

State of Haryana and ors. Respondents. Vs. State of Haryana and ors.

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Court : Punjab and Haryana

Decided On : Aug-19-2013

Appellant : State of Haryana and ors. Respondents.

Respondent : State of Haryana and ors.

Judgement :

CWP No.21692 of 2008.

::-1-:: IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP No.21692 of 2008 [O&M].Date of Decision:19th August, 2013.

Babu Lal & ORS.Petitioners Versus State of Haryana & ORS.Respondents.

*** CORAM:HON'BLE Mr.JUSTICE SURYA KANT HON'BLE Mr.JUSTICE SURINDER GUPTA *** Present:- Mr.Rajiv Atma Ram, Sr.Advocate-amicus-curiae with Mr.R.S.Mann and Ms.Sunita Bindlish, Advocates.

Mr.S.S.Khurana, Advocate, for the petitioneRs.Ms.Palika Monga, DAG, Haryana.

Mr.Raman Gaur, Advocate for HUDA.

Mr.Ashok Aggarwal, Sr.Advocate with Mr.Sanjay Vij, Advocate, for respondent No.5.

** 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 seek quashing of notifications dated 27.01.2003 and 23.01.2004 issued under Sections 4 and 6 of the Land Acquisition Act, 1894, respectively besides Award No.32 dated 20.01.2006 so far as the same pertain to acquisition of their residential houses.

In addition, the petitioners have impleaded respondent No.5 - a private Builder-cum-Developer to make out a case of discrimination though they also seek quashing of licence granted to the Builder on 31.05.2007 to make out a case of discrimination.

[2].The petitioners challenge to the acquisition is on two counts.

Firstly, they allege that the residential houses were Gupta Dinesh 2013.08.31 11:02 I attest to the accuracy and integrity of this document Hihg Court Chandigarh CWP No.21692 of 2008.

::-2-:: constructed by them much before the issuance of notification under Section 4 and this fact having been brought on record in their objections under Section 5-A, it may be imperative on the respondents to release their houses.

Their second allegation is of discrimination as they urge that the land of respondent No.5 - a builder-cum-developer has been released from acquisition after passing of the award and licence has been granted on 31.05.2007.

[3].The fact that the petitioners have built up residential houses before Section 4 notification has been acknowledged by the Land Acquisition Collector, Urban Estate, Gurgaon, in following para of his reply:- 2.

That petitioners No.1 to 6 filed the objections u/s 5A before the Land Acquisition Collector.

The same are attached as Annexure R1 to R9 for kind perusal of the Hon'ble Court.

The petitioner No.1 and 3 filed the objections u/s 5-A claiming the houses in KhaSr.No.18//17.

The constructed portion along with proportionate vacant land of both the petitioners was released by the Govt.

Petitioner No.2 to 4 filed the objections u/s 5 claiming there [sic-their].houses in KhaSr.No.18//18.

The constructed portion along with proportionate vacant land of petitioner No.2 and 4 was also released by the Government.

Petitioner No.5 filed three different objections u/s 5-A of the Act claiming different KhaSr.Nos.in all the three objections.

There was construction of petitioner No.5 in KhaSr.No.15//12/3.

The said construction along with proportionate vacant land has already been released by the Govt.

Rest of the land claimed in said objections by petitioner No.5 was vacant at the time of issuance of notification u/s 4 of the Act.

Gupta Dinesh 2013.08.31 11:02 I attest to the accuracy and integrity of this document Hihg Court Chandigarh CWP No.21692 of 2008.

::-3-:: Petitioner No.6 filed two different objections u/s 5-A claiming different khaSr.Nos.in both the objections.

The construction portion of petitioner No.6 in KhaSr.No.15//13/3 along with proportionate vacant land was released by the Government.

There was some construction in KhaSr.No.15//18/1 of petitioner No.6.

The said construction was not released by the Government.[4].The objections submitted by some of the petitioners under Section 5-A appended with the written statement [Annexures R-1 to R-9].also reveal that the plea of existing residential houses was specifically taken.

[5].With a view to satisfy ourselves with regard to existence of the structures, the respondents were directed on 15.07.2013 to conduct a fresh survey of the acquired land and submit report regarding existence of constructions as well as desirability of releasing those structures from acquisition.

[6].Learned counsel for the HUDA has handed-over a letter dated 16.08.2013 sent by the Estate Officer, HUDA, Rewari to the Chief Administrator, HUDA stating that:- The above said land owner filed a Civil Writ Petition No.12692 of 2008 which is pending in the Hon'ble High Court Chandigarh.

However, on the direction of worthy Chief Administrator, e-mail dated 05.08.2013 regarding fresh survey of the area in question, a team consisting of undersigned, DTP Rewari, Revenue Patwari at the time as per site constructed area report and sketc.Rect.

No.15//5/1 and 18//13/2, 14//2/1 and LAO, HUDA, Gurgaon report at the time Section 4 and carried out the survey of Gupta Dinesh 2013.08.31 11:02 I attest to the accuracy and integrity of this document Hihg Court Chandigarh CWP No.21692 of 2008.

::-4-:: the disputed site/land.

The survey report is placed below as per Annexure 'A' for your kind perusal please.[7].He has appended Annexure 'A' to depict the status of structures/buildings as on 16.08.2013 along with Photographs in respect of each petitioner and the same reads as follows:- Sr.not Name of the KhaSr.not Use of building Plot area Constructed owner of area building 1.

Babu Lal 15//5/1 Residential 626.98 359.52 Sq.Yard Sq.Yard 2.

Balwant 15//5/1 Residential 630.11 198.44 Sq.Yard Sq.Yard 3.

Rohtash 15//5/1 Residential 599.50 92.96 Sq.Yard Sq.Yard 4.

Abhey Singh 15//5/1 Residential 628.30 134.46 Sq.Yard Sq.Yard 5.

Satish 18//14/2/1 Residential 242.00 84 Sq.Yard Sq.Yard 6.

Satbir 18//13/2 Residential 2405.33 682 Sq.Yard Sq.Yard [8].It may, thus, be seen that not only the respondents have admitted the existence of residential structures built up by the petitioners on the acquired land but in the written statement they have gone a step further to say that the constructed portions of the petitioners have since been released from acquisition.

It, however, appears that the entire area of the residential structures has not been released due to which the petitioners are still pressing this petition on merits.

[9].Suffice it would be to take notice at this stage that the State Government itself has resolved vide policy dated 26.10.2007 as modified on 24.01.2011 to release the structures/houses found in existence at the time of issue of notification under Section 4 of the Gupta Dinesh 2013.08.31 11:02 I attest to the accuracy and integrity of this document Hihg Court Chandigarh CWP No.21692 of 2008.

::-5-:: Act.

These policies have been held to be enforceable by the Hon'ble Supreme Court in Patashi Devi & ORS.versus State of Haryana & Ors.,[2012].9 SCC, 503.

It thus appears that residential structures of the petitioners have also been released by the respondents in furtherance of their policy decisions.

[10].Since the respondents themselves have released the structures found at the time of issuance of Section 4 notification, the only other effective relief which can be granted to the petitioners is that some reasonable open space also deserves to be released to enable them to enjoy their residential properties.

Ordered accordingly.

[11].We, therefore, allow the writ petition and direct the respondents to release the residential houses of the petitioners in entirety along with reasonable vacant area to enable them to properly enjoy their properties.

Let appropriate orders to this effect be passed within a period of three months from the date a certified copy of this order is received.

[12].In this view of the matter, the second contention raised by the petitioners based upon the plea of discrimination need not be gone into.

[13].Disposed of.

(SURYA KANT) JUDGE August 19, 2013.

(SURINDER GUPTA) dinesh JUDGE Gupta Dinesh 2013.08.31 11:02 I attest to the accuracy and integrity of this document Hihg Court Chandigarh

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