

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

**1. CWP No.15978 of 2019 (O&M)
Date of decision: 09.01.2020**

**Carrier Air-Conditioning and Refrigeration Ltd.
..Petitioner**

Versus

**State of Haryana and others
..Respondents**

**2. CWP No.35637 of 2019
Carrier Airconditioning and Refrigeration Ltd.
..Petitioner**

Versus

**National Highways Authority of India and anr.
..Respondents**

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

Present: Mr. Vikas Behl, Sr. Advocate with
Mr. Abhishek Shivpuri, Advocate,
Mr. Nikhil Sabharwal, Advocate and
Mr. Vishal Sharma, Advocate
for the petitioner.

Mr. Ankur Mittal, Addl. AG, Haryana with
Mr. Pradeep Prakash Chahar, DAG, Haryana.

Ms. Amandeep Kaur, Advocate for
Mr. Deepak Balyan, Advocate
for respondent No.2-HUDA in CWP No.15978 of 2019.

Ms. Gunjan Sinha Jain, Advocate
for respondent No.4-NHAI in CWP No.15978 of 2019.

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Daya Chaudhary, J.

By this common judgment of ours, two cases bearing CWP Nos.15978 and 35637 of 2019 shall be disposed of as the issue involved in both the petitions is the same. However, for the sake of brevity, facts are being extracted from CWP No.15978 of 2019.

As per version of the petitioner, the factory has been functioning at the present location since the year 1986. It was established after taking all the necessary clearances, change of land use permission and sanction of building plans. Presently, approximately 1000 workmen are working and contributing about Rs. 500 crores to the exchequer by way of taxes. The petitioner has allegedly finalized plans for further expansion under 'Make in India' scheme. It is further alleged that the petitioner is a pioneer in bringing the latest technology in refrigeration and airconditioning to India and also for establishing research and development facilities.

The Haryana Government in the urban estates department issued a notification dated 07.08.2013 under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the 1894 Act') for acquisition of a big chunk of land for the alleged public purpose of development and utilization of land for Transport and Communication Zone, 90 meter wide V2(e) type road with 30 meters green belt on both sides (CPR), Open Space, portion of 30 meters wide green belt along NPR, portion of 60 meters wide green belt along NH-8 and clover leaf at the junction of V2(e) type road (CPR) with NH-8 at Gurgaon in accordance with the approved development plan. About 94.72 acres of land situated in

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village Narsingh Pur, HB No. 102 was also notified as part of the land proposed to be acquired. The factory of the petitioner is situated in village Narsingh Pur. The said notification was followed by a declaration under Section 6 of the said Act dated 05.08.2014 in respect of 79.57 acres of land of village Narsingh Pur, inclusive of small portion of the land the petitioner. Award dated 06.06.2016 was passed in respect of the land in dispute as well as rest of the land of village Narsingh Pur. Some other residents of village Narsingh Pur challenged the acquisition of their land vide CWP No.20068 of 2014 *inter alia* on the ground that construction was in existence as on the date of issuance of notification under Section 4 of 1894 Act. This Court, issued notice of motion and ordered status quo regarding possession. Thereafter, the matter came up on 12.12.2016, on which date the writ petition was rendered infructuous as learned State counsel informed the Court that the impugned land acquisition proceedings had been dropped. Some other persons whose land had also been acquired by virtue of the aforementioned notifications, challenged the same vide CWP No. 20069 of 2014. This writ petition was disposed of vide judgment dated 05.09.2017 by holding that the notification under Section 4 of the 1894 Act had lapsed qua the petitioners, as declaration under Section 6 of the 1894 Act had not been issued before repeal of the 1894 Act. From the record, it also appears that the Land Acquisition Officer, Urban Development Department, Haryana, Gurugram wrote a letter dated 03.04.2019 to the Executive Engineer HSVP, Division No. 2, Gurugram requesting him to give the assessment of the construction/property/trees existing on the acquired land so that a

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supplementary award may be passed in respect thereof and possession may be handed over to the Haryana Urban Development Authority (HUDA). The land comprised in Khasra No. 27//7/2, 8 of the petitioner is also mentioned therein, detail of construction existing in the Khasra No. being 'boundary wall'.

The present petition was filed for quashing of impugned notification dated 27.02.2018 (Annexure P-10) issued under Section 3-A of the National Highways Act, 1956 (for short 'the Act, 1956') and notification dated 18.07.2018 (Annexure P-11) issued under Section 3-D of the Act, 1956 by the National Highways Authority of India (for short 'the NHAI') and award dated 17.10.2018 passed by the Sub Divisional Officer (Civil)-cum-Competent Authority (Land Acquisition), Gurugram-I under Section 3-G(1) of the Act, 1956 stating to be an act of respondent being illegal, arbitrary, discriminatory, unjust and also violation of Article 14 of the Constitution of India as well as contrary to provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Settlement Act, 2013. A further prayer has also been made for issuance of direction to respondents to release the land of the petitioner from acquisition after conducting a fresh survey.

