

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No. 1128 of 2004

1. Lakhmi Chand son of Channa Ram,
2. Jagmal Singh sainsi s/o Laxman Dass Saini
3. Jagdish Chander Saini s/o Laxman Dass,
4. Suraj Bhan son of Jiya Lal,
5. Chander s/o Piare, all residents of village Barktabad, Tehsil Bahadurgarh, District Jhajhar.

.....Petitioner

Versus

- 28
1. State of Haryana through Secretary, Urban Estates Department, Civil Secretariat, Chandigarh.
 2. The Land Acquisition Collector, Urban Estate, Faridabad.

.....Respondents

Petition Under Articles 226/227 of the Constitution of India for the issuance of a writ in the nature of ~~it is, therefore, respectfully prayed that;~~ ^{prayer}

- (a) A writ in the certiorari/mandamus quashing the impugned notification under section 4 and 6 of the land Acquisition Act (Annexure P/6 & P/9) being illegal, arbitrary, ultra-vires of the provisions of the act and violative of articles 14 and 21 of the Constitution of India.
- (b) A writ of mandamus directing the respondents to release the Constructed land of the petitioner;

- © to issue such appropriate, writ, order or direction as this Hon'ble Court may deem fit in the facts and circumstances of the case;
- (d) filing of certified copies of Annexure P/1 to P/15 may be dispensed with;
- (e) issuance of advance notices to the respondents may be dispensed with;
- (f) Records of the case may be summoned for the perusal of this Hon'ble court;
- (g) Costs be awarded to the petitioners.

It is, further prayed that during the pendency of the writ petition, the passing of the Award and the dispossession of the petitioners from the Constructed land may kindly be stayed.

12

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

C.W.P.No. 9281 of 2004
Date of decision 11.2.2008

Lakhmi Chahd and others

...Petitioners

Versus

State of Haryana and another

... Respondents.

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE T.P.S. MANN

Present: Mr. Pritam Saini, Advocate for the petitioner no.1.
Mr. Ranjit Singh, Advocate for petitioner nos. 2 to 4
Ms. Polika Monga, AAG Hy.

M.M.KUMAR, J.

This order shall dispose of CWP No. 9281 and 14292 of 2004 as common notifications acquiring the land of the petitioners have been challenged. In both the petitions filed under Article 226 of the Constitution, the petitioners have prayed for quashing of notification dated 17.4.2002 (Annexure P.6) issued under Section 4 and dated 10.4.2003 (Annexure P.9) issued under Section 6 of the Land Acquisition Act, 1894 (for brevity 'the Act') which includes the land belonging to the petitioners. The purpose of acquisition is a public purpose to establish residential, commercial and institutional for Sector 1 (Part) 10-11 (Part), 12 and 13 Bahadurgarh. It is conceded position that the petitioners have filed objection under Section 5A of the Act. Eventually after issuing notice under Section 9 of the Act, award was announced on 25.6.2004.

The only ground on which acquisition has been challenged in the instant petition is that in releasing the land from acquisition, the State

has acted arbitrarily, discriminatory and unfairly. It has been argued that in the objections (Annexure P.8) filed by petitioner nos. 2 and 3 it was pointed out that the petitioners have installed a factory over the land comprised in kila Nos. 17/11/1, in khewat no.248/231. It was also pointed out that residential plots bearing no.250 comprised in khewat no.246/229 and 251 comprised in khewat no. 248/231 fall in the midst of the abadi of the village and those plots were surrounded by constructed houses of other people. It has also been contended that the petitioners have filed detailed representations to the respondents (Annexures P.10 and P.11) for excluding their land from acquisition or for releasing the same. According to the petitioners notification dated 29.2.2003 (Annexure P.14) under Section 48 of the Act was issued and the land measuring 12.14 acres had been released from acquisition.

Ms. Polika Monga, learned State counsel has pointed out that the notifications which are subject matter of challenge in this petition were earlier also challenged in CWP No. 12764 of 2003 (Om Parkash Tehlan and others v. State of Haryana and others which was dismissed on 26.9.2003) (Annexure R.1) and CWP No. 11370 of 2003 which was dismissed on 30.4.2004. According to her the acquisition has already been upheld. She has further pointed out that all the steps including the notifications under Sections 4 and 6 of the Act and their publication in the newspapers, filing and hearing of objections have been meticulously taken care of and the petitioners have not been able to point out any legal flaw. With regard to releasing the land from acquisition by issuing notification under Section 48 of the Act, learned State counsel has pointed out that the land belonging to the petitioners fall in the proposed residential Sector Part

I and in proposed commercial Sector 12 as has been shown in the development plan of Bahadurgarh. It has further been pointed out that in the land there is one temple, one Samadhi and one tubewell as shown in the site sketch plan and there is a residential house, oil expeller, flour mill and one constructed shed. The construction has been found to be of "B" class whereas construction of temple is considered as "A" class. It has also been submitted that from para 5 of the report sent by the District Town Planner to the Director Urban Estate Development, Haryana dated 8/7.2004 (Annexure P.16) it is clear that most of the part of the land comes in the restricted area belt of 30 meters wide of the Bahadurgarh-Badali scheduled road which has been shown in the site plan. Learned State counsel has also drawn our attention to letter dated 22.5.2007 (Annexure P.17) issued by Land Acquisition Officer, Urban Estate Development, Rohtak which shows that only one kanal of land has been released from acquisition and rest of the land has been acquired as per award No.7 dated 26.5.2000. Learned State counsel has also placed reliance on a judgement of Hon'ble the Supreme Court in the case of M/s Anand Buttons Ltd. etc. v. State of Haryana and others AIR 2005 SC 565.

After hearing learned counsel for the parties, we are of the considered view that respondents have taken all necessary steps for completion of acquisition which led to the announcement of the award on 25.6.2004. The plea of discrimination in releasing the land of another person cannot constitute basis for declaring the notifications issued under Sections 4 and 6 of the Act as illegal and the petitioners cannot claim to have acquired a right for the release of their land. It is in these circumstances Hon'ble the Supreme Court in M/s Anand Buttons Ltd. case

(supra) has taken the view that exemption of the land of the appellants would 'render askew the development scheme of the industrial estate and it was not possible for the High Court or Hon'ble the Supreme Court to interfere with the satisfaction recorded by the concerned authorities'. The Supreme Court has gone to the extent of observing that even if some parties have been granted exemption wrongly from acquisition that would not arm the petitioner with any right to seek similar relief and it would not violate the equality clause enshrined by Article 14 of the Constitution. The aforementioned observations made in para 13 of the judgement of Hon'ble the Supreme Court fully apply to the facts of the present case. Accordingly, we are of the view that this petition is liable to be dismissed.

For the reasons afore-mentioned both these petitions fail and the same are hereby dismissed. However, the area of one kanal which has already been released from khewat No.168 Khatauni No.306 Moraba No.13 because of "A" class construction is upheld.

Sd/- M.M. Kumar
Judge

True copy
Examiner
5/3/08

Sd/- T.P.S. Mann
Judge

11.2.2008
okg

Common
J. A. A. A.
20/2/08
29/2/08

FIT FOR INDEPENDENCY