

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

CWP No.7378 of 2021
Date of decision: 23.12.2021

Sube Singh and others

...Petitioners

Vs.

State of Haryana and others

...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. S.P. Yadav, Advocate,
and Mr. Inderjit Sharma, Advocate,
for the petitioners.

Mr. Saurabh Mago, AAG, Haryana,
respondent Nos. 1, 2 and 4.

Mr. Ankur Mittal, Advocate,
for respondent N.3-HSIIDC.

Ritu Bahri, J. (Oral)

Petitioners are seeking quashing of the order dated 16.03.2021 (Annexure P-1) passed by respondent No.1, whereby their claim for release of land bearing Khasra Nos. 28//6 (8-0), 28//15 (8-0), 29//10 (8-0) and 29//11 (8-0), situated in the revenue estate of village Panchgaon (Kukrola), Tehsil and District Gurgaon, has been rejected.

Brief facts of the case are that initially, the State Government had issued notifications dated 25.04.2008 and 22.04.2009, under Sections 4 and 6 of the Land Acquisition Act, 1894, for acquisition of land measuring 3325 acres 3 kanals and 16 marlas, situated in the revenue estates of Fazilwas, Kukrola, Kharkhari, Bas Lambi, Mokalwas, Seharavan and Fakharpur, Tehsil and District Gurugram, for setting up of Chaudhary Devi Lal Industrial Model Township, to be planned as an integrated complex for Industrial, Commercial and other public

utilities by Haryana State Industrial Development Corporation Limited. Subsequently, in view of the decision of the Cabinet Sub-Committee in its meeting held on 15.02.2011, acquisition of about 2200 acres of land involved in these proceedings was dropped and award with respect to the remaining land measuring about 1128 acres was announced on 21.04.2011. Petitioners, Sh. Sube Singh, Sh. Raj Pal, Sh. Shadi Ram, Sh. Ramehar and Sh. Suresh Kumar sons of Sh. Lal Singh filed CWP No.3066 of 2010 seeking release of land to the extent of their share in land comprising in Khasra Nos.28//6 (8-0) and 29//10, situated in the revenue estate of village Kukrola. Vide order dated 03.02.2011 passed by this Court, a bunch of 39 petitions (including CWP No.3066 of 2010) was disposed of by holding that wherever construction of the petitioners had been admitted by the respondents on the acquired land and recommendations were made for release of such lands by the Land Acquisition Collector, the same were liable to be released and the acquisition proceedings against them were liable to be quashed subject to the conditions that such lands do not fall in the infrastructure facilities such as widening of road, green belt, ROW, global corridor and change of zones etc. This order was upheld by Hon'ble the Supreme Court vide order dated 27.04.2011 passed in SLP No.11019 of 2011 (**State of Haryana vs. Gurcharan Kaur**). In the meantime, Fertile Land Protection Movement and others filed WP (C) No.113 of 2011 (titled as **Fertile Land Protection Movement and others vs. Union of India and others**) before Hon'ble the Supreme Court challenging the land acquisitions at IMT, Manesar, including the notifications dated 25.04.2008 and 22.04.2009. Hon'ble the Supreme Court, vide order dated 25.04.2011, granted ex-parte ad-interim stay of the further proceedings pertaining to taking possession of the land notified by the respondent authority for acquisition and/or to maintain *status quo* pertaining to the said lands. Further, Hon'ble the Supreme Court, vide order dated 06.08.2014, transferred WP (C) No.113 of 2011 to the High Court for passing a fresh order.

Consequent upon this order, it was renumbered as CWP No.18940 of 2014 (**Fertile Land Protection Movement and others vs. Union of India and others**). Thereafter, on an application (CM-18615-CWP-2018) filed by the State of Haryana before this Court, the *status quo* order dated 25.04.2011 passed by Hon'ble the Supreme Court was modified on 30.10.2019 (Annexure P-11) and the State was granted liberty to set up the Toll Plaza. Subsequently, vide order dated 02.12.2019, CWP-18940-2014 was disposed of keeping in view the orders passed in CWP Nos.9605 and 9629 of 2016.

Grievance of the petitioners is that without issuing show cause notice to the petitioners to appear before any High Powered Committee to consider their claim for release of the land, impugned order dated 16.03.2021 (Annexure P-1) has been passed, whereby their prayer for release of land from acquisition has been rejected. The reason given in the impugned order is that this land is required for infrastructure facility viz. construction of NHAI Toll Plaza proposed at Panchgaon Chowk, which is a pre-dominant public purpose.