As per case of the petitioner, the land as well as the factory established on some portion of the land is subject matter of compulsory acquisition process after issuance of notification under Section 4 of the Act, 1894 for the public purpose i.e. for the development and utilization of land for transport and communication zone, 90 meter wide V2(e) type road with

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30 meter green belt on both sides (CPR), open space, portion of 30 meter wide green belt along NPR, portion of 60 meter wide green belt along NH-8 and clover leaf at the junction of V2(e) type road (CPR) with NH-8 at Gurgaon by the Haryana Urban Development Authority. By said notification, a total area of 94.72 acres was sought to be acquired of Village Narsinghpur, including the land of the petitioner. Thereafter notification under Section 6 of the Act, 1894 was issued on 05.08.2014. As per case of the petitioner, several parcels of lands belonging to different landowners were released from the acquisition and the case of the petitioner is also at par with those landowners. The acquisition of land of the petitioner upon which, the factory is in running condition, has been challenged by raising various arguments.

Subsequently, during pendency of writ petition, an application for amendment of writ petition was moved by impleading Sub Divisional Officer (Civil)-cum-Competent Authority (Land Acquisition), Gurugram-I, District Gurugram as party respondent No.5. There were negotiations between the parties for shifting of factory. It transpired during hearing of the case that the petitioner-company was keen in having reasonable time for shifting of machinery, so that the land could be vacated within the reasonable time. As per stand of NHAI, the compensation amount has already been deposited and writ petition filed subsequently was not maintainable. The acquisition has not been challenged by any other person and amount of compensation has also been received. Even petitioner-company did not file any objection whereas the ordinary persons filed

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objections. Although an argument has been raised by learned counsel for the petitioner that there was no reason to know as neither the factory had been shown to be in existence over the land in dispute nor numbers were correctly mentioned. Even the land in dispute belonging to the petitioner-company has been shown to be as agricultural and barren land. It could not be presumed that the land of the petitioner had been acquired.

Learned Senior counsel for the petitioner submits that no inspection, survey or assessment was ever done. Even no concerned official ever visited the premises of the petitioner to assess the value of the structure/building of the petitioner-company. The award passed by the concerned authority itself shows that no assessment/valuation report of structure was ever received from the Project Director, NHAI and the petitioner-company is entitled for release of land. Learned senior counsel further submits that by issuing defective notifications, the statutory rights of the petitioner-company have been taken away. Learned senior counsel also submits that before determining the amount of compensation by the competent authority, a public notice was required to be issued for inviting claims from the interested persons but it was also not done. There is violation of mandatory provisions regarding mode of payment. The amount so determined under Section 3-G of the Act, 1956 is mandatory to be deposited by the Central Government before taking possession of the land. Neither any amount was deposited by the Central Government with the Competent Authority nor the Competent Authority has determined the amount qua to land belonging to petitioner-company. Even in the

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supplementary award, no assessment/valuation of report of structure was given by the Project Director, NHAI. The land of the petitioner has been shown to be '*Gair Mumkin*' in notification issued under Section 3-A of the Act, 1956 and the same has been reflected as '*Barren Land*'. Without having any such assessment, the question of depositing of amount of compensation does not arise. It is also the argument of learned senior counsel for the petitioner that there cannot be two acquisitions of the same piece of land and it shows the arbitrary exercise of power, which is liable to be set-aside on this ground. The factory was in existence even prior to issuance of notification under Section 4 of the Act, 1894. As per policy, the factory structure raised upon the land in dispute should have been released. Learned senior counsel has also relied upon judgment rendered by this Court in ***Deepak Aggarwal and another vs. State of Haryana and others, 2018 (1) RCR (Civil) 161*** and other judgments in support of his arguments.

The submissions made by learned senior counsel for the petitioner have been opposed by learned State counsel as well as counsel appearing for HUDA and NHAI.

Mr. Ankur Mittal, learned State counsel submits that neither any objection was filed nor any stand was taken stating therein that the structure was there prior to issuance of notification. The petitioner could have claimed his right for release of land in case, any objection had been raised but no such objection was ever raised.

