

2024:PHHC:131189-DB



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

CWP-4354-2019 (O&M)
Reserved on: 20.09.2024
Pronounced on: 14.10.2024

The Institute of Sisters of CharityPetitioner (s)

Versus

State of Haryana & othersRespondent(s)

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MRS.JUSTICE MEENAKSHI I. MEHTA

Present: Mr.Shailendra Jain, Sr.Advocate
with Ms.Richa Sharma, Advocate, for the petitioner (s).

Mr.Ankur Mittal, Addl.A.G., Haryana
Mr.Saurabh Mago, DAG, Haryana.

Mr.Ankur Mittal, Advocate
Ms.Kushaldeep K.Manchanda, Mr.Siddhant Arora,
Advocates, for respondent No.3-HSVP.

Mr.Deepak Sabherwal, Advocate, for respondent-HSVP.

G.S. Sandhawalia, J. :

1. Prayer in the present writ petition, filed under Article 226/227 of the Constitution of India, for issuance of directions to release the remaining acquired un-developed and un-utilized area shown in blue and yellow colors in the site-plan (Annexure P-4) which, according to the petitioner, is not needed for the public purpose and which is beyond the requisite 30/60 meter sector road in between Sector 10 and Sector 37-C, Gurugram.

2. Resultantly, a writ in the nature of mandamus is also sought that the notification issued under Section 4 of the Land Acquisition Act, 1894 (for short, the 'Act') dated 08.03.1989 (Annexure P-6), followed by the Section 6 notification dated 07.03.1990 (Annexure P-8) and resultantly, challenge has also been raised to the award dated 14.03.1991 (Annexure P-9), for the land falling in Village Basai, on account of the fact that proceedings had lapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, the '2013 Act').

3. The case of the petitioner is that it is a registered Society belonging to Catholic Christian Minority Community, serving the people through its humanitarian and philanthropic services from its inception in India since 1901. Land measuring 5 bighas 12 biswas falling in khasra no.710/2 was purchased by virtue of sale deed dated 16.06.1987 (Annexure P-1) and application for the Change of Land Use was applied and permission was granted for construction of a registered Training Centre/Institutional building on 09.07.1987 (Annexure P-2). It is submitted that construction was carried out after approval of the building-plan to the extent of 1 bigha 12 biswas and about 40 young women were regularly undergoing training and the remaining 4 bighas had been kept for future expansion, to provide kitchen garden, playground etc.

4. The necessary notification had even been issued and objections under Section 5-A of the Act was filed on 17.04.1989 (Annexure P-7). The Section 6 declaration was then issued without hearing the petitioner and 4 bighas was declared to be acquired under Section 6 of the Act whereas construction in 1 bigha 12 biswas falling in

the building was released and the award, thereafter, came to be passed on 14.03.1991. Part of the acquired land shown in red color was taken in possession by respondent No.3-HSVP for construction of a sector road to the extent of 30 meter wide which was subsequently built thereupon only on the alignment of 10 meter wide strip and the balance land was stated to be in possession of the petitioner on which, ancillary use of the petitioner is being done.

5. The authorities had been requested for release of the acquired land of the petitioner's institute shown in blue color and beyond that, shown in yellow color as the same was neither utilized or needed for development and utilization. Representation for release of land was, thus, made firstly on 25.02.1991, which was followed up on 07.05.2001, 30.05.2001, 11.10.2001 (Annexure P-11 Colly.), wherein requests were made for release of the remaining portion of the land and lastly, on 29.05.2001, 29.05.2007, 31.05.2007 and 18.06.2009, the said requests were repeated. Similar requests were made to provide some land which were acquired for the purpose of training, gardening, farming and animal husbandry. It was mentioned that in order to protect the inmates, on remaining part of the land beyond the built up road shown in red color, petitioner had constructed a boundary wall enclosing the blue portion within its parameters.

6. On 18.12.2018, attempt was made to take possession of the land shown in blue color for widening the 60 meter wide road and it is, thus, pleaded that it was indispensable part of the Charitable Institution and needed for the ancillary purposes and it should be released. Similarly, the portion shown in yellow color in the site-plan was not needed by the

respondents as the width of the said sector road was only 60 meters and resultantly, status quo regarding demolition of the existing structure of the petitioner was prayed for. An application for stay was filed bearing CM-5426-CWP-2019 in which notice was issued on 11.4.2019 and the matter has been pending thereafter. CM-1405-CWP-2022 thereafter, came to be filed placing additional affidavit along with documents (Annexure P-13 to P-22) to plead that there was hostile discrimination and lands were released from acquisition proceedings and resultantly, reference was made to various examples of land release to contend that beyond the 60 meter wide road, the land could be released.