Pursuant to the order dated 31.03.2021 passed by this Court, an affidavit dated 01.04.2021 was filed by the Divisional Town Planner, HSIIDC on behalf of respondent No.3. In this affidavit, it was stated that vide orders dated 03.02.2011 passed by this Court in CWP Nos.6166 and 3066 of 2010 (Annexure P-10), a direction was given to release the land, where recommendations had been made by the Land Acquisition Collector. Khasra Nos. 28//15(8-0) and 29//11 (8-0) did not form part of the writ petition, which was disposed of along with CWP No.6166 of 2010 (**Brahm Dutt and others vs. State of Haryana and others**). While passing the said order, a direction was given to release the lands, where structures were existing and recommendations for release had been made by the Land Acquisition Collector, subject to the condition that such lands did not fall in infrastructure facilities such as widening of road, green belt, ROW, global corridor and change of zones etc. It has been further stated that Hon'ble

the Supreme Court, vide order dated 06.08.2014, remanded WP (C) No.113 of 2011 to this Court. Thereafter, it was renumbered as CWP No.18940 of 2014. In the meantime, the Government decided to shift the Toll Plaza from kherki Daula to Panchgaon Chowk and transferred about 40 acres of land forming part of present acquisition proceedings to NHAI for this purpose. The initial location of Toll Plaza at Kherki Daula had been a bottle-neck, resulting in long duration traffic jams causing inconvenience and delay to the commuters, particularly for the industry located at IMT, Manesar and Bawal. Local residents and industry at IMT, Manesar, had been persistently demanding to shift this Toll Plaza for easy outflow of traffic and to reduce pollution and road mishaps. In this backdrop, a decision was taken to shift the Toll Plaza to Panchgaon Chowk. It has been further clarified that opportunity of hearing was granted by respondent No.1 to the petitioners, namely Sh. Sube Singh, Sh. Raj Pal, Sh. Shadi Ram, Sh. Ramehar and Sh. Suresh Kumar, on 18.02.2021. During the course of hearing, Sh. Sube Singh and Sh. Ramehar-petitioners were present and they were represented by Sh. Balbir Singh Yadav, Advocate. They reiterated that their land, under residential construction, might be released. Officers from HSIIDC, Directorate of Industries and Commerce, Haryana and DRO-cum-LAC, Gurugram, also attended the said hearing. HSIIDC was directed to submit a site report showing the extent of construction on Khasra Nos.28//6 and 29//10. Thereafter, a detailed site report was sent by the HSIIDC, through an email dated 19.02.2021, stating that there existed a residential structure and cattle shed in Khasra No.28//6, of which, 153.69 square meters was under permanent construction and 93.68 square meters was under temporary construction being used as cattle shed/fodder. It was also informed that land comprising Khasra No.29//10 was predominantly lying vacant being used for agriculture purpose with temporary structure measuring 33.52 square meters. As per report dated 10.10.2008 sent by DRO-

the Land Acquisition Act, 1894, for release of land comprising Khasra Nos.28//6, 28//15 and 29//11, situated in the revenue estate of Kukrola. After considering the objection, land comprised in khasra Nos. 28//6, 28//15 and 29//11 (whereupon a residential house measuring 1 Kanal and an ice factory were existing) was recommended to be released. Recommendation to acquire the remaining land was made. HSIIDC, vide report dated 15.04.2009, **recommended to release the residential house, which was existing on the land measuring 1 Kanal, comprised in Khasra No.28//15 and recommended to acquire the land under ice factory, as it was forming part of green belt.** After this process, notification under Section 6 of the Land Acquisition Act was issued on 22.04.2009. It was further stated that pursuant to the direction dated 03.02.2011 (Annexure P-10) given by this Court, considering that the land of the petitioners falling in Khasra Nos. 28//6 and 29//10, was required for infrastructure facilities i.e. construction of NHAI Toll Plaza, proposed at Panchgaon Chowk, it was decided, vide impugned order dated 16.03.2021 that the same could not be considered for release. Accordingly, the claim of the petitioners was rejected. It is clarified that land measuring 1 Kanal falling in Khasra No.28//15, has been released, even though that was not part of the earlier writ petition i.e. CWP No.3066-2010. Finally, it has been stated that claim of the petitioners has been rightly rejected vide impugned order dated 16.03.2021 (Annexure P-1).

Short question for consideration in the present petition is, 'whether decision of the Government to shift the Toll Plaza from Kherki Daula to Panchgaon Chowk, can be made a ground to set aside the acquisition proceedings and in this background, transferring of 40 acres of land, forming part of the acquisition proceedings to NHIA, is justified?"

