

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**Civil Writ Petition No. 3895 of 2012**

**Date of decision: October 31, 2013**

Subhash and others

... Petitioners

Vs.

State of Haryana and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE SURYAKANT  
HON'BLE MR. JUSTICE SURINDER GUPTA**

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?*

Present: Mr. Arun Jain, Sr. Advocate with  
Mr. Amit Jain, Advocate for the petitioners.  
Ms. Palika Monga, DAG, Haryana.  
Mr. Kamal Sehgal, Advocate for HSIIDC.

**Surinder Gupta, J**

The petitioners impugn the notifications dated 19.2.2010 (Annexure P/7) and 11.2.2011 (Annexures P/9) issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short, 'the Act'), to the extent of acquisition of their land measuring 10 kanal 9 marls comprised in Khasra No.131//23 min (4-0), 24 (2-6), 132//3 min (4-0), 4 (0-3), situated within the revenue estate of village Patli Hazipur, District Gurgaon, in respect of which Change of Land User (for short, 'CLU') had already been granted by the State Government vide letter dated 5.9.2008 (Annexure P/1). The petitioners intend to set up godown over their land. The approval for the building plan was granted vide letter dated 11.11.2009 (Annexure P/32). The petitioners proceeded to raise 25% of the construction and sought

extension of time for raising remaining construction vide letter dated 5.12.2011. As required they also deposited extension fee of ₹3,02,063/-.

2. Vide notification dated 19.2.2010 (Annexure P/7), issued under Section 4 of the Act, 80 acres 7 kanal 19 marla of land was acquired for setting up of Industrial Model Township to be planned as an integrated complex for industrial storage space, railway corridor, railway siding, institutional, public, semi public use and other public utilities. The land proposed to be acquired included the above land of the petitioners, for which CLU had already been granted.

3. The objections under Section 5-A of the Act were filed, for the release of acquired land of petitioners raising the plea of grant of CLU and construction raised prior to notification. The objection did not find favour and notification under Section 6 of the Act dated 11.2.2011 (Annexure P/9) was issued. It is alleged that the land of the petitioners has been acquired due to change/shifting of the railway siding corridor of the proposed 30 meters Maruti Suzuki Railway Siding which is merging in 100 meters main industrial corridor along side the KMP Express way. There is lack of planning on the part of the concerned authorities. In one development plan of Gurgaon Manesar Urban Complex 2025, Industrial Corridor has been shown on the right side of KMP Expressway while in the development plan available on the website of the respondent authorities, Industrial Corridor has been shown on the left side of KMP Express way. Notification dated 5.2.2010 (Annexure P/15) has also been issued acquiring the land on the other side of KMP Expressway.

4. In short reply, Chief Town Planner, Department of Town and Country Planning Haryana, has refuted the contentions of the petitioners, *inter alia*, pleading that CLU permission was granted subject to the condition that this permission will not provide any immunity from any other Act/Rules/ Regulations applicable to the land in question. The petitioners cannot seek immunity from acquisition on the ground of granting CLU permission. Section 24 of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Developed Act, 1963 (latter referred as, 'Act of 1963), does not effect power of the State or any other authority to acquire the land if needed for public purposes and it provides as follows :-

*“Savings – Nothing in this Act shall affect the power of the Government or any other authority to acquire land or to impose restriction upon the use and development of land comprised in the controlled area under any other law for the time being in force, or to permit the settlement of a claim arising out of the exercise of powers under this act by mutual agreement.”*

5. The State of Haryana, in its separate written statement, has averred that the land of the petitioners was essentially required for an infrastructure project of public use. The permission of CLU with regard to acquired land was allowed subject to the condition that the petitioners would not raise any construction on the land measuring 16187.29 square meters which include acquired land bearing Khasra No.131//23 min and 132//3 min.

6. After hearing the objections under Section 5-A of the Act, the Land Acquisition Collector, recommended the acquisition of the land bearing Khasra No.131//23 min (8-0) and 132//3 (8-0) as it was proposed to be used for railway siding and he recommended the release of 2 kanal 09 marlas land of the petitioners comprising Khasra No.131//24 (2-6) and 132//4 (0-3). However, HSIIDC made recommendations against the release of the land with the plea that at the spot there exist only boundary wall and temporary room.

