

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

CWP 16336 OF 2016

Date of decision: September 08,2022.

Kuldip Singh and another

.....Petitioners

v

State of Haryana and others

.....Respondents

**CORAM:- HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MS. JUSTICE NIDHI GUPTA**

**Present: Mr. Partap Singh, Advocate for the petitioners.
Mr. Ankur Mittal, Additional Advocate General,
Haryana for respondents.**

NIDHI GUPTA, J.

Petitioners have filed the present Civil Writ Petition under Articles 226/227 of the Constitution of India for the issuance of a writ in the nature of certiorari, seeking the quashing of impugned order dated 28.3.2014 (Annexure P – 10) passed by respondent No. 5; and quashing the notifications dated 28.5.2010 and 27.5.2011 issued under Section 4 and Section 6 respectively of the Land Acquisition Act, 1894 (hereinafter ‘the Act’), qua the land of the petitioners; and a writ of mandamus directing the respondents to release the land of the petitioners from the acquisition as the same falls under exempted

category vide policies dated 26.10.2007 and 24.1.2011 (Annexures P-6 and P-7 respectively).

It is the case of the petitioners that they had constructed a residential house and a temple on the premises prior to the issuance of Notification under Section 4, and therefore the subject property deserved to be released in terms of the aforementioned Government policies dated 26.10.2007 and 24.1.2011 which have been framed for release of land from acquisition proceedings. Counsel for the petitioners stated that a specific plea to this effect was taken by the petitioners in their objections filed under Section 5–A of the Act. However, the respondents paid no heed to the objections raised by the petitioners and went ahead and issued Notification under Section 6 of the Act.

Accordingly, the petitioners were left with no alternative but to approach this Court by way of **Civil Writ Petition no. 9779 of 2012** titled as '**Kuldeep Singh & another versus State of Haryana and others**'. It was pointed out that the above said Civil Writ Petition was partly allowed and disposed of vide order dated 30.7.2013.

Relevant part of said order dated 30.7.2013 is reproduced as follows:

“3. As the averments in the written statement were somewhat contradictory, the Land Acquisition Collector on being directed, has filed an additional affidavit dated 26.7.2013, para two whereof reads as

follows:-

“That the total land of the land owner that has been acquired is 16 kanal. Out of the 16 kanal acquired land, land measuring 11 Marla has construction, i.e., (one hall with veranda and shop) existing prior to the notification of u/s 4 of the Act and land measuring 8 Marla has construction i.e. (one room, temple and shop) constructed after the notification under section 4 of the Act. No land of the petitioner has been released. The Land Acquisition Collector gave his recommendation that it is relevant to acquire this land except the Shiv Temple i.e. 33 x 28 ft. and sent it to the Government for further decision. Besides the recommendations of LAC, the matter was also examined by the Joint Site Inspection Committee and vide its report dated 10.5.2011 also recommended the land for which section 4 of the Act has already been announced, to acquire the land for development for Sector 16 under section 6 of the Act. The land of the petitioner with construction is depicted on the map which is

annexed as Annexure R1.”

4. It thus emerges out that construction raised by the petitioners before Section 4 notification has been acquired while the Shiv Temple constructed thereafter is recommended to be released. There is no denial to the fact that in terms of the Government policies, the residential house/structure found to be in existence at the time of issuance of Section 4 notification deserves to be released from acquisition.

5. The Land Acquisition Collector has appended the site plan (Annexure R1) with his latest affidavit depicting the area(s) which the State Government has decided to release post-acquisition. We have also compared the site plan brought on record by the petitioners (Annexure P13) with the one produced by the LAC. The residential house of the petitioners is located in one corner of the land measuring 2 acres. Most of the land is lying vacant. Since the acquisition under challenge has been made for the development of residential Sector 16, Gohana,

we see no reason as to why the acquired vacant land cannot be utilised for the said public purpose. At the same time, we find no justification for acquiring the part of the land where residential house stood constructed before issuance of notification under Section 4.

6. For the reasons aforesaid, we allow this writ petition in part and hold that the petitioners are entitled to the release of constructed portion of their residential house/structure along with some reasonable open space which shall be determined keeping in view the sectoral plan.

