

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

C.W.P. No.26567 of 2016

Date of Decision: 12th December,2019

Shyam Lal

...Petitioner

Versus

State of Haryana & Ors.

...Respondents

**CORAM: HON'BLE MRS.JUSTICE DAYA CHAUDHARY
HON'BLE MRS.JUSTICE MEENAKSHI I. MEHTA**

Present: Mr.G.S.Brar,Advocate,
for the petitioner.

Mr.Ankur Mittal, Addl.AG, Haryana.

MEENAKSHI I MEHTA

By way of this petition, the petitioner has sought the issuance of a writ in the nature of certiorari quashing the order dated 03.11.2015 (Annexure P-6) passed by respondent No.3 whereby the land to the extent of 210 sq. yards only has been released in his favour and he has also prayed for issuance of a writ in the nature of mandamus directing the respondents to release the land in his favour as per the policy/guidelines of the Land Acquisition Act, 1894 (hereinafter referred to as “the Act”).

2. Shorn and short of unnecessary details, the factual matrix as canvassed by the petitioner in the present petition, is that he is owner in possession to the extent of ½ share in the land comprised in Khewat No.1513, Khata No.2381, Rectangle No.36,

Killas No.1/2 (should have been mentioned as 7/2) and 14/1 measuring 7 Kanals 15 Marlas and has constructed shops as well as residential house in the same. The Haryana Urban Development Authority issued a notification under Section 4 of the Act on 21.05.2010 for acquiring the land for setting up residential and commercial Sector-10 in Dabwali. He preferred objections against the same under Section 5A of the Act while pleading that the construction existed over an area measuring 503 sq. yards out of the land of his share in the said land. Then, HUDA issued notification under Section 6 of the Act on 20.05.2011 but his land was not released as per the policy/guidelines formulated by it (HUDA) whereas, in the case of similarly placed land-owners, double the area of their constructed area had been released to them in accordance with the policy/guidelines.

3. The petitioner has further averred that in the list as issued by the Land Acquisition Office, his total constructed area has wrongly been shown as "503 sq.yards" instead of 1076 sq. yards. On 16.05.2013, he preferred a representation to the respondents with the prayer to release the land in his favour as per the relevant policy/guidelines but in vain. Then, he was constrained to prefer CWP No.11161 of 2014 in this Court seeking release of double the area of the total constructed acquired area and this petition was disposed of on 29.05.2014 while directing the respondents to verify his claim and to take appropriate decision in accordance with law or policy within a period of three months. However, the

respondents failed to comply with this order and hence, he initiated contempt proceedings against them and on 09.03.2015, he filed COCP No.716 of 2015 against them. Thereafter, instead of releasing double the area of 503 sq. yards, HUDA passed the impugned order regarding release of only 210 sq.yards land to him in contravention of the policy/guidelines as provided under the Act. Then on 17.11.2016, the said COCP was disposed of while granting him the liberty to avail remedy against the said order in accordance with law.

4. Respondents No.1 to 4, in their joint written statement, have contested the claim of the petitioner,inter-alia, on the grounds that there is no illegality in the acquisition proceedings and this writ petition is not maintainable. On merits, they have asserted that as per the report under Section 5A of the Act, the house of the petitioner existed over the area measuring 503 sq.yards in the said land at the time of issuance of the notification under Section 4 of the Act and the same had been released from acquisition after hearing him on his objections as filed under Section 5A of the Act and the remaining vacant area in the said land had been acquired vide Award No.2 dated 15.05.2013 and the possession of the same, alongwith the other acquired area, had been handed over to HUDA on 15.05.2013. An additional area measuring 210 sq. yards has also been released to the petitioner after examining his claim in compliance of the order dated 29.05.2014 passed by this Court in CWP No.11161 of 2014 and thus, the land measuring 713 sq.yards

(503+210), i.e., 1 Kanal 4 Marlas, falling in his share in the land comprised in Killa No.7/2 (2 Kanals 10 Marlas) stands released to him whereas, the land falling under his share in Killa No.14/1 measuring 2 Kanals 11 Marlas, is situated far away from the constructed area and is separated by 16.5' wide revenue rasta and has been acquired and is in possession of Estate Officer, HUDA and the petitioner has already received compensation in lieu of its acquisition. It is not possible to release open space equivalent to the constructed area on the ground floor which is actually 426 sq.yards, because adequate space, adjacent to the constructed area, is not available.