7. The State, in its reply to CM-5426-CWP-2019, held out that the award had been announced and only 4 bighas 1 biswa had been acquired and mutation No.7956 dated 26.12.2018 had also been registered. It is pointed out that the 30 meter wide road had already been constructed on the acquired land and on the remaining acquired land, 30 meter wide road has already been constructed by GMDA. The total acquired land of the petitioner had been utilized for the notified purpose and only land measuring 1.40 acres was left unutilized which may be utilized in future. Copy of the lay-out plan was shown as Annexure R-2. It was, accordingly averred that construction for widening of the road had been completed and the same had been carried out on the acquired land only and there existed a wall on the land of HSVP and the same was demolished for widening of the road and photographs were appended as Annexure R-1. It is submitted that the petitioner-Society was in illegal possession of the acquired land and prayer was made for dismissal of the stay application.

8. In the written statement, filed by respondents No.1 & 2, plea was that the writ petition had been filed after considerable period of 27 years of the passing of the award. Reliance was accordingly placed upon the Apex Court judgment in **Aflatoon Vs. Ltd. Governor of Delhi, 1975 (4) SCC 285**. The lapse of proceedings, thus, was contested in view of the law laid down by the Constitution Bench of the Apex Court in **Indore Development Authority Vs. Manohar Lal and others AIR 2020 SC 1496**. The constructed portion having been released and possession of the balance 4 bighas 1 biswa having been taken vide Rapat Roznamcha No.306 dated 05.03.1992 and handed over to the erstwhile HUDA, now HSVP, the beneficiary department was projected. The twin conditions having not satisfied regarding the possession and the non-deposit, was stressed upon. It was pleaded that the petitioner did not receive the amount of compensation and also did not file reference petition before the Land Acquisition Collector and that the awarded compensation was offered to the petitioner while taking possession. Reliance was placed upon the observations of the Apex Court in **CA Nos.9098-9099 of 2014** titled ***State of Haryana Vs. Vinod Oil Mills Ltd.***, to point out that it would be hindrance to development. It was pointed out that award No.11 in question was dated 05.03.1992 and not award No.15 dated 14.03.1991. The construction of the road had been done by the beneficiary department-HSVP and the land had been acquired as per the demarcation plan. The land measuring 1 bigha 11 biswas had already been released so that charitable purpose can be performed smoothly on the land released from acquisition and therefore, the petitioner was stated to be in possession without any authority and was just a trespasser.

9. Notice in the application CM-1405-CWP-2019 was issued way-back on 08.02.2022 to the plea of discrimination but no reply has been filed to the same. The State Counsel has tried to distinguish the instances given orally and submitted that once the land had already been acquired, the belated requests are not liable to be accepted.

10. In the written statement, filed on merits, it was pleaded that out of the 3.5 acres, land measuring 2.53 acres had been acquired for the development and utilization of land as residential and commercial area for Sectors 9, 9A and 10, Gurugrama and the land measuring 1.40 acre had been left unutilized which would be utilized in future as per the development plan. The petitioner-Society had illegally encroached upon the acquired unutilized land by way of tin-shed and boundary wall. The photographs of the acquired and unutilized land encroached by the petitioner was attached as Annexure R-3.

11. In the replication filed, the plea taken was that the area lies in the thick of constructed area on all its three sides with no development planning existed for its utilization and the petitioner can use the said area for future expansion purposes for implementing its objectives of training young women etc. after its release from the purview of subject acquisition. It was, accordingly, pleaded that the physical possession had remained with the petitioner and there was no illegal encroachment by way of tin-shed and boundary wall.