7. The respondents shall be at liberty to carry out fresh demarcation of the entire area and then determine the area to be released in terms of these directions. The needful shall be done within a period of three months from the date of receipt of a certified copy of this order.
...

It is stated by the counsel for the petitioners that it is in pursuance to this above order dated 30.7.2013, that respondent No. 5 has now passed impugned order dated 28.3.2014 whereby the

respondents have not released the constructed land of the petitioners and have instead relocated the same in 3 plots of 6 Marla category by adjusting the temple.

In his arguments before us, the Counsel for the petitioners has assailed the above action of the respondents primarily on grounds of being illegal, arbitrary, contrary to policies dated 26.10.2007 and 24.1.2011; as also being in contravention of order dated 30.7.2013 passed by this Court.

In response, counsel for the State submitted that:

Vide order dated 30.7.2013, the respondents had been directed to release the constructed portion of the residential house/structure, keeping in view the sectoral plan. It was stated that the respondents had made every endeavour to ensure compliance with order of this Court and maintain sanctity of sectoral plan.

To do so, the respondents had referred the matter to Chief Administrator, HUDA for carrying out fresh demarcation, whereupon vide memo dated 14.1.2014 it was reported that:

“...the site of the petitioner is falling in residential sector – 16, Gohana. The total land of the petitioner is 16K0M or 2 acres. The structures raised by the petitioner except the temple are falling in the 30 meters restricted belt along Panipat – Rohtak Scheduled Road or in the

proposed 12 meters wide internal roads of residential sector 16, Gohana. The total existing construction comprising of temple and residential rooms reported to be 210 sq. meters. Therefore, a recommendation has been given to relocate the residential construction adjoining to temple. Accordingly, the land measuring 405 sq. meters falling in the proposed three plots of 6 Marla category in the proposed layout plan of residential sector 16, Gohana has been recommended for release.”

It was stated that thereafter petitioner was given a personal hearing on 10.3.2014 where the above proposal was discussed and explained to them. And, it was only after considering and discussing the submissions of the petitioners, as well as the above proposal dated 14.1.2014, that respondent No. 5 passed order dated 28.3.2014. It was urged that above order was equitable and just as due thought and consideration had been given to the submissions and objections raised by the petitioners, and every effort had been made to accommodate their convenience, whilst maintaining sectoral integrity in compliance with the order of this Court.

Counsel for the respondents further pointed out that the area in dispute had already been notified as controlled area under

Section 4(1) (a) of the Punjab Scheduled Roads and Controlled Areas Restrictions of Unregulated Development Act, 1963. Award in respect of land measuring 149.94 acres had also been announced on 24.5.2013, and possession of the acquired land was handed over to the Estate Office HUDA on the same day vide *Rapat Rojnamcha* No. 800 of 24.5.2013 of V. Gohana. Yet, notwithstanding the aforesaid facts, the petitioners had still gone ahead and raised unauthorised construction thereby evading conversion charges and development charges. It was submitted, that accordingly the petitioners were not entitled to any benefit in this regard.

It has also been averred that out of total compensation of Rs. 91,53,45,240/- calculated for awarded land measuring 149.94 acres, the LAC had already disbursed an amount of Rs.85,06,80,366/- to the land owners, which constituted 92.92% of the total Award amount.

We have heard counsel for the parties, as well as given our thoughtful consideration to the submissions made by them. In our view, the impugned action of the respondents suffers from no legal infirmity, irrationality, and/or procedural impropriety.

The petitioners have sought relief of exemption of their land primarily on the basis of the Government Policies of Exemption dated 26.10.2007 and 24.1.2011. However, it is an admitted fact that part of the construction had been raised by the petitioners subsequent to

issuance of notification under section 4. In our view, in such a situation, no benefit of the exemption policies can accrue to the petitioners as they had raised the construction after notification under section 4, in flagrant violation of regulatory provisions.

