Station in

Mustil No.8 and Killa No.12, 19, 20, 21 & 22 total measuring 33 kanal 03 marla land owned by Gram Panchayat Dharampur. Copy of letter no.1939 dated 26-10-2017 is annexed as **ANNEXURE R-3** (Colly.).

6. That thereafter the deponent vide letter no.2421 dated 26-10-2017 sought feasibility report from construction of Power Sub Station in the above mentioned land from Executive Engineer Haryana Vidhyut Prasaran Nigam Limited, Gurugram. The Executive Engineer, Gurugram has given a report vide letter no.11493/Est-1963 dated 27-10-2017 that the alternative land proposed by the Gram Panchayat is not suitable for the construction of Power Sub Station. Copy of letter no.11493/Est.-1963 dated 27-10-2017 is annexed as **ANNEXURE R-4.**"

Vide order dated 06.11.2017 this Court observed that the Committee of officials of the Haryana Vidhyut Prasaran Nigam Ltd., Gurugram did not assign any reason whatsoever as to how the site is unsuitable and directed the Executive Engineer C/W (T) Division No. 66 KV Sub Station, Gurugram to appear in the Court along with record to explain as to how the alternative site offered by the Gram Panchayat is unsuitable. For the sake of convenience relevant part of order dated 06.11.2017 is also reproduced as under :-

"On 21.08.2017, the State Government was directed to explore the possibility of constructing the Power Sub-Station at an alternative site proposed by Gram Panchayat so as to save 100 sq.yard plots carved out for the marginalized sections of society under the Mahatma Gandhi Gramin Basti Yojna from acquisition.

In deference to that order, learned State counsel has filed status report-cum-affidavit dated 31.10.2017 of Deputy Commissioner, Gurugram which is taken on record. The documents appended with the report reveals that the Gram Panchayat of village Dharampur vide resolution no.1 dated 23.10.2017 resolved to give land measuring 33 kanal 3 marla for construction of Power Sub-Station as an alternative site which was statedly visited by the Committee of officials of the Haryana Vidhyut Prasaran Nigam Ltd., Gurugram and the said Committee did not find the site "suitable for construction of Power Sub Station". Unfortunately, no reason whatsoever has been assigned as to how the site is unsuitable. The Executive Engineer C/W (T) Division No.66 KV Sub Station, Gurugram is directed to remain present in Court along with record to explain as to how the alternative site offered by the Gram

Panchayat is unsuitable. The Deputy Commissioner, Gurgaon shall ensure the presence of the above-stated Officer alongwith records.

List on 06.03.2018.

Interim order to continue.”

In compliance with above order Mr. Krishan Kumar Sharma, Executive Engineer, Civil Works (T) Divn. 66 K.V. Sub Station, HVPNL Gurugram filed affidavit dated 05.03.2018. It will be apposite to extract the relevant paras of the affidavit as under:-

“2. That the Committee comprising Executive Engineer, TS Division HVPNL, Gurugram, Executive Engineer Civil Works (T) Divn. HVPNL Gurugram, SDO Construction Sub Divn. Gurugram and AEE C/W Sub Divn. No.1 HVPNL, Gurugram had inspected the alternative spot offered by the Gram Panchayat, Dharampur for the construction of Power Sub Station. A copy of joint report of the Committee is annexed herewith as Annexure A-1.

3. That the site offered land is not suitable due to the following facts:-

i) The offered site has access of only 3 Karam rasta through the flats built by builders whereas the earlier proposed site had excess road of 75M. Width and more. Approach is not suitable for the access for heavy tractor trailers used for transportation of heavy electrical machinery required for construction and maintenance of Power House.

ii) The offered site is along the Najafgarh drain and remains water logged most of the time.

iii) The right of way for incoming and outgoing lines is not available for the site as it does not fall along the proposed sector roads. Installation of tower and Electricity poles are not feasible on the proposed site.

Thus, in view of the above observation, the alternative site offered by the Gram Panchayat, Dharampur is not suitable for the construction of alleged Power Sub Station.

3. That the way which leads to the site is very narrow and curved one upon which the long and heavy vehicles cannot be plied. Copies of the Map prepared by the Department as well as by the Revenue Authority are annexed herewith as Annexure A-2 and A-3.”

Hence, it is seen that Executive Engineer has cited three cogent reasons for not utilizing the alternative site suggested by this

Court.

In the present case the petitioners and other allottees were gifted 100 square yards plots out of land comprised in killa No.27//6, 7, 14 and 15 out of which only killa No.27//15 has been acquired in which 16 plots had been gifted to 16 beneficiaries out of whom only 9 beneficiaries impleaded as petitioners No.2, 6, 7, 8, 16, 18, 27, 35 and 42 challenged the acquisition and remaining 7 beneficiaries did not challenge the same. No legal right of the other petitioners, whose plots were not acquired by the impugned notifications, is infringed by the impugned acquisition.