Reference, at this stage, can be made to a decision given by the Division Bench of this Court in **Jagtar Singh etc. vs. State of Punjab etc.**, CWP

considering acquisition of land, which was done for the purpose of establishing 'Baba Farid University of Health Sciences, Faridkot.' For this purpose, land was purchased by the said University. Thereafter, the Government issued notification dated 17.06.2011 transferring 86 Acres 6 Marlas of land belonging to the University to Punjab Urban Development Authority (PUDA); 25 Acres 5 Kanals 19 Marlas of land belonging to the Department of Home Affairs & Justice (Jail Branch) to the University and 11 Acres 4 Kanals 11 Marlas of land, which was in possession of Principal's Office of Guru Gobind Singh Medical College, Faridkot to the University. The writ petition was dismissed by referring to a number of judgments passed by Hon'ble the Supreme Court, whereby consistent view was that after making payment of compensation, land vests in the State and the State Government is competent to use the same for any other public purpose. The landowners cannot seek direction to the State to use the land in dispute only for the purpose, for which, it was intended to be acquired. Reference was made to the decision given by Hon'ble the Supreme Court in **Gulam Mustafa and others vs. The State of Maharashtra and others**, AIR 1977 SC 448, wherein it was held as under:-

“5.once the original acquisition is valid and title has vested in the municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. There is no principle of law by which a valid compulsory acquisition stands voided because long later the requiring authority diverts it to a public purpose other than the one stated in the declaration.”

The above said view was again followed by a three Judge Bench in **Mangal Oram and others vs. State of Orissa and another**, AIR 1977 SC 1456. Later on, it was again followed by another three Judge Bench in **State of Maharashtra vs. Mahadeo Deoman Rai @ Kalal and others**, (1990) 3 SCC 579. Thereafter, in **Municipal Corporation of Greater Bombay vs. Industrial Development Investment Co. Pvt. Ltd. and others**, (1996) 11 SCC 501, Hon'ble

the Supreme Court observed as under:-

“22. It is thus well-settled legal position that the land acquired for a public purpose may be used for another public purpose on account of change or surplus thereof. The acquisition validly made does not become invalid by change of the user or change of the user in the Scheme as per the approved plan. It is seen that the land in Block ‘H’ which was intended to be acquired for original public purpose, namely, the construction of Sewage Purification Plant, though was shifted to Block ‘A’, the land was earmarked for residential, commercial-cum-residential purposes or partly for residential purpose etc. It is the case of the appellant that the Corporation intends to use the land acquired for construction of the staff quarters for its employees. It is true that there was no specific plan as such placed on the record, but so long as the land is used by the Corporation for any designated public purpose, namely, residential-cum-commercial purpose for its employees, the later public purpose remains to be valid public purpose in the light of the change of the user of the land as per the revised approved plan..... It would not, therefore, be necessary that the original public purpose should continue to exist till the award was made and possession taken. Nor is it the duty of the Land Acquisition Officer to see whether the public purpose continues to subsist. The award and possession taken do not become invalid or ultra vires the power of the Land Acquisition Officer. On taking possession, it became vested in BMC free from all encumbrances including tenancy rights alleged to be held by the respondents. Possession and title validly vesting in the State, becomes absolute under Section 10 of the Act and thereafter the proceedings under the Act do not become illegal and the land cannot be revested in the owner.”

Ratio of the above said judgment is that the public purpose, for which the land is acquired, can always be changed to another public purpose by the State Government for optimum utilization of the land. The requirements of the community keep on varying. The schemes can be varied to meet the changing needs of the public. The Division Bench further observed that 70 acres of land was transferred to the Department of Home Affairs & Justice (Jail Branch) for construction of Modern Jain Complex at Faridkot. This jail has been constructed at the cost of Rs.250 acres and not a little finger was raised at that point of time

by the petitioner. When the land was transferred to PUDA for carving out the

plots, the petition was filed. Punjab Urban Development Authority (PUDA), constituted under Section 17 of the Punjab Regional & Town Planning & Development Act, 1995, was a local authority and an instrumentality/agency of the State Government. Hence, transfer of land in favour of PUDA could not be questioned.

In the facts of the present case, the petitioners have approached this Court in the year 2021, whereas the HSIIDC, vide report dated 15.04.2009, had released the land measuring 1 Kanal, which was comprised in Khasra No.28//15 and recommended to acquire the remaining land under the ice factory, as it was forming part of green belt. The acquisition proceedings have already attained finality after dismissal of SLP No.11019 of 2011 (**State of Haryana vs. Gurcharan Kaur**). As far as transfer of land for construction of Toll Plaza by NHAI at Panchgaon Chowk is concerned, this transfer has been made after completing all the formalities of acquisition. Now, the land in question vests in the State Government and as per the judgments, referred to above, the land acquired for one public purpose can be used for another public purpose.

In view of the above discussion, no ground is made out to interfere in the impugned order dated 16.03.2021.

No merits. Dismissed.

(RITU BAHRI)
JUDGE

(ARCHANA PURI)
JUDGE

23.12.2021
ajp

<i>Whether speaking/reasoned</i>	: Yes/No
<i>Whether reportable</i>	: Yes/No