In similar circumstances where the landowners sought exemption under State Government policy, but had raised unauthorised constructions in case **SLP (C) no. 28469 of 2011, titled as ‘Tek Ram Dahiya & others vs State of Haryana & others’**, the Hon’ble Supreme Court while dismissing the landowners petition held that “... *the High Court did not commit any error by observing that the persons who had raised unauthorised construction are not entitled to the benefit of the policy framed by the State Government.*”

In yet another case being **SLP (C) no. 30618 of 2011 titled as ‘M/s Mehta Handloom Industries versus State of Haryana and another’**, the Hon’ble Supreme Court held that “*In our view the High Court did not commit any error by refusing to entertain the petitioner’s challenge to the acquisition of land because it raised construction after issue of notification under section 4(1) and that too without getting permission from the competent authority.*”

Even this Court in numerous decisions has held that if purpose of acquisition is a necessary public purpose then, even if there is some construction on the land, the same cannot be exempted in order to achieve the larger public interest.

Reference may be made to one such judgement dated 9.2.2012 passed in **CWP No. 407 of 2005 titled as ‘Dayanand versus State of Haryana’**, where this Court has held that:

“Apart from the fact that the construction has not been proved to be in existence prior to publication of notification under Section 4 of the Act, defined from the layout plan exhibit D – one, that the land of the petitioners is necessary for the proper development as such land has the proposal of provision of the green belt with tramway, service Road and sector Road. The said purpose of acquisition is a necessary public purpose and therefore, even if there is some construction the same cannot be exempted to achieve the larger good.”

It is thus, clear that State Government has absolute right to acquire land for public purpose even though construction has been raised prior to issuance of notification under Section 4 of the Act.

Even otherwise, in our view, exemption under State policies cannot be claimed as a right by the land owners/petitioners. The above said policies do not give the petitioners a vested right to seek release of their land.

In this regard the decision rendered by the Hon’ble Supreme Court in case of **‘Ram Swaroop vs State of Haryana’ SLP (C) No. 16421 of 2021** is apposite. Albeit in said case, Hon’ble Supreme Court was dealing with Section 101-A of the Right to Fair

Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Haryana Amendment) Act, 2017, yet the principles for de-notification/ release of acquired land laid down therein squarely cover the issue at hand. It has been held therein that –

“Section 101–A does not give a vested right to the land owner to seek the de-notification or even that upon De-notification, the land in question must return to the erstwhile owners only. The state government is at liberty to pass such order other than release of land in favour of the land owners.

Therefore, the appellants cannot compel an exercise of power by the State Government in their favour as the appellants have no vested right to seek the de-notification of the land. Consequently the present appeal is dismissed.”

Furthermore, perusal of the record evidences that a major part of the petitioners’ land is lying vacant; and the constructed part falls within 30 meters restricted belt/green belt along the Panipat – Gohana Schedule Road, or in the 12 meters wide internal roads of residential sector-16, Gohana. As such, in order to maintain sectoral plan, the only solution was to relocate the residential structures next to the temple.

In view of these facts, it is held that that there is no

illegality in the impugned action, and order dated 30.7.2013 has been fully complied with in letter and spirit as, land measuring 405 sq. Meters has been released by the respondents in lieu of constructed area measuring 210 sq. meters while simultaneously keeping in view the integrity of the sectoral plan of Sector – 16 Gohana. It is thus, clear that the impugned order dated 28.3.2014 is just and equitable, and has been passed after due application of mind.

In any event, as per the law laid down in plethora of decisions given by the Hon'ble Apex Court, judicial review of administrative action is limited; and is permissible only in face of illegality, irrationality, and procedural impropriety (as held by Hon'ble Supreme Court in **Tata Cellular vs UOI (1994) 6 SCC 651**).

In view of the discussion above, it is held that the impugned action suffers from no illegality, irrationality, or procedural impropriety. Impugned order dated 28.3.2014 is just and legal in the facts and circumstances of the present case. Accordingly we find no merit in this writ petition, and the same is dismissed.

(NIDHI GUPTA)
JUDGE

(RITU BAHRI)
JUDGE

September 08,2022

“Joshi”

Whether Speaking/Reasoned:	Yes/No
Whether reportable:	Yes/No