12. It is to be noticed that the acquisition in question which has taken place and the land has been utilized for the purpose of road and it is the case of the State itself that the 60 meter road is in place. Apparently, the requests for the balance land and the fact that it has been used and

CLU had already been granted and rather the requests had been initiated in 1991, well before the award which was passed in 1992. The State apparently has not taken any action the same regarding the release of the land which had not been utilized till now. Instances have been given of CWP-7063-2014 titled *Sunil Kumar & others Vs. State of Haryana & others*, decided on 25.07.2016 whereby plots measuring 100 sq.yards had been carved out within the revenue estate of Villages Basai and Kadipur, were directed to be released, for the same notification dated 08.03.1989. It was noticed that purpose and use was for residential purpose and direction had been issued to constitute a team of officers who shall carry out survey and spot inspection and identify the house/plot/structures for release of such properties and recommendation had been made on 20.04.2012 (Annexure P-18) that awards be announced only for the vacant land of Village Basai. The due recommendation has been made in favour of the present petitioner except for the land is falling in sector road which could be acquired and subject to request made, which could be accepted and the land could be left out of the acquisition which was way-back on 21.02.1990 (Annexure P-21). Relevant part reads as under:

“Objection No.268

The objector is the Institute of Sisters of Charity who have started charitable/social welfare services on this piece of land. Land-use change was permitted to them by the Town and Country Planning Department in 1987. On verbal inquiry from the department it is learnt that land falling in sector-road, if any, can be acquired. Subject to this, the objections may be accepted and the land left out of acquisition.

This Shajra Plan prepared by the L.A.O. is placed below at flag ‘C’. Orders of Govt. on the objections may kindly be obtained accordingly so that notification U/s 6 which is to be issued by 7-3-1990, may be issued in time.

Sd/-

Addl. Director, U.E.

21.2.1990”

13. Reliance was also placed upon the orders passed in CWP-6989-1990 titled *Ram Kishan Gupta & others Vs. The State of Haryana & another*, decided on 26.05.2010 (Annexure P-22) wherein the same notification in question was quashed on account of the fact that objections under Section 5A were blindly accepted without passing any speaking order and there was non-consideration, as such. The fact that the acquisition of the landowner was akin to fundamental rights as per provisions of Article 300-A of the Constitution of India in view of the law laid down in **Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chennai, (2005) 7 SCC 627** had been stressed upon.

14. Keeping in view the above and considering the fact that the petitioner is doing charitable work on the land which has been acquired and part of which has been released, we are of the considered opinion that the State has not taken a decision to release the balance land which was unutilized despite of the fact that there was a proposal regarding the fact that usage had been done of the major portion, as such. We have seen the site-plan in question and are of the considered opinion that for the infrastructure, since the land was acquired at that point of time, for the purpose of setting up the residential and commercial area of Sectors 9, 9A and 10, Gurugram, the purpose has been fulfilled, to a large extent by construction of the road. The balance of 1.40 acres which is pertaining to the land of the petitioner and shown in the site-plan in blue and yellow colors, apparently, the blue color portion has now been used for the construction of the road whereas the yellow portion still remains beyond

the usage for the purpose of the road which has already been constructed to its optimum width.

15. In such circumstances, we are of the considered opinion that since only the constructed portion had been left out, as such, out of 5 bighas 12 biswas by the State, to the extent of 1 bigha 12 biswas and major chunk was acquired but the utilization is not complete and the petitioner-Society has always been representing for additional land and the said land is now adjoining the petitioner-Institute which has already been released, it would be in the interest of justice that the balance land which has not been utilized continues to remain in the possession of the petitioner. It is not disputed that the petitioner neither picked up the amount of compensation of the land acquired nor filed any reference petition for enhancement and therefore, has not, at any point of time, accepted the acquisition proceedings.

16. The issue of delay that it is coming after a belated period is also without any basis, considering the fact that the first representation was filed immediately in the year 1991 regarding the land to be left out and the fact that the award was passed in the year 1992. Even thereafter, the State has taken no action on the representations filed repeatedly (Annexures P-11 & P-12) as mentioned above though the petitioner is engaged in charitable service. In such circumstances, the issue of delay also would not stand in the way as it was imperative for the State to have taken a call especially keeping in view the fact that recommendation would also show that the State itself had recommended that whatever portion comes within the road was to be acquired and the balance land was to be left out of acquisition. In such circumstances, the non-decision of

the objections filed under Section 5A of the 2013 Act, would also stand in the way of the State.

17. It is pertinent to notice that for the same acquisition in question, writ petition was filed bearing CWP-7063-2014 titled *Sunil Kumar & others Vs. State of Haryana & others*, decided on 25.07.2016 (Annexure P-17) wherein even though some of the landowners had purchased the plots after the issuance of Sections 4 & 6 notifications but before the passing of the award, the benefit of release of land was ordered. The reasoning which prevailed with the Co-ordinate Bench, at that point of time, was that the State had opted to release 150 acres of land even though the acquisition in principle had been upheld on an earlier occasion in CWP-4999-1991 decided on 21.03.2011 wherein it had been noticed that the landowners had been using the area and the acquisition was also for the said purpose. The decision to release the property had been taken after more than 22 years of the issuance of Section 4 notification and in such circumstances, directions had been issued that persons who did not own manifold plots and the development plan of the area is not seriously affected and the owners are willing to part with the open spaces wherever required for public utilities like roads etc. and willing to pay the development charges, as may be proportionately quantified, the benefit should be granted while conducting the survey.

18. Similarly, the said notification was also subject matter of challenge in CWP-6989-1990 titled *Ram Kishan Gupta & others Vs. The State of Haryana & another*, decided on 26.05.2010 (Annexure P-22) on the ground that there was recommendation for release of the land in favour of some of the persons having construction on the land and no Site

Selection Committee was ever formulated and the report of the Land Acquisition Officer under Section 5-A of the Act was blindly accepted without any speaking order. An additional issue was also raised as to whether the report of the Land Acquisition Officer submitted under Section 5-A of the Act was examined in the right perspective and vitiates the notification under Section 6 of the Act. Accordingly, keeping in view the law laid down in **Union of India & others Vs. Mukesh Hans, (2004) 8 SCC 14** and **Darius Shapur Chennai** (supra), it was held that Section 5-A is not an empty formality, keeping in view the provisions of Article 300-A of the Constitution of India. After perusing the original record, the Learned Single Judge came to the conclusion that the notification dated 07.03.1990 issued under Section 6 of the Act was on the basis that there was no time left as acquisition would lapse and the Site Selection Committee should have been constituted and the report of the LAO should have been acted upon. Resultantly, it was held that the State wanted to deprive a citizen from his property without adhering to the due process of law and a hasty decision was taken. Resultantly, the notifications in question dated 08.03.1989 and 07.03.1990 were quashed while noting that stay was already operating in favour of the said landowners.

19. Resultantly, we are of the considered opinion that the law laid down in **Davinder Kumar Vs. State of Haryana & others, 1995 (2) PLR 438** would also come into play wherein it had been held that where there is recommendation to the Director for release of the land and there was no reason furnished for not releasing the same and it would not affect the development plan and the action of the respondents in not releasing the land was held to be discriminatory and arbitrary.

20. The observations of the Apex Court in **Hari Ram & another Vs. The State of Haryana & others**, would also come into play wherein it was held that the action of the Government in treating the landowners differently cannot be countenanced and has to be declared bad in law as the State was following the policy that “you show me the face and I will show you the rule”. As noticed, inspite of a positive recommendation in favour of the petitioner-Society, the same has not been acted upon only on account of apparently rush of work and scarcity of time, as noticed in the connected matter by the Learned Single Judge.

21. The Apex Court in **Surinder Singh Brar & others Vs. Union of India & others, 2012 (12) SCR 1077** discussed the issue threadbare on the rights of the landowners under Section 5-A and the power of judicial review and where there is a breach of mandate of the said section. Resultantly, it was held that the reports of the LAO had not been positively considered but filed and it was the case of blatant violation of the mandate of Sections 5-A(2) and 6(1) of the Act, while deciding issue no.2, which was regarding vitiation of the reports prepared under Section 5-A(2) and the conclusion arrived at was that there was no proper application of mind on the part of the Government. Similar is the case herein in view of the fact that on account of a positive recommendation on 21.02.1990 not to acquire the land beyond what had been acquired for the road on which no consideration was apparently done and Section 6 notification was issued mechanically on 07.03.1990 as acquisition would have lapsed.

22. Resultantly, in view of the above discussion, we are of the considered opinion that the petitioner, who had purchased the land well

before the acquisition proceedings and had filed the representation immediately, is entitled for the release of the balance land which stands unutilized, as shown in yellow color in Annexure P-4 (depicted by petitioner itself). Accordingly, the present writ petition is allowed and consequently, the notification issued under Section 4 of the Act, followed by the Section 6 notification dated 07.03.1990 (Annexure P-8) and the award dated 14.03.1991 (Annexure P-9), are quashed, to that extent. All CM application(s) accordingly stand disposed off.

(G.S. SANDHAWALIA)
JUDGE

14.10.2024
Sailesh

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :	Yes	