

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

CWP No.8609 of 2022
Date of decision: 04.08.2022

M/s Raj Cotton and Oil Mills

...Petitioner

Vs.

State of Haryana and others

...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr. B.S. Rana, Senior Advocate,
with Mr. Nayandeep, Advocate,
for the petitioner.

Mr. Ankur Mittal, Addl. A.G., Haryana,
and Mr. Saurabh Mago, AAG, Haryana.

Ritu Bahri, J.

Petitioner is seeking quashing of the notifications dated 16.12.2008 and 17.12.2009 (Annexures P-1 and P-2 respectively) issued under Sections 4 and 6 of the Land Acquisition Act, 1894. Further prayer has been made for issuance of direction to the respondents not to demolish the business premises of the petitioner and consider its case for release of land from acquisition.

Vide above said notifications, land measuring 10 Kanals 5 Marlas, belonging to the petitioner's factory was acquired. Site plan of the factory premises of the petitioner has been attached as Annexure P2-A. It is stated that the main object for purchase of the above said land by the family of the petitioner was to start a business of cotton ginning and extracting oil from mustard as the main agricultural produce in the surrounding areas was

submitted to the Municipal Council, Charkhi Dadri along with necessary fee. Copy of receipt with regard to deposit of fee is attached as Annexure P-3. After clearance of the site plan, construction was raised and sales tax No.6325 dated 10.08.1996 was granted to the petitioner (Annexure P-4). Thereafter, the petitioner was granted licence for starting a factory for ginning, purchase, storage and processing of agricultural produce from the Government w.e.f. 25.09.1996 (Annexure P-5). The said licence was renewed from time to time. As per the electricity bills (Annexure P-6), the petitioner-factory is working since 1996. Bills pertaining to purchase of machinery and other raw materials in the year 1996 are attached as Annexure P-7. In order to enthruse more money, effort and human resources in the business, the petitioner entered into a partnership deed dated 20.09.2007 (Annexure P-8). In the year 1999, a development plan was notified by the respondent-authorities. But, for the reasons best known to the State authorities, the factory of the petitioner was not shown in the development plan. After issuance of the notifications for acquisition of land, the petitioner filed objections (Annexure P-9) under Section 5-A of the Land Acquisition Act for release of land from acquisition, mentioning therein that the petitioner was running a factory on the acquired land since 1996 and it was generating jobs for the local youth as well. After filing of the objections, the Collector visited the site and made a demarcation report. As per report, the portion of the road, which was falling inside the Market Committee area, was reviewed and changed so that the road may come outside the committee area. Copy of the *sazra* plan of Sector 10 Part, Dadri has been attached as Annexure P-10. At that time, the petitioner was assured that its case shall also be considered and alignment of the road shall be so

changed that it will not effect anybody. However, at the time of issuance of the notification under Section 6 of the Act, this aspect was not considered by the respondent-authorities and the land of the petitioner-factory was acquired. The petitioner made another representation (Annexure P-11) to the competent authority. Thereafter, the officials of HSVP (HUDA) and the District Town Planner as well as the Land Acquisition Collector convened a meeting with the affected persons and assured that the changes might be made in the Development Plan and a new *sazra* plan would be made in order to enable the authorities to know the extact situation of the area. It was assured that necessary changes might be made in the sector layout plan so that most of the A-Class constructions prior to issuance of the notification under Section 4 of the Act would be accommodated. The petitioner has placed on record copy of the licence granted to M/s Sh. Balaji Builder (Annexure P-12), whereby his land was released after issuance of the notification under Section 6 of the Act.

Earlier, the petitioner had challenged the notifications dated 16.12.2008 and 17.12.2009 (Annexures P-1 and P-2) by filing CWP No.22823 of 2011. The said petition was disposed of vide judgment dated 20.08.2013 (Annexure P-17) by upholding the notification for acquiring the land of the petitioner for construction of 75 metre wide road, subject to the condition that the petitioner shall not be dispossessed for a period of six months from the date of receipt of certified copy of the order so as to enable it to shift the part of its industrial unit from the acquired land to the un-acquired land. Thereafter, the petitioner filed Review Application No.452 of 2013 (Annexure P-18) seeking review of the order dated 20.08.2013 (Annexure P-17). The said application was disposed of vide order dated

29.11.2013 (Annexure P-19) by giving liberty to the petitioner to bring the new facts in the notice of the competent authority, who would take a decision with regard to the petitioner's acquired property. Pursuant to the order dated 29.11.2013 (Annexure P-19), petitioner made a representation (Annexure P-20) to the respondents seeking release of land from acquisition. The petitioner was afforded an opportunity of hearing on 19.05.2016 and proceedings of hearing held on 11.08.2016 (Annexure P-21) were drawn. The proposed alignment of road and factory of the petitioner is attached as Annexure P-21-A. Finally, vide letter dated 06.02.2020 (Annexure P-22), the petitioner was given opportunity of hearing by the Principal Secretary, Urban Estates Department on 10.02.2020. Pursuant to the said letter, the petitioner visited the office of Principal Secretary-respondent No.1, but no decision has been taken on its representation. As per petitioner, the respondents have not taken any decision on the proceedings dated 11.08.2016 (Annexure P-21) regarding change of the alignment of 60 meter wide peripheral road. In this backdrop, the present petition has been filed.