Similarly, learned counsel for NHAI has also vehemently opposed the submissions made by learned senior counsel for the petitioner

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on the ground that even the ordinary persons, whose land was acquired, filed objections and it cannot be said that the petitioner being educated was not aware about the proceedings. There was proper publication of the acquisition proceedings and a number of communications were there between the parties. There were talks of settlement regarding removal of structure from the land in dispute. The dispute was of the time as petitioner-company was asking for longer period and that request was not accepted. However, it was agreed to give a period of three months. Learned counsel for NHAI further submits that still reasonable time can be given if the petitioner-company is ready to relocate the fire hydrant system. Learned counsel for NHAI also submits that no stay was granted by this Court as well as by Hon'ble the Apex Court and all these arguments were raised before Hon'ble the Apex Court also. The petitioner has no right to raise same arguments, which have already been raised upto Hon'ble the Apex Court.

Heard arguments of learned counsel for the parties and we have also perused the documents available on the file.

During pendency of the writ petition, arguments were raised by counsel for the parties for grant of interim stay. The case was argued at length. A detailed speaking order was passed by considering the arguments raised by learned counsel for the parties and the application for interim stay was dismissed vide order dated 29.10.2019. The arguments, which have been raised now, were also considered at the time of hearing of the application. Admittedly, the award was passed on 17.10.2018 and after

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passing of award, the land had already been vested with NHAI. It is also not disputed that the amount of compensation has also been deposited and thereafter, the petitioner has no right to challenge the proceedings. Even in order dated 29.10.2019, it was mentioned that the writ petition was not maintainable at this stage. Although an argument has been raised by learned senior counsel for the petitioner that the petitioner was not having any knowledge of the acquisition proceedings initiated by the State of Haryana till 31.05.2019. Objections were filed of the same acquisition by the rustic villagers but the petitioner-company, who is having a vast structure and might be having a well equipped legal department for contesting case, did not find it proper to file any objection within the stipulated period. Subsequently, the writ petition has been filed by raising vague and technical objections. In case, the revenue report was not updated, the plea cannot be taken by the petitioner-company that it was agricultural or barren land when structure has been admitted by the petitioner. Even no efforts were made to move any application for correction of the number in Hindi and English version. The supplementary award for structure was passed on 03.05.2019 and now it cannot be said that no award has been passed as far as land of petitioner is concerned. The land of the petitioner is comprised in khasra No.27//2/1 min and khasra No.27//2/2 min, which is the subject matter of the impugned notifications. Said khasra numbers are clearly reflected in the notifications but only on this ground that it has been described as 'agricultural land', no benefit can be given.

Order dated 29.10.2019 whereby, request for interim was

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declined by this Court was also challenged before Hon'ble the Apex Court by way of filing SLP Nos.27982-27983 of 2019, which were dismissed on 02.12.2019. It has also come in the arguments as reflected in various orders that the petitioner-company was negotiating for granting temporary permission for access and even efforts were made to shift its installation without damaging within some agreed time frame. NHAI was given liberty to examine the realignment proposed by the petitioner, in case, the same was found technically feasible as reflected in order dated 29.10.2019. Thereafter, the talks were there between the petitioner and NHAI authorities and the dispute was only of time factor. The petitioner also moved an application before this Court for placing on record correspondence between the petitioner and respondent No.4 regarding settlement of issues. Thereafter, the petitioner sent an email for fixing the date of meeting to resolve the issue amicably on 16.10.2019. Again on 18.10.2019, the petitioner and respondent No.4 held a meeting to discuss the issue of realignment. In pursuance of meeting held between petitioner and respondent No.4 still negotiations continued and temporary permission for access was given to the petitioner. The petitioner was given time to shift its installation without damaging within the time frame. The case was adjourned on various dates before this Court due to negotiations continued between the parties. In fact the time schedule was not agreed between the two and the things could not be settled between the parties.

As earlier observed in order dated 29.10.2019 that the petitioner-company is providing employment to about 1000 workmen and is

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contributing in hundreds of crores to the revenue of the State apart from being a major participant in 'Make in India' scheme. The factory of the petitioner has been in existence for over 30 years now and is not a defaulter in any manner. Moreover, the negotiations have been there of the petitioner-company with NHAI for shifting the same. It would be a loss not only to the petitioner-company as the established structure will have to be demolished in case some reasonable time is not given to the petitioner-company to relocate the fire hydrant system within the time frames given by the NHAI.

Accordingly, we do not find any merit in the arguments raised by learned counsel for the petitioners with regard to acquisition proceedings but keeping in view the larger interest in view of the observations made above, the present writ petition is disposed of with the direction to respondent No.4-NHAI to give a period of four months to the petitioner to relocate the fire hydrant system and one month for handing over the possession of vacant land from the date of receipt of the copy of the order passed by this Court to the counsel for the parties to be supplied by the Registry.

**(DAYA CHAUDHARY)
JUDGE**

**09.01.2020
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**(MEENAKSHI I. MEHTA)
JUDGE**

Whether speaking/reasoned	Yes
Whether Reportable	Yes