As recorded in order dated 23.03.2018 of this Court, respondent no.6 expressed willingness to accommodate the petitioners and other similarly situated persons in the area immediately adjacent to the one that is being acquired by the State for construction of the electric sub-station.

Thus, on 16.05.2019, after hearing counsel for the parties, this court passed the following order :

“After hearing counsel for the parties, it transpires that the issue is extremely short. The petitioners can be very easily accommodated in the adjoining kila on the same rectangle earmarked for providing residential plots to the weaker sections of the society, while only 4 kanals and 6 marlas have been acquired/apportioned for construction of 220 KV Sub Station in 2.95 acres of land. The action cannot be said to be malafide by any stretch of imagination. The alternate suggested site already has been examined by a team of experts and rejected.

Counsel for the petitioners agrees if clearly demarcated plots in the adjoining kila numbers are provided, nothing more would survive for adjudication.

Counsel for the Gram Panchayat prays for a short accommodation to file the affidavit in terms of the order dated 28.05.2018 as also what has transpired in Court today.

List for further consideration on 29.05.2019.

To be taken up in the urgent list.”

In compliance with the above said order Gram Panchayat Village Dharampur filed affidavit dated 27.05.2019, paras no. 1 to 5 of which are reproduced as under :-

“1. That the present writ petition has been filed by the petitioners who are permanent residents of village Dharampur and belong to weaker section of the society. The scheme for allotment of plots to the eligible families of scheduled castes and poor families of other communities was made by the State Government dated 01.02.2008 for allotment of plots to the landless workers under the provisions of Mahatma Gandhi Gramin Basti Yojna. The plots were to be made available out of the Shamlat land of the village.

2. That the Gram Panchayat had reserved land out of the Shamlat land of the village for 100 sq. yds. Plots to be carved out of the land bearing Khasra No. 27//6, 7, 14, 15. After approval from the authorities, the gift deeds were registered to the allottees and the mutations were sanctioned for each of the allottees regarding a share of 30/5760 share in the total land reserved for this scheme. A list of the allottees with their plot nos. is annexed herewith as Annexure A-1.

3. That the Government of Haryana acquired the land for commissioning of 220 KV Electric Sub-Station site in 99 to 115 at Gurgaon and the land under the acquisition in village Dharampur is in mustil no. 27, killa no. 15 min (4-6), 16 min (7-11), 17 min (0-18), 25(1-3) and mustil no. 28, killa no. 11min (1-10), 19/1 min (0-9), 20 min (6-11), 21 min (0-19), Khasra No. 199 min (0-5). The award no. 40 was passed on 24.12.2015 and thus, the land vests in the State. This Civil Writ Petition has been filed after the passing of the award.

4. That the land in Mustil no. 27 killa no. 15 min is also under acquisition but the same had been gifted to some allottees under the Mahatma Gandhi Gramin Basti Yojna. There were total 71 plots allotted under the scheme and plot No. 45 to 60 fall in the acquired area, as per the site plan prepared at the time of allotment. The Gram Panchayat has proposed that as these plots no. 45 to 60 falling in the acquired area Mustil no. 27 killa no. 15 min can be adjusted against the vacant land in the same reserved area for this purpose in Mustil no. 27 killa no. 14 and thus, the allottees will get alternate plots. A proposed revised site plan has been prepared by the Gram Panchayat now and is annexed herewith as Annexure A-2. The area shown in red is the area under acquisition for sub-station and the area shown in the Green are the plots proposed to be allotted to these persons having plot no. 45 to 60. In this way, the site of the sub-station will not be disturbed and the allottees will get alternate plots.

5. That the development plan of the area shows that the plots allotted by the Gram Panchayat are at an advantageous site due to the falling on the Dwarka Express Way. A copy of the development of Sector 107 & 108 is annexed herewith as Annexure A-3. The area shown in red is the acquired land for the 220 KV Sub Station and land shown in Green is the allotted area for plots. It is relevant to mention here that the villagers will be the beneficiaries of this Sub Station when it is commissioned.
6. **That it is respectfully submitted that the proposal of providing alternate plots on the same site from the land reserved for this purpose by the Gram Panchayat may kindly be considered for the benefit of the poor families who have been allotted the plots under Mahatma Gandhi Gramin Basti Yojna for residential purposes.”**

In view of the affidavit filed by respondents No. 6- Gram Panchayat, Dharampur whose proposal is agreeable to the petitioners, the writ petition is disposed of with the directions that the petitioners No.2, 6, 7, 8, 16, 18, 27, 35 and 42 being allottees of plots out of land comprised in killa No.27//15 which was acquired by the impugned notifications be adjusted against the plots of the same number now allotted to them out of reserved vacant land comprised in killa No.27//14 as mentioned in the affidavit of respondent no.6-Gram Panchayat and shown in revised site plan (**Annexure A-2**) enclosed therewith.

(JASWANT SINGH)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

01.11.2019
Kavneet Singh

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No