

227-2

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

CWP-851-2019  
Date of decision:28.08.2023

NARESH KUMAR

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR  
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. N.C. Kinra, Advocate  
for the petitioner.

Mr. Ankur Mittal, Addl. AG Haryana with  
Mr. Saurabh Mago, DAG, Haryana.

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**SURESHWAR THAKUR, J. (ORAL)**

1. The present petitioner had earlier motioned this Court through his instituting CWP-19589-2014. On the writ petition (supra), a decision became recorded, on 22.09.2014. It appears that through, the impugned order, as made in pursuance to the verdict made on writ petition (supra), there is a declining to the petitioner therein the relief, qua his being entitled to the benefit of the relevant policy, whereby constructions raised on the disputed lands prior to issuance of a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as “the Act of 1894”), rather became protected from acquisition, and/or, theirs being ordered to be released to the petitioners. Moreover, it appears on a reading of the order (supra), order whereof becomes extracted hereinafter, that the said declining order became partly upheld by this Court, but nonetheless on an argument

becoming addressed by the learned counsel for the petitioner, that as per survey report Annexure P-8 only part of the constructions was raised by the petitioner after the issuance of a notification under Section 4 of the Act of 1894. Therefore, permission was granted to the petitioner to withdraw the petition (supra), with liberty to draw the attention of the Secretary-cum-Director General, Urban Estates Department, Haryana hence to the survey report and with a request to him to review his order.

*“Learned counsel for the petitioners argued that as per the Survey Report Annexure P-8, only part of the construction was raised by the petitioners after issuance of notification under Section 4 of the Act. If that is so, then we permit the petitioners to withdraw these petitions with liberty to draw the attention of the Secretary-cum-Director General, Urban Estates Department, Haryana to the Survey Report and request him to review his order.*

*Dismissed as withdrawn with the aforesaid liberty”*

2. Importantly the submission made by the learned counsel for the petitioner before this Court, which earlier decided writ petition (supra), and, as relates to the factum, that some part of the construction(s) was raised on the disputed lands, post the issuance of a notification under Section 4 of the Act of 1894, is but exemplification of an acquiescence of the petitioner, that as a matter of fact constructions, did come to be raised on the disputed lands, thus post the issuance of the relevant notification. Resultantly, the consequence thereof, is that, in terms of the relevant policy, the petitioner was not entitled to secure an order of releasing the said constructions, thus from the respondent concerned.

3. Moreover, it appears that this Court had, in respect of the applicability of the relevant policy to the constructions, if any, which

became raised on the disputed lands either prior to, or subsequent to the

issuance of a notification under Section 4 of the Act of 1894 rather had made certain directions which are carried in paragraph 16 of a verdict made by this Court in CWP-4498-1993. The said directions are extracted hereinafter.

“16. xxx

*i) The claim of the petitioners for the release of their constructed properties from acquisition shall be considered by the respondents in the light of the Government policy dated 26.10.2007, as modified from time to time, on the premise that construction was raised by them prior to issuance of notification under Section 4 of the Act. Resultantly, the constructions which are not found to have obstructed any 'public utility' shall be released in accordance with this policy;*

*ii) Wherever any constructed property is required to be demolished for completion of a 'public utility' the effected land-owners shall be allotted residential plots in accordance with the policy-decision dated 9.11.2010;*

*iii) The entire exercise, as directed above, shall be completed within a period of four months from the date of receiving a certified copy of this order.*

*iv) The interim directions issued earlier by this Court shall continue to operate till the completion of afore-stated exercise.”*

4. A reading of the above extracted directions reveals, that but obviously the relevant policy would be applicable only when the constructions raised on the disputed lands are evidently raised thereon, thus prior to the issuance of a notification under Section 4 of the Act of 1894.

5. It is in the light of the above made concession made by the learned counsel for the petitioner in the earlier writ petition i.e. CWP-19589-2014, that this Court has formed an inference, that thereby there is acquiescence on the part of the petitioner that, as such, some portion of the

constructions, rather on the disputed lands, thus were raised by the petitioner herein, but post the issuance of the relevant notification, and, thereby the said constructions are not amenable to become released from acquisition by the respondents concerned.

6. Be that as it may, it is also evident on a reading of clause (ii) of para 16 of the verdict (supra), as made by this Court on CWP-4498-1993 that whenever any constructed property is required to be demolished for completion of 'public utility', thereby the affected landowners, shall become entitled to residential plots in accordance with a policy decision of 09.11.2010.

7. That the impugned annexure which has been drawn in terms of the verdict drawn by this Court on CWP-4498-1993 reveals, that there is an imperative necessity of the acquired lands being put to use for the requisite public purpose, as 81 meter wide major service road, is to be constructed thereons. However, there is no further compliance of the mandate which occurs in Clause (ii) of para 16 of the verdict (supra), as made by this Court inasmuch as, if some portion of the constructions which became raised post the issuance of a notification under Section 4 of the Act of 1894, thereby, if so, whether in terms of Clause (ii) of para 16 of the verdict (supra), if the said constructions are required to be demolished, thus for the completion of a 'public utility', whether as such, the affected landowners are entitled to, in terms of the policy decision made, on 09.11.2010, to become allotted residential plots in lieu thereof.

8. Therefore, in respect of the above, thus on an application, to be made before the Authority concerned, by the present petitioner, the latter shall in accordance with law hence make a valid speaking decision thereon,

but after hearing all affected persons concerned. The said decision be positively taken within two months from today.

9. Disposed of.

(SURESHWAR THAKUR)  
JUDGE

28.08.2023  
Ithlesh

(MANISHA BATRA)  
JUDGE

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