5. Respondent No.5, in its separate written statement, has also made more or less similar assertions to those as made by respondents No.1 to 4 in their written statement and has also specified that the petitioner was, in fact, owner of the land measuring 3 Kanals 18 Marlas being 153/314 share in the land measuring 7 Kanals 17 Marlas comprised in Khasra No.36, Killa nos. 7/1, 7/2 and 14/1 and out of this land, he had sold land measuring 2 marlas comprised in Killa No.7/1 to Lalit Kumar, Harbans Singh and Jeevan Kumar and was, thus, left with the land measuring 3 Kanals 16 Marlas in Killa Nos.7/2 min and 14/1 min, as shown in three pockets marked as 'A', 'B' and 'C' in the site plan Annexure R-1. Pocket 'C' is separated from Pockets 'A' and 'B' by 16.5 feet wide revenue rasta and falls in khasra No.14/1. In the survey report prepared by its office, the constructed area of the petitioner

had wrongly been recorded as 1076 sq.yards due to clerical/typographical error and on examination of this report by Senior Town Planner, this error was detected and on re-verification, the constructed area was found out to be 503 sq.yards. The entire area, falling under the share of the petitioner in Killa no.7/2, is 24 Marlas and the same has already been excluded/released from acquisition. The release of the land to the extent of double the area of the constructed portion, for light and ventilation purpose, is subject to availability of the space adjoining the constructed area and therefore, this writ petition deserves dismissal with costs.

6. After hearing learned counsel for both the parties and giving our thoughtful consideration to the arguments addressed by them, we are of the considered opinion that this petition is sans any merit because admittedly, the land belonging to the petitioner and comprised in Rectangle No.36 Killa nos.7/1, 7/2 and 14/1 was the part of the subject matter of the notification issued under Section 4 of the Act and the petitioner preferred objections qua the same under Section 5A of the Act and in view thereof, the land measuring 503 sq. yards, whereupon the construction existed at the time of issuance of this notification, was released from the acquisition. Thereafter in pursuance of the order dated 29.05.2014, as passed by this Court in CWP No.11161 of 2014, an additional area of 210 sq.yards has also been released in favour of the petitioner vide the impugned order, meaning thereby that in total, the land of the petitioner measuring 713 sq.yards stands released from

acquisition.

7. As categorically mentioned in the impugned order (Annexure P-6) itself, the petitioner sold 2 Marlas of the land, comprised in Killa no.7/1, out of the total land of his share measuring 3 Kanals 18 Marlas being 153/314 share in the land measuring 7 Kanals 17 Marlas comprised in Killas No.7/1, 7/2 and 14/1 and was, thus, left with his share in the land comprised in Killas No.7/2 min and 14/1 min to the extent of 3 Kanals 16 Marlas. As per Annexure R-1, i.e., the site plan showing the status of the site in COCP No.716 of 2015, Killa nos.7/2 and 14/1 are separated by revenue rasta measuring 16'-6" in width and Pockets 'A' & 'B', as shown therein are comprised in Killa no.7/2. It has been categorically explained in Para No.7 of the impugned order that the petitioner is the owner of 153/314 share (1 Kanal, 4 Marlas, i.e., 24 Marlas) out of the land comprised in Killa No.7/2 measuring 2 Kanals 10 Marlas. It has also been mentioned in Para No.6 therein that after hearing on the objections as preferred by the petitioner under Section 5A of the Act, 17 Marlas land was exempted from acquisition while issuing notification under Section 6 of the Act. The release of the remaining 7 Marlas of the land of his share has been recommended and approved by Government as mentioned in the said order. Thus, his entire share in the land comprised in Killa No.7/2 stands released/exempted and now, no more space falling to his share and adjoining his already released area, is available. The petitioner has not been able to precisely come

forward with any cogent reason/ground to show as to how the impugned order is arbitrary or illegal in any manner. Resultantly, it is explicit that the petitioner cannot claim the release of the land as prayed for by him.

8. As a sequel to the foregoing discussion, this petition being devoid of any merit, is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

12.12.2019

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Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.