

2024:PHHC:137158-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(1)

CWP-12282-2018

Deepak Kumar

.....Petitioner (s)

Versus

State of Haryana& others

....Respondent(s)

(2)

CWP-14983-2018

Abhay Singh & another

.....Petitioner (s)

Versus

State of Haryana & others

....Respondent(s)

Reserved on :04.10.2024

Pronounced on: 25.10.2024

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICEHARPREET KAUR JEEWAN

Present: Mr. Prashant Singh Chauhan, Advocate
Mr.Aman Yadav, Advocate, for the petitioner
in CWP-12282-2018.

Mr.Ashish Gupta, Advocate, for the petitioners
in CWP-14983-2018.

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

Mr.Ankur Mittal, Ms. Kushaldeep Kaur Manchanda,
Mr.Siddhanth Arora, Ms.Naina Jindal, Advocates, for
respondent-HSIIDC.

G.S. Sandhawalia, J. :

The present judgment shall dispose of CWP-12282 & 14893-2018 as the notifications in question are similar and there is commonality of questions of law and fact. The pleadings shall be discussed separately and reasoning accordingly, given to pass appropriate orders, keeping in

view the peculiar facts and circumstances the petitioners are placed on the basis of the submissions made and the stand taken by the respondents.

2. Challenge in principle is to the order dated 17.10.2014 passed by the Addl.Chief Secretary to Government of Haryana, Industries & Commerce Department, Haryana whereby the claim of the petitioners has been rejected in pursuance of the earlier directions issued in the lead case filed by the landowners of the said area in CWP-14340-2011 titled *Sultan Singh and others Vs. State of Haryana & others*, decided on 29.11.2013. Challenge had been raised to the acquisition proceedings initiated on 13.05.2010 under Section 4 of the Land Acquisition Act, 1894 (for short, the ‘Act’) followed by the declaration under Section 6 of the Act dated 12.05.2011 and the subsequent notices under Section 9 followed up by the award dated 10.05.2013 in the said proceedings.

3. The land in question which is sought to be acquired is for the public purpose mainly for the development of Industrial Sectors 15 to 17, Dharuhera, falling in Village Kapriwas, Malpura and GhatalMahniawas Tehsil & District Rewari vide the Section 4 notification and the award for 494 acres, 3 kanals 6 marlas of the area, the break-up of the three villages finds mention as under:

“Sr.No.	Name of Village	Area	
		Kanal	Marla
1.	Kapriwas	2030	2
2.	Malpura	1491	12
3.	GhatalMehniwas	433	12
Total		3955	6

or 494 acres 3Kanals 6 Marlas”

4. The objections under Section 5-A were accordingly filed which lead to issuance of recommendations by the Land Acquisition collector and eventually vide Section 6 notification, 435 acres, 1 kanal& 12 marlas of land which was sought to be acquired out of the three villages and the break-up of the land which is sought to be acquired is as under:

Village wise details of land under acquisition				
Sr.No.	Village	Area		
		Acre	Kanal	Marla
1.	Kapriwas	227	4	1 (1816)
2.	Malpura	153	4	1 (1224)
3.	GhatalMehniwas	54	1	10(432)
Total	435 acres 1 kanal 12 marlas			
Total Area: 435 acres 1 kanal 12 marlas				

5. The notices were issued to the landowners for submitting their claim for amount of compensation before the LAC on 10.05.2013 leading to the award being passed on the said date. Apparently, 5 writ petitions came to be filed challenging the said acquisition, the lead case being **Sultan Singh** (supra)and the principle that the acquisition being a salutary step towards the regulated industrialization, was upheld in principle on 29.11.2013. However, the denial of benefit of Government policy for release of different types of land or properties from acquisition to other landowners including the petitioners only on the plea of non-submission of objections under Section 5A was declared illegal and annulled and the entire area under acquisition was considered for the desirability of releasing those land including that of the petitioners which fulfilled the criteria as per the Government policy applicable and exemption for buildings/structures was to be considered. Relevant part of the order dated 29.11.2013 reads as under:

“[52]. For the reasons afore-stated, the 'public purpose' of the acquisition being a salutary step towards the regulated industrialisation of the State is upheld. However, the denial of benefit of Government Policy for the release of different types of land or properties from acquisition to other landowners including the petitioners only on the plea of non-submission of objections under Section 5-A is declared illegal and annulled. Similarly, in rest of the cases, the claim of parity if made out, would also require re-consideration. The respondents are consequently directed to deputise the Officers' team to visit the entire area under acquisition and consider the desirability of releasing those land or properties [including of the petitioners] which fulfill the criteria of the Government Policy then applicable. The Officers' Committee shall be at liberty to invite fresh claims in this regard but only those buildings/structures shall be considered for exemption which were in existence at the time of issue of Section 4 notification. The exercise in this regard shall be completed within a period of three months and till then status-quo with regard to the existing structures shall be maintained.

[53]. Disposed of. *Dasti.*”

6. The order dated 17.10.2014 was then passed by the Addl. Chief Secretary rejecting the cases on merits. The landowners had also approached the Apex Court against the order of the Co-ordinate Bench which was disposed of on 24.04.2018 (Annexure P-16), keeping in view the fact that the case had been reconsidered and liberty was granted to challenge the said order. The relevant part of the order passed by the Apex Court in one set of cases reads as under:

“We have heard the learned counsels for the petitioners.

During the pendency of the present Special Leave Petitions pursuant to the impugned order(s) of the High Court, the cases of the petitioners have been reconsidered and an order dated 17th October, 2014/8th December, 2014 has been passed which is adverse to the petitioners. The petitioners have a remedy against the aforesaid order dated 17th October, 2014/8th December, 2014 which they may avail of. We make it clear that in the event the

petitioners choose to challenge the aforesaid order dated 17th October, 2014/8th December, 2014 such challenge can be founded on all legal grounds and objections that may be available in law. There shall be status quo for a period of four weeks with effect from today to enable the parties to avail of remedy in accordance with law.

We make it clear that we have expressed no opinion on merits.”

Pleadings of CWP-12282-2018

7. The petitioner-Deepak Kumar son of Laxmi Narain son of Mukh Ram, submitted that he is owner of land measuring 117 kanals 6 marlas which is stated to be acquired which would be clear from Section 5A objections (Annexure P-2). The basis of the objections were that there was a pucca house in Rectange 44 Killa No.11/1(4-0), 12/1(4-0) and that he was residing with his family members. The land was agricultural and the adjoining land was fertile land and he was dependent upon it and there was an electric connection in the said house. There was a memorial in the name of his father in Rectangle No.44 Killa No.11/1 and similarly, a poultry farm in Rectangle No.43 Killa No.15/1(4-0) and a pucca well in Rectangle No.44 Killa No.11/1 which had a separate connection and thus, sought exemption. The Land Acquisition Collector, in his case, had recommended as under:

Sr. No of objection	HSII DC Sect or No.	Name of Objecto r	Khasr a No. & total area	Total constructio n	Wheth er before or after Sectio n 4	Objection got recorded by the objector in the application	Recommendation made by the Land Acquisition Collector
1	2	3	4	5	6	7	8
4	15-16-17	Deepak Kumar	42//6/1/1/1(	In the said land	Alr-eady	The applicant in hisapplication has	In the said land holding, in Rect

		son of Shri Laxmi Narain son of Mukh Ram resident of Kapriwa s	1-0) 43//6(8-0) 8(8-0) 9(8-0) 10(8- 0) 15/1(4 -0) 44//6 (8-0) 15/4(4 -0) 7(8-0) 8(8-0) 9(8-0) 11/1(4 -0) 12/1(4 -0) 13/1 (4-0) 14/1 (4-0) 45//10 (8-0) 11/1 (4-0)	holding, in Rect. No.43, Killa No.15/1, on the land measuring 2 Kanals there is Poultry farm and in Rect. No.44 Killa No.11/1 on the land measuring 2 Kanals residential house and Poultry Farm is constructed .	const- ructed	written that one Pacca house has been constructed and oneYaadgar and its boundary, in the memory of father has been made and for earning livelihood one poultry farm has been constructed in which the work of poultry is being done and the applicant has prayed for releasing his agricultural land from acquisition	No.43 Killa No.15/1, on the land measuring 2 kanals, Poultry farm and in Rect. No.44 Killa No.11/1, on the land measuring 2 Kanals, residential house etc. and poultry farm have been constructed in respect of these killa numbers, the Government is requested to take decision at its own level. In the rest of the killa numbers there is agricultural land, therefore, finding no merit in the objection the same be rejected and, thus, it is right to acquire the land.
			Kitta 19 117-0 Salam				

Sd/- 6.1.2011

S.D.O. (Civil)-cum-

Land Acquisition Collector,

REWARI”

8. In the writ petition which was decided alongwithSultan Singh

(supra), filed by the petitioner’s son and grandsons and other sons of

Mukh Ram bearing CWP-10550-2013 titled *Sat Pal & others Vs. State of Haryana & others*, findings were recorded against him regarding the existence of any residential house. The said findings read as under:

“[v] similarly in the case of *Sat Pal & Ors., [CWP No.10550 of 2013]*, there is nothing on record to suggest any residential house over the acquired land. There exists a small *Kotha* and structure of a defunct poultry farm. The rest of the land is vacant and barren and there is no legal impediment against its utilisation for industrial purposes.

[35]. Since the objections submitted by some of the petitioners have been rejected broadly for the reasons drawn in the preceding paragraph, we are of the view that the decision of the State Government in arriving at that conclusion can not be termed arbitrary or taken without any application of mind.”

9. In such circumstances, keeping in view the directions issued in the main case, for re-consideration, the authorities had visited the site on 19.09.2014 and came to the conclusion that there was only one room structure and they have their regular residence in the village and the so-called house at the poultry farm was just to use the same during the attendance of the birds and was more of labour office, Samadhi and the poultry farm. Relevant portion of the Site Visit Report read as under:

“Site visit on 19.09.2014 and Site Report

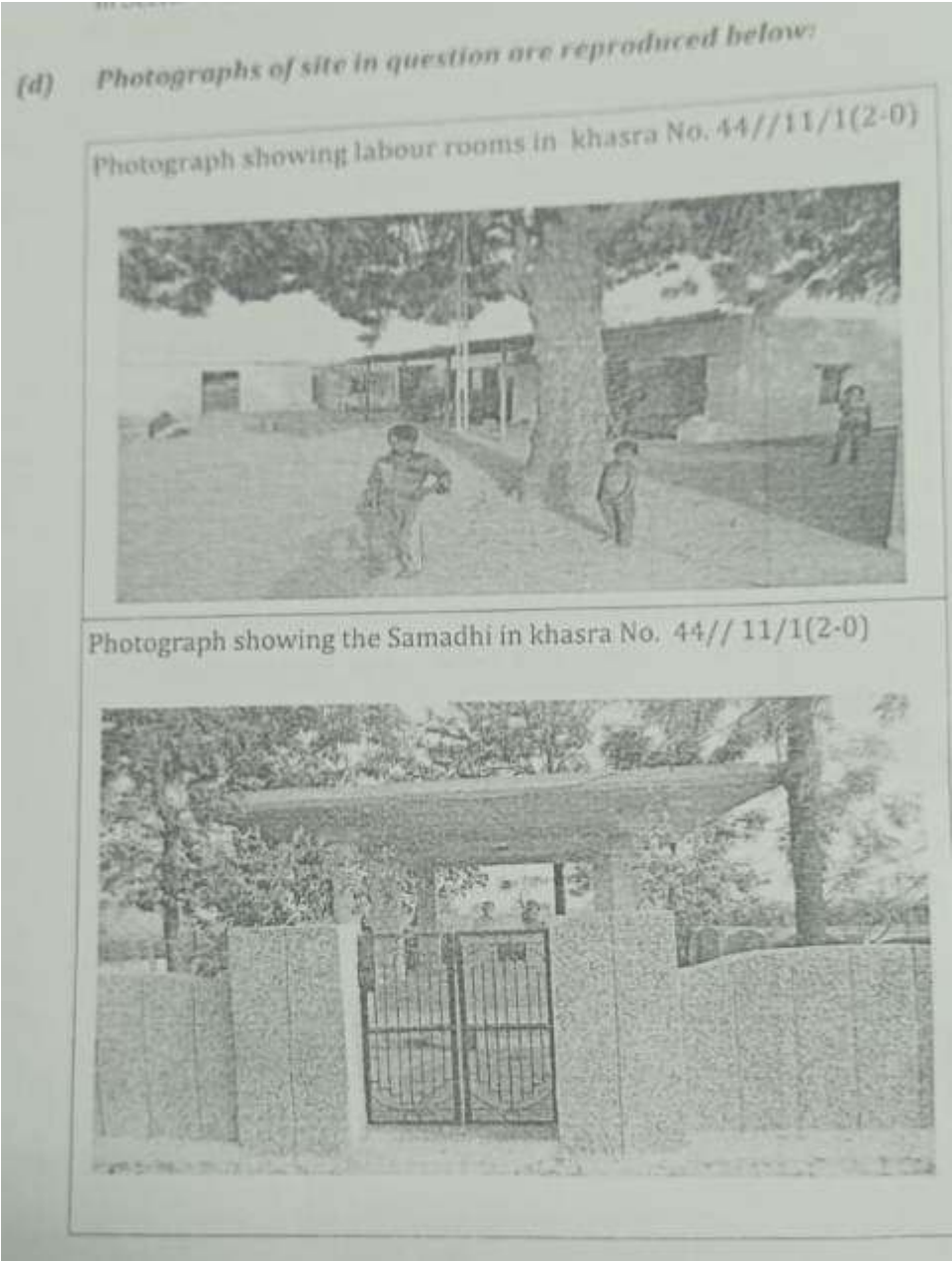
(i) The petitioner was present at the site when it was inspected. It was observed that the petitioner is running a poultry farm (83.50m x 10.70m) over part of the land in khasra Nos. 44//11/1 and 43//15/1, and has also constructed labour rooms (3.4m x 9.1m) and water tank. Poultry farm is just to use the same during the attendance of the birds. Remaining land is lying vacant at site.

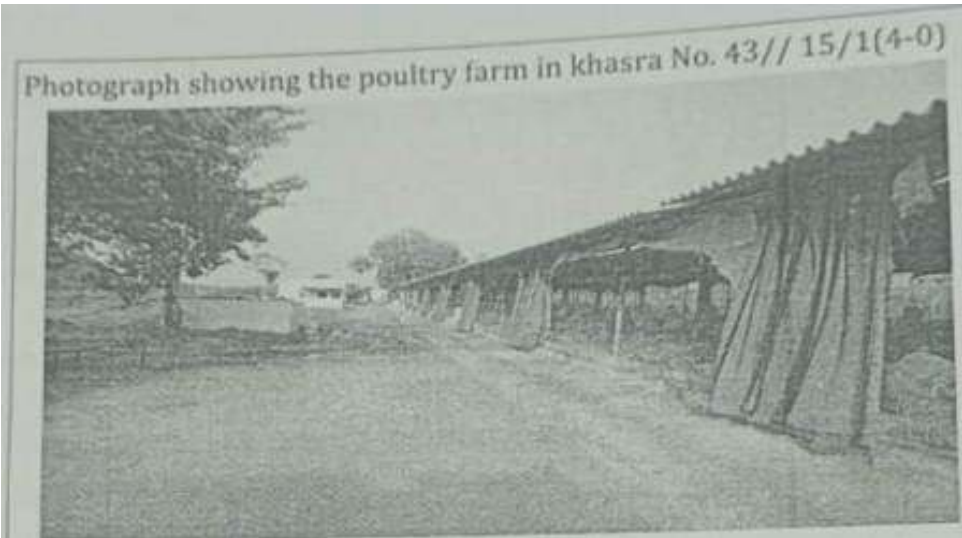
(ii) It was clear from a perusal of the above that construction on the said land would have been in existence at the time of issue of Section 4 Notification. However, all the structures are an extension of the Poultry Farm and its subsidiary uses and do not constitute a regular residential

house. He is learnt to be maintaining his regular residence in the village.

(iii) The layout plan showing the land of the petitioner company (marked at serial No. 6) is enclosed as Annexure 1. As per the lay out plan, the land of the petitioner is forming part of road network consisting of 24 meter wide road, 30 meter wide road in Sector-17, Dharuhera, Industrial plots in Sector-16 and 17, water works and part of land reserved for parking in Sector 17, Dharuhera Industrial Area.

(d) Photographs of site in question are reproduced below:





(e) **Conclusion**

- (i) The Hon'ble High Court has made the following observations in its order dated 29.11.2013 qua this case:

'Similarly, in the case of Satpal & Ors. [CWP No. 10550 of 2013], there is nothing on record to suggest any residential house over the acquired land. There exists a small Kotha and structure of a defunct poultry farm. The rest of the land is lying vacant and there is no legal impediment against its utilization for industrial purposes.

- (ii) Aggrieved by the order dated 29.11.2013 of the Hon'ble High Court, the petitioner has approached the Hon'ble Supreme Court by way of SLP No.14929 of 2014 -Satpal and others v. State of Haryana and others. The Hon'ble Supreme Court has ordered status quo in respect of possession of subject land vide order dated 01.07.2014. Since the order dated 29.11.2013 is under challenge in the Hon'ble Supreme Court, therefore, it would not lie with the Officers' Team to pass any order in the matter."

10. The written statement filed by respondents No.1, 2, 5 & 6 is also to the same extent that there is no residential house and no family of the landowners reside at the said land. Reliance has been placed upon the site inspection and the photographs. It is further clear from the order that the land of the petitioners required for the road network consisting of 24 meters road, 30 meters wide road, 75 meters wide road and industrial

estate, as per the site-plans appended, as Annexure R-1 along with the written statement which confirms the said factum. The averments regarding discrimination which has been pleaded in the writ petition regarding release of land of one Dhanpat, Chand Singh, Tej Singh, Hari Singh, Mam Chand, all sons of Dev Karan and Karan Singh, Hari Ram, Jeet Ram and Suresh all sons of Rampat, on the ground that their only 4 kanals 17 marlas of land was included in the acquisition proceedings whereas they had total land measuring 35 kanals 11marlas and therefore, they were also similarly situated and the policy of pick and choose has been highlighted.

11. The reply of the State is categorical regarding the issue of discrimination that land of one Pushpinder Spinning Mill Ltd.was released and 9 marlas of Sukhbir Singh Chabra in Village Kapriwas. Regarding the release of land of Hari Singh, it is pointed out that as per the report of the LAC, land of Dhanpat, Chand Singh, Tej Singh, Hari Singh, Mam Chand, all sons of Rampat filed six sets of objections for release of land measuring 35 kanals 11 marlas. The LAC had considered the objections and noticed that there were residential houses in Khasra Nos.22//25/2(2-0) and 27//5(4-0) and the remaining land was being used for agriculture purposes. The team of officers who had visited the land of the objectors had noticed that construction was also there on Khasra Nos.22//25/2(7-11) and 27//5 min(7-11) which form part of cluster of houses in the name of 'Digaram Colony' and had recommended release of the said parcel of land. It is thus clear that keeping in view the observations made in the earlier writ petition, the consideration had to take place and therefore, the petitioners in the present case cannot plead any discrimination as has been

sought to be argued and neither any replication has been filed to controvert the defence taken by the State.

12. The factual matrix has been clarified by the visit of the site which in consonance shows that labour office and poultry farm was there and there is no construction and the petitioner is residing in a separate residential house and therefore, cannot claim release of land as per the policy which shows that the house has to be inhabited and it was, thereafter, further superseded by the subsequent policy that the house has to be used by the owner for his own residential purposes. In the absence of the factual matrix being in favour of the petitioner in the present case, there seems to be no valid reason to interfere in the well considered order of the State. It is also to be noticed that on an earlier occasion also, the findings had already been recorded in the case of the petitioner and therefore, it would not be appropriate for us to take a contrary view, in the absence of any change of circumstances. Thus, no case for interference is made out in the case of petitioner-Deepak Kumar and the writ petition bearing CWP-12282-2018 is, accordingly, dismissed.

Pleadings in CWP-14983-2018

13. A perusal of the writ petition would go on to show that deceased-petitioner No.1, Abhay Singh, through his LRs had withdrawn the writ petition vide order dated 27.09.2022 when the LRs were brought on record vide CM-15315-2022 and the petition only survives qua petitioner No.2, Rohtash. The pleadings are that the petitioners are two brothers residing collectively in the village and were co-owners of land and house bearing Mustil No.36, Kila/Khasra No.7/2, 8/1, 9/1, 12, 13, 14/1, 17/1, 17/2, 18, 19, 21, 22, 23, 24/1 and Mustil No.42, Kila/Khasra

No.2/2/1, 2/2/2, 3, 8, 13, 27 and Mustil No.43, Kila/Khasra No.1 in the Revenue Estate of Village Kapriwas, Tehsil and District Rewari vide registered Jamabandi dated 27.05.2010, which would also be clear from the fact that the objections under Section 5A (Annexure P-3) were filed on the ground that they have a pucca house and a tubewell on the land. The existence of 20/25 trees of medicinal qualities like Neem, Awala, Jamun, Sehtut etc. had been pleaded and the land of the petitioners was touching National Highway No.8 and other side is touching the common village passage. The land was also bifurcated by 200 feet wide road of Alwar bye-pass.

14. The report of the LAC was that there was house of 10 marlas constructed on Mustil No.42, Kila No.8 and the Government was requested to take a decision and the rest of the land was agricultural and the acquisition would have been appropriate, as per the report dated 07.07.2011, which reads as under:

“On the land mentioned above there is a house of 10 Marla which is constructed on Mustil No.42, Kila No.8. The Govt. is required to take a decision at his own level. The remaining land is agriculture land and I do not find any reasonable cause in the objections and I dismiss the same. So, it is correct to acquire the land.

Sd/- 7.7.2011

SDO(C)-cum-

Land Acquisition collector, Rewari”

15. Photographs have been appended (Annexure P-10) which also verify the said factum of the type of construction and the balance land being mainly agriculture in nature. In the earlier round of litigation in CWP-23810-2011 titled *Abhay Singh & another Vs. State of Haryana & others*, the writ petition was disposed of on 09.04.2014 with the

observations that the respondents would conduct a fresh survey as directed in Sultan Singh's case (supra) and take appropriate decision. The petitioners had approached the Apex Court by filing SLP-9004/2014 and during the pendency of the same, they were granted interim relief and the order was passed on 17.10.2014 (Annexure P-15) which is subject matter of challenge herein. The observations regarding petitioner No.2, Rohtash residing at the residential house of the acquired land and his brother being a practicing Advocate was residing at Rewari and the residential house, cattle-shed and 2 rooms having been constructed for labour and one tube-well being installed, have come forth. The land was forming part of statutory green-belt of Sector 17 along with the NH 8 and industrial plot of Sectors 16 & 17. The conclusion arrived at that the residential house and the cattle-shed constructed for the labour could not be considered for release as it was forming part of the statutory green-belt along NH-8. However, the HSIIDC was directed to allot the petitioners equal land along with prescribed open space after measurement of the area subject to the R&R policy. Relevant part reads as under:

“(c) Site visit on 19.09.2014 and Site Report

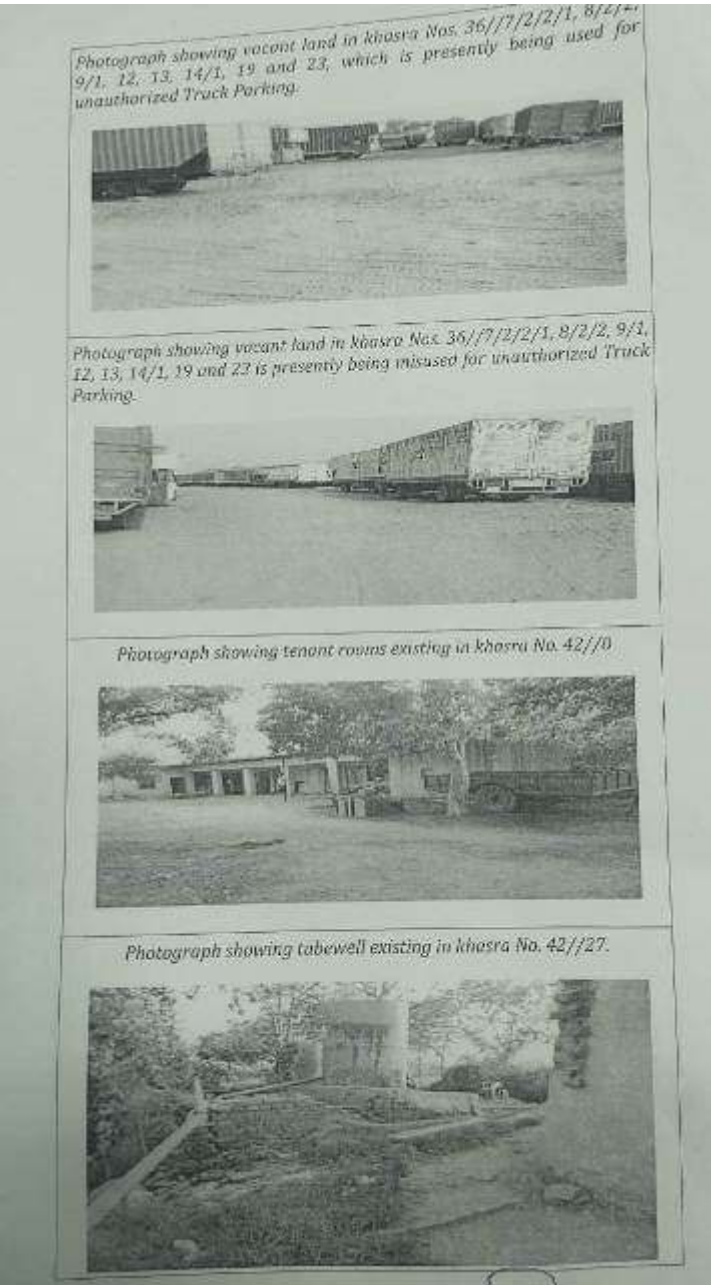
(i) It was observed at the time of site visit that the petitioner has constructed a Samadhi (3.0 x 2.0 square meters), residential house and cattleshed (approximately 145.87 square meters) in khasra No. 42//3 and tubewell in khasra No. 42//27. The area under construction (residential house, cattle shed, smadhi and labour rooms) is forming part of statutory green belt along NH-8. The remaining land is lying vacant.

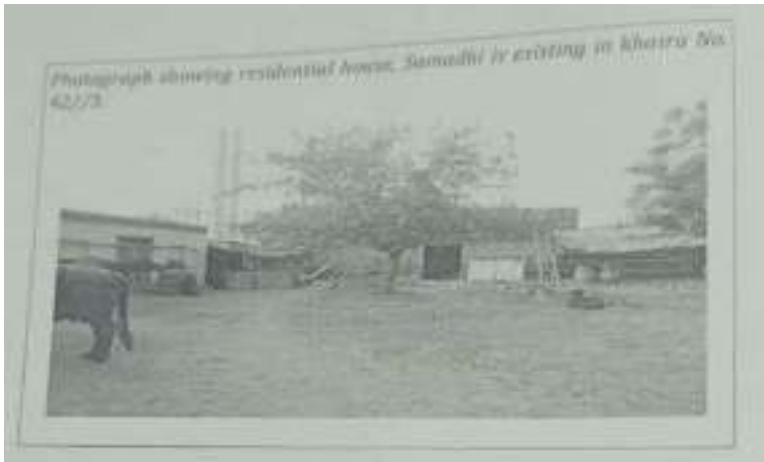
(ii) Both the brothers Sh. Abhey Singh and Sh. Rohtash were present during the site visit. It was revealed during interaction with them that Sh. Rohtash is actually staying in the residential house constructed over the acquired land along with his family. His brother (Abhey Singh - Sr. No. A.9) is a practicing Advocate and maintains his regular residence at Rewari. The constructed area has also provision for cattle, and a few rooms constructed for the labour, one of

which is on rent with some transporter company whose trucks were seen parked outside.

(iii) The layout plan showing the land of the petitioners (marked at serial No. 5) is enclosed as Annexure-1. As per the lay out plan, the land of the petitioner is forming part of land required for the internal circulation 30 meter wide road in Sector 17 and the green belt along the NH-8, industrial plots in sector 16 and 17, while part of the land is reserved for parking of Dharuhera Industrial Area.

(d) Photographs of the site in question are reproduced on the following page:





(e) Conclusion

It is observed that the land under residential house and cattle shed at present location cannot be considered for release as it is forming part of the statutory green belt along NH-8. However the HSIIDC is directed to allot to the petitioner equal land along with prescribed open space, after measurement of the area under the constructed structures (comprising of the residential house, the cattle-sheds and the rooms constructed for the labour etc.) at compensation rate in the area earmarked for the R&R plots. The landowner shall be liable to pay the EDC and IDC etc. to the HSIIDC in respect of the alternate allotted area. The landowners will, of course, be entitled to the compensation for the structures."

17. The stand of the State and HSIIDC is also crystal clear which is in consonance with the orders passed by the State that land in question was affecting the planned development in the cases not covered under the policy of the Government and cannot be considered for release. The recommendation has already been given in favour of petitioner No.2 that he is to be allotted equal land along with prescribed open space and constructed structure comprising of residential house, cattle shed and room constructed for labour etc. at the compensation rate in the area earmarked for the R&R plots and is liable to pay the EDC and IDC etc. to HSIIDC for the alternate allotted area and that he is entitled for the compensation

for structure and that the release aspect would affect the planned development.

18. We have been also taken through the site-plans to show as to how the release would adversely affect the planned development as the green-belt along with the National Highway would be adversely affected and the part of the land juts into the portion of National Highway, which would be clear from the site-plan (Annexure R-1). As noticed, petitioner No.1 has already got his petition dismissed as withdrawn and is a practicing Advocate at Rewari wherein he is residing and thus, only petitioner No.2, Rohtash is entitled for allotment of land as recommended by the LAC and the HSIIDC has filed separate reply and would comply with the same. It has also been mentioned that land falling in Khasra Nos.42//2 min (1-5) and 43//1 min(5-2) falling in Village Kapriwas stood acquired by the Department of Urban Estates, Haryana vide Award dated 09.08.2010 for the construction of a 75 meter wide road and the other land was notified vide notification dated 12/13.05.2011. The land, thus, being required for the road network consisting of 24 meters road, 30 meters wide road, 75 meter wide road and industrial plots, as per the site-plans appended and the development planning would be adversely affected and therefore, there is no scope of any interference.

19. The Co-ordinate Bench in Sultan Singh's case (supra), as reproduced above, noticed that the notification is for salutary purpose of industrialization of the said area and only on account of the land being used for cultivation, we do not find any tangible reason to take a different view. Resultantly, we do not find any merit in the present writ petition, apart from the benefit which is to be granted, as recorded by the LAC, which respondent No.4-HSIIDC will duly comply with.

20. The issue of discrimination raised has already been dealt with above as the other persons have been granted the benefit of release on account of a residential colony already in place. Resultantly, the present writ petition bearing CWP-14983-2018 is disposed of, with the above-said observations, since respondent No.4-HSIIDC has to implement the recommendations made by the officers. All pending CM application(s) stand disposed off.

(G.S. SANDHAWALIA)
JUDGE

25.10.2024
Sailesh

(HARPREET KAUR JEEWAN)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :	Yes	