7. The Industrial Township at Manesar, which was initially set up on 1800 acres of land in the year 1997 has expanded to an area of 3500 acres in phases. It is one of the best industrial townships in the country. It has 2133 industrial plots of different sizes, which include one plot measuring 600 acres for Maruti-Suzuki and more than 1500 industrial units including Auto majors like Maruti-Suzuki, Honda Motors, Denso etc. are currently functional. Due to transportation of manufactured goods from these units, there remain severe congestion on the National Highway No.8. Keeping this grave situation in view, HSIIDC, planned to develop the proposed facility of railway siding, together with Maruti-Suzuki, which alone accounts for about 70% of traffic. Once the railway siding is developed and connected with 'Patli' Railway Station. All industrial units will be able to make optimal use of transport of their inputs and outputs using this alternate facility thereby reducing the congestion on National High Way No.8. The acquisition of 10 kanals 09 marls of land of the petitioners has been necessitated on account of this predominant public purpose.

8. Arguments heard. Record perused.

9. The acquisition of the land of the petitioners has been assailed on following four grounds by the learned counsel for the petitioners :-

1. *The land of the petitioners, regarding which CLU has been granted, cannot be acquired.*

2. *Alignment of the railway siding corridor has been shifted/changed in violation of the original zoning plan, due to which the land of the petitioners was effected. The earlier proposed alignment of Maruti-Suzuki railway siding was not effecting the land of the petitioners. This change of alignment is mala-fide and without any basis.*

3. *The Land Acquisition Collector had recommended the exemption of land bearing Killa No.24 min 132//4 (0-3), vide his report Annexure P-12, but the same was not accepted due to the ulterior motives and under colourable exercise of power*

4. *The land of the petitioners is being acquired for private limited companies which is not permissible without invoking the provisions of Part VII of the Act.*

10. To further elaborate his arguments, learned counsel for the petitioners has argued that the site plan (Annexure P/14) clearly depicts the orbital railway corridor on the left side of KMP Expressway, while in the draft development plan (Annexure P/10), the railway corridor has been shown on the right side of KMP Expressway. There is one more notification issued under Section 4 of the Act, on 5.2.2010 (Annexure P/15) relating to the Industrial Model Township, which also include railway

siding. This shows that the authorities are not sure about the location of the railway corridor.

11. Refuting the arguments of learned counsel for the petitioners, Deputy Advocate General Haryana and the standing counsel for HSIIDC, at the very outset, have submitted that this plea of the petitioners that the railway corridor plan was changed has absolutely no basis. The plan Annexure P/14 placed on the file by the petitioner is not genuine or has any official source. The railway corridor has been proposed with a vision to decongest the National Highway. The acquisition is not for any private person, firm or company, rather in the larger public interest, keeping in view the traffic conditions as prevailing in the Gurgaon Manesar Zone, which is hub of industries. Due to heavy traffic for transportation of raw material and finished goods, there remains congestion and the proposed railway corridor is a step towards the traffic de-congestion in the area. The major industrial units established in this zone will be able to use the alternate mode for transportation of their products thereby decreasing pressure on using the road transport. The grant of CLU does not exempt the land of that party from acquisition if it is required for the larger public interest of vital national importance. The shijra plan Annexure R/1, depict uses of the area under acquisition for railway siding, for which bare minimum land of the petitioners has been utilized. The acquired land will remain with the Government and will be utilized for the public purpose, as such, the provision of Part VII of the Act are not attracted to the present case.

12. On examination of the facts and the documents on file, we are of the considered opinion that the land of the petitioners has been acquired

for public benefit purpose which is of vital importance for the development of nation. This plea of the petitioner that the alignment of railway siding was changed has absolutely no basis and is also not supported by any documentary evidence worth reliance. The plan, Annexure P/14, is neither an official document nor signed by any authority. It is not made clear as to from which source the petitioners have obtained it.

13. As depicted in the plan Annexure R-1 the Railway Siding is on the right side of the KMP Expressway Highway. This fact is admitted that this Railway siding has been planned for the number of industries currently functioning in IMT Manesar. The notification under Section 4 of the Act dated 5.02.2010 (Annexure P-15) has been issued for the purpose of Industrial Model Township planned as an integrated complex for Industrial, Storage space, Railway siding, Industrial public, Semi Public use and other public utilities in village Babra-Bakipur, Patli, Tehsil Farukhnagar, District Gurgaon and village Dhana, Tehsil and District Gurgaon. An affidavit to this effect has been filed by the Divisional Town Planner HSIDC on 2.5.2013. It appears that the learned counsel for the petitioners has tried to confuse the matter by referring towards the notification under Section 4 of the Act dated 19.2.2010 (Annexure P-7) and dated 5.2.2010 (Annexure P-15) which are altogether for different public purposes.