On 27.04.2022, when this case was taken up for hearing, learned counsel for the petitioner had referred to the proceedings dated 11.08.2016 (Annexure P-21), wherein with respect to the constructed portion of the petitioner-unit, it had been observed that even if, the peripheral road is reduced to 60 meters from 75 meters, the built up portion of the factory unit still falls within the width of 60 meters. However, the petitioner had made an offer to exchange the linear shape pocket of land with their acquired land. After detailed deliberations, Chief Administrator, HUDA, was to examine the request made by the petitioner for exchange of

land. Thereafter, a letter dated 06.02.2020 (Annexure P-22) was received by the petitioner from the office of Director, General Urban Estate, Haryana, asking him to attend the hearing in the office of Principal Secretary to Government of Haryana, Urban Estates Department, for examining his request for transfer/fresh hearing in the appeal. Learned State counsel had taken time to get instructions with respect to the proceedings pursuant to the letter dated 06.02.2020.

Pursuant to the order dated 27.04.2022, compliance report dated 18.05.2022 was filed by the Additional Director, Urban Estates Department, Haryana on 19.05.2022. In para no.8 of the report, it is stated that in compliance with the order dated 29.11.2013 (Annexure P-19) passed by this Court, Joint Site Inspection Committee (JSIC), headed by the Zonal Administrator, Hisar, submitted its report on 23.05.2014, which reads as under:-

“That the construction is the part of factory and is commercial establishment falls in 75 meter wide road, 12 meter service road and effects the planning, may not be considered for release.”

After getting the report of JSIC, an opportunity of hearing was granted to the petitioner on 27.05.2015. Case of the petitioner that alignment of 75 meter wide road was changed to accommodate the construction of Smt. Meena Kumari, was found without any substance. Claim of the petitioner was rejected after approval by the State Government and it was communicated to all concerned officers and also the petitioner vide memo dated 24.08.2015 (Annexure R-1 and R-2).

While passing the order dated 24.08.2015 (Annexure R-1), the competent authority had observed that the company was owner of land measuring 24 Kanals bearing Khasra No.206/15, 207/11, 12, out of which,

land measuring 10 Kanals 5 Marlas bearing Khasra No.206/15 min 207//11 min was notified under Sections 4 and 6 of the Land Acquisition Act, 1894 on 18.12.2008 and 11.12.2009. It was acquired vide award dated 16.12.2011. Thus, substantial part of the land measuring 14 Kanals 15 Marlas was still with the petitioner-company and it was to relocate the existing industrial unit in the unacquired portion as per the order passed by the Court. Land of Smt. Meena Kumari wife of Aatma Ram was not falling in the alignment of 75 meter wide road/its service road as per site condition. The averment of the petitioner that the alignment of road was changed to accommodate the construction of Smt. Meena Kumari, was wrong. It was observed that there was no justification in change of alignment of 75 meter wide road just to accommodate the industrial unit. With these observations, the case of the petitioner was rejected. Vide letter dated 02.11.2015 (Annexure R-2), this information was sent by the Land Acquisition Officer, Urban Estte Department, Hisar to the Additional Director, Urban Estte Department, Haryana. The information was also sent to the petitioner vide letter dated 09.12.2016 (Annexure R-3).

Pursuant to the passing of the rejection order, the petitioner again filed representation to the Chief Minister, Haryana on 29.12.2015. The petitioner was afforded opportunity of hearing on 19.05.2016 and the District Town Planner, Bhiwani again inspected the site in question and submitted his report on 11.07.2016. The petitioner was again given opportunity of hearing on 11.08.2016. In the report dated 11.07.2016 given by the District Town Planner, Bhiwani, it was observed that the construction of tin shed, godown shed and main machine oil uni are located within the proposed 75 meter wide peripheral road. A sketch plan was prepared in

consultation with the Executive Engineer, HUDA, Bhiwani to re-align the 60 meter wide road to save the building of the petitioner-factory. Upon perusal of the plan, it was observed that due to the proposed realignment, approximately 1.25 acres of acquired HUDA land, in the shape of approximately 300 meters long strip, would remain as the left out of pocket/unplanned pocket/land due to its linear shape, which could not be gainfully utilized by HUDA. At that time, the petitioner's counsel had submitted that they were ready to exchange the linear shape pocket of land with their acquired land, if HUDA so desires. Accordingly, the matter was referred to the Chief Administrator, HUDA for his comments on the proposal. The Chief Administrator, HSVP, Panchkula gave his comments on 07.09.2016, relevant part thereof, is reproduced as under:-

“If the alignment of the road of width 60 meter is not disturbed and land of the Mill coming in the alignment of the road and sector held acquired as it is, then the shifting of machinery is involved. In the unit, total 4 nos. Oil expellers are found installed, which can be easily shifted to any other location on the un-acquired land of Mill. The machinery to be shifted is not heavy or medium machinery which may be costlier and difficult in shifting and rather the machinery involved in shifting is small oil expellers and can be shifted easily to any other location.

In case the land where machinery is installed as shown on drawing attached is released, a total 5057 Sq. Meters or 1.25 acres approximately valuable land will be wasted. This area of land will not come in use for road construction or will have no link with HUDA acquired land shown in the map attached. Secondly, an additional curve will also come in the alignment of the road which can be avoided by holding the acquisition of the land in question. Comparatively the shifting of machinery is easy and cheaper rather than to waste an area of 5057 Sq. Meters or 1.25 acres approximately of valuable land and construct the road with additional curve in which, as per standard cross section, two nos. Metalled carriage way of 12.50 meter each and two nos. Service lane of metalled width 5.50 meter each will be effected.”

Finally, claim of the petitioner-company was rejected vide letter dated 09.12.2016 (Annexure R-3). Thereafter, the petitioner filed another representation through the Chief Minister, Haryana, on 28.06.2019, which was filed by the Director, Urban Estate, Haryana, on 19.08.2019. Finally, the petitioner gave another representation dated 28.01.2020 to the Chief Minister, Haryana, whereupon the Principal Secretary, Urban Estate fixed the date of hearing on 10.02.2020 at 12.00 noon. During that hearing, the Principal Secretary, Urban Estate issued directions, which read as under:-

“Heard the applicant in the presence of the deptt. Officers. Put up proceedings/DFA of minutes as per discussion after view of CA/HSVP as per 11.08.2016 order of then ACSTCP.”

Consequent upon the aforesaid directions, the Chief Administrator, HSVP did not recommend release of land in question as it would affect the planning as under:-

“Area falling under Judicial Complex : 399 sq. Mtrs.

Area falling under 60 mtrs wide road : 4756 mtrs.

Total : 5155 sq. Mtrs (1.25 acres.

Thereafter, the file was submitted to the Government for decision. Ultimately, the the Government approved the proposal given by the department for rejection of the representation and ordered to submit the DFA for rejection of the same. A query was raised by the Chief Minister on 05.07.2020, which is reproduced as under:-

“CM wishes to know, if the factory was setup after taking a CLU/NOC.”

In response to the said query, the DTP, Bhiwani submitted a report that **M/s Raj Cotton & Oil Mills has submitted an application for CLU on 12.03.2007, but as per office record, no CLU/NOC has been**

granted. The Government, thereafter, approved the recommendation of the department and rejected the claim of the petitioner. However, due to outbreak of COVID-19 pandemic, the formal order of rejection could not be passed. Later on, in compliance with the order passed by this Court, the Director, Urban Estate Department, Haryana, passed a detailed speaking order dated 17.05.2022 (Annexure R-4), whereby claim of the petitioner has been rejected. This is the fourth rejection of claim of the petitioner. Copy of the said order was handed over to the petitioner through Land Acquisition Collector, Hisar. Another copy was sent through registered post dated 18.05.2022 (Annexure R-6).

A perusal of the speaking order dated 17.05.2022 (Annexure R-4) shows that all the inspections carried out by the Joint Site Inspection Committee and the personal hearings given to the petitioner on 27.05.2015, 19.05.2016 and 11.08.2016 have been considered. It has been clarified that the petitioner-factory falls within the width of 60 meter wide peripheral road after changing the approved development plan by reducing the width from 75 meters to 60 meters. With regard to realignment of the road in order to save the building of the factory, the State Government has accepted the comments of the Chief Administrative Officer, HSVP, Panchkula, relevant portion thereof, is reproduced as under:-

“In case the land where machinery is installed as shown on drawing attached is released, a total of 5075 Sq. Mts. Or 1.25 acres approx. valuable land will be wasted. This area of land will not come in use for road construction or will have no link with HUDA acquired land shown in the map attached. Secondly, an additional curve will also come in the alignment of the road which can be avoided by holding the acquisition of the land in question. Comparatively, the shifting of machinery is easy and cheaper rather than to waste an area of 5075 Sq. Mts. or 1.25 acres approx. of valuable land and construct the road with additional curve in which as per standard cross section, two nos. metalled

carriage way of 12.50 meter each and two no. service lane of metalled width 5.50 meter each will be effected.”

Finally, the Government approved the proposal given by the department for rejection of the representation. The order further reveals that the petitioner-company had filed an application for Change of Land Use (CLU) on 12.03.2007, but as per official record, no CLU/NOC was granted to it.

After going through the detailed orders dated 24.08.2015 and 17.05.2022 (Annexures R-1 and R-4), it is apparent that case of the petitioner has been considered at every stage as and when the petitioner filed representations. Keeping in view that shifting of the machinery is/was much easier than to waste about 5075 sq. meters or 1.25 acres of valuable land, claim of the petitioner has been rightly rejected by the respondent-authorities. No case is made out to interfere in the impugned order(s).

Resultantly, finding no merits, the present petition is dismissed.

(RITU BAHRI)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

04.08.2022
ajp

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