

Has Been Constructed Provided the Structure Vs. State of Haryana and ors.

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Court : Punjab and Haryana

Decided On : Aug-26-2013

Appellant : Has Been Constructed Provided the Structure

Respondent : State of Haryana and ors.

Judgement :

CWP No.15457 of 1991. ::-1-:: IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH. CWP No.15457 of 1991. [O&M]. Date of Decision:26th August, 2013. Mrs. Suchitra Banerjee & Ors. Petitioners through Mr. C.B.Goel, Advocate with Mr. Manot Sharma, Advocate. Versus State of Haryana & Ors. Respondents through Mr. S.S.Patter, Sr. DAG, Haryana. CORAM:HON'BLE MR. JUSTICE SURYA KANT HON'BLE MR. JUSTICEINDERJIT SINGH 1 Whether Reporters of local papers may be allowed to see the judgment?.

2. To be referred to the Reporters or not?.

3. Whether the judgment should be reported in the Digest?. SURYA KANT, J.[ORAL]. The petitioners who are residents of village Islampur, Tehsil & District Gurgaon have statedly constructed their residential houses/dwelling units on small size plots in a locality known as 'Gagan Vihar'. They are aggrieved by the notifications dated 22.03.1990 and 19.03.1991 issued under Sections 4 and 6 of the Land Acquisition Act, 1894, respectively whereby land of various villages including the land of 'Gagan Vihar' locality has been acquired for its development

and utilization as residential, commercial, institutional and maintenance of open spaces. at Gurgaon. [2].. The respondents in Para No.2 of the preliminary objections of their reply/affidavit have averred that structures of some of the petitioners have since been released from acquisition. Gupta Dinesh 2013.09.03 12:35 I attest to the accuracy and integrity of this document Hihg Court Chandigarh CWP No.15457 of 1991. ::-2-:: [3].. It may be mentioned at the outset that this Court had stayed dispossession of the petitioners vide order dated 08.10.1991. [4].. Mr. Pattar, learned Senior DAG, Haryana, on instructions from the departmental officials who are present in Court, states that 'Gagan Vihar' is not a fully developed residential colony and it is too obvious that rest of the petitioners have also built up their dwelling units and are living there over two decades. [5].. In these circumstances when the acquisition is also meant for 'residential purpose' and the petitioners have also constructed residential houses only, we are of the considered view that the matter regarding release of the constructed properties of the petitioners requires reconsideration by the respondents. We say so for the reason that during the pendency of the writ petition, the respondents themselves have issued a policy decision dated 26.10.2007 as modified on 24.01.2011, for the release of structures found in existence at the time of issuance of Section 4 notification, the salient features whereof are as follows:- Policy dated:26.10.2007:- After careful consideration of the facts and circumstances, the Government has felt the need to review the policy referred to above. The amended policy regarding release of land will be as under:- 1. Only those requests will be considered by the Government for release of land under Section 48(1) where objections under Section 5-A were filed in following cases:- a) Any request or application where structure Gupta Dinesh 2013.09.03 12:35 I attest to the accuracy and integrity of this document Hihg Court Chandigarh CWP No.15457 of 1991. ::-3-:: has been constructed provided the structure existed prior to Section 4, is inhabited and is being used by the owner for his own residential purposes. b) Any factory or commercial establishment which existed prior to section 4 provided it was functional at the time of Section 4 and is also functional at the moment. c) Any religious institution or any building owned by community which is being used for community purposes.

2. That the Government may also consider release of land belonging to individual applicants involving self inhabited structures, factory or commercial establishment or community or religious buildings, where the owner has approached the Honble High Court and has obtained stay dispossession/status quo or any restraint order. In such cases, the decision will be taken on the merits of each individual case keeping in view the benefit to the development agency in terms of providing linkages, services and in the interest of planned development. However, this clause will not be invoked for grant of licence for development of colonies.

3. Any land in respect of which an application under Section 3 of the Haryana Development and Regulation of Urban Areas Act, 1975 has been made by the owner prior to issuance of Section 6 for converting the land into a colony may also be considered for release subject to the condition that ownership of the land is prior to the notification under Section 4 of the Act. In case, individual land owner makes application for grant Gupta Dinesh 2013.09.03 12:35 I attest to the accuracy and integrity of this document Hihg Court Chandigarh CWP No.15457 of 1991. :-4-:- of licence in collaboration with the developer/colonizer, the collaboration agreements should be registered before the Registering Authority before issuance of Section 6 notification. This clause will be made applicable on the applications received after this policy has come into effect.. [6].. The modified Policy dated 24.01.2011 reads as follows:- 1. Only those requests will be considered by the Government for release of land under Section 48[1]. where objections under Section 5A were filed in following cases:- [a]. Any request or application where structure has been constructed provided the structures existed prior to section 4, is inhabited and is being used by the owner for his own residential purposes. [b]. Any factory or commercial establishment which existed prior to Section 4 provided it was functional at the time of Section 4 and is also functional at the moment. [c]. Any religious institution or any building owned by community which is being used for community purposes; 2. That the Government may also consider release of land belonging to individual applicants involving self inhabited structures, factory or commercial establishment or community or religious buildings where the owner has approached the Honble High Court and has obtained stay dispossession/status-quo or any restraint order. In such cases, the decision will be taken on the merits of each individual case Gupta Dinesh

2013.09.03 12:35 I attest to the accuracy and integrity of this document Hihg Court Chandigarh CWP No.15457 of 1991. ::-5-:: keeping in view the benefit to the development agency in terms of providing linkages, services and in the interest of planned development. However, this clause will not be invoked for grant of licence for development of colonies.

3. Any land in respect of which an application under Section 3 of the Haryana Development and Regulation of Urban Areas Act, 1975 has been made by the owner prior to the notification under Section 4 of the Act. In case, individual land owner makes application for grant of licence in collaboration with the developer/colonizer, the collaboration agreements should be registered before the Registering Authority before issuance of Section 6 notification. This clause will be made applicable on the applications received after this policy has come into effect. Provided that the Government may release any land on the grounds other than stated above under Section 48[1]. of the Act under exceptionally justifiable circumstances for the reasons to be recorded in writing.. [7].. The above stated policies have been held to be enforceable by the Hon'ble Supreme Court in Patasi Devi & Ors. Vs. State of Haryana & Ors.,[2012]. 9 SCC, 503 observing as follows:- 19.Before this Court it has been pleaded that on the date of issuance of preliminary notification the appellant's land was vacant, but this statement can not be relied upon for denying relief to her because no such averment was made in the counter-affidavit filed before the High Court. The policy framed by the Government of Haryana clearly stipulates release of the land on which construction had Gupta Dinesh 2013.09.03 12:35 I attest to the accuracy and integrity of this document Hihg Court Chandigarh CWP No.15457 of 1991. ::-6-:: been raised prior to issuance of Section 4 notification. The appellant's case is covered by that policy. Therefore, her land ought to have been released was done in the case of M/s Sharad Farm and Holdings [P]. Ltd....

.. [8].. The petitioners have no other house as a measure of their social shelter. Such a protection is indeed referable to Article 21 of the Constitution of India. [9].. For the reasons stated above and keeping in view the policy decisions referred to above, the writ petition is allowed to the extent that the respondents are directed to conduct re-survey of the area owned by the petitioners and if residential houses/

structures wherein the petitioners are living along with their families, are found in existence, the same shall be released from acquisition within two months from the date of receipt of copy of this order. [8].. Disposed of. Dasti. (SURYA KANT) JUDGE August 26, 2013. (INDERJIT SINGH) dinesh JUDGE Gupta Dinesh 2013.09.03 12:35 I attest to the accuracy and integrity of this document Hihg Court Chandigarh

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