14. The contention that the land of the petitioners is being acquired for private limited companies which is not permissible without invoking provisions of Part IV of the Act is also not made out from the fact and document on record. The purpose of acquisition is not to provide any land for exclusive use by any particular industry. There are about 1500 industries

in IMT Manesar. The vision behind providing Railway Siding is to decongest the National Highway No.8 from heavy traffic, which carries raw material and finished products of industries in this area. The factory of one of the major auto giant Maruti Suzuki Ltd. is also situated in the zone with the manufacturing capacity of three lakh vehicles annually. All these vehicles are transported through trucks by road and providing the railway siding will not only decongest the traffic on National Highway No. 8 but will also cater to the transport requirements of all the industrial units in that area. This facility is being provided by HSIIDC, as such, it is not an acquisition for a particular industrial unit.

15. Much stress has been laid on the point that the petitioners have been allowed CLU for the land under acquisition and once the CLU has been allowed, the land of petitioners stands immuned from acquisition. The petitioners were allowed change of land use permission for setting up of godown for storage of unloaded goods at village Patli Hazipur with regard to 20137.50 Sq. Mtrs. land. Even in the site plan attached with the permission for change of land use dated 05.09.2008 (Annexure P-1) the proposed alignment of Maruti Suzuki siding has been depicted which is almost the same as shown in the plan produced by the respondents Annexure R-1. This document firstly rebut the contention of the petitioners that alignment of the Railway siding was earlier on the left side of the road and later on brought on the right side of the road.

16. The petitioners had applied for CLU of 27872.50 Mtrs land. The total land of the petitioners at the spot is 87Kanal-2Marlas out of which 18Kanal-9 Marlas has been acquired vide notification dated 19.2.2010 and



the petitioners have challenged the acquisition of only 10Kanal-9Marlas of land comprising Khasra No. 131//23(4-0), 24(2-6), 132//3(4-0) and 4(0-3). Even after excluding the land under acquisition the writ petitioners will have a big chunk of about 69 Kanals of land at their disposal. Keeping in view the predominant public purpose of acquisition of the land of the petitioners, the purpose for which the permission of change of land use was allowed to the petitioners becomes insignificant.

17. The permission for change of land use was conditional and did not provide any immunity to the petitioners from acquisition of the land qua which permission had been allowed. The permission allowed for change of land user (Annexure P-2) contains the Clause 11, which reads as follow :-

*“11. That this permission will not provide any immunity from any other Act/Rules/Regulations applicable to the land in question.”*

18. Land Acquisition Collector had recommended the release of 2 Kanals 9 Marlas of petitioners' land but the same was not finally released. The recommendations of the Land Acquisition Collector are as follows :-

*“The applicants have obtained C.L.U. in respect of this land. M. No. 131, Killa No. 23min(8-0) and M.No. 132, Killa No. 3 (8-0) fall in between the railway line, therefore, it will be right to acquire it. M. No. 131, Killa No. 24 and M. No. 132, Killa No. 4(0-3) is recommended to be exempted from the acquisition.”*

19. The above recommendations of the Land Acquisition Collector do not depict that these are based on any expert opinion. The land of the petitioners has been acquired for Railway sidings and it is for the expert in the field to determine as to which and how much land is required for the

purpose. The Land Acquisition Collector is not an expert and non-acceptance of his recommendations is immaterial.

20. The discussion above lead us to a conclusion that contentions raised by learned counsel for the petitioners have no merit.

21. Reliance has been placed by learned counsel for the petitioners on a Division Bench judgment of this Court in the case of ***Maha Singh vs. State of Haryana and others, 2008(2) RCR(Civil) 290***. In that case the petitioners' company had acquired the change of land use for 79 Kanals-14Marlas of land for construction of approach road. It had deposited the required fees and also spent lot of amount for the construction of road. Thereafter the land was acquired for a public purpose, namely, for the extension and systematic development of the Tourist Complex, Surajkund.

22. In para 33 of above referred citation, it was observed as follows :-

*“33. It is true that the acquisition is for a public purpose, namely, for the expansion and systematic development of the Tourist Complex, Surajkund. The land appears to be adjacent to the area where Surajkund Mela is held, as is evident from the site plan (R-1) attached with the affidavit of Shri Satish Kumar of the office of respondent No.1. The whole process of acquisition i.e. issuance of notification under Section 4 of the Act, hearing of objections and issuance of declaration under Section 6 of the Act stands completed. Even the award has been passed on 5.5.2006. Mr. M.L. Saggar, during the course of arguments has even offered to refund the amount paid by the petitioner-company for change of land use and for external development charges. The public purpose which is sought to be served by acquisition of land would be fulfilled by the petitioner-company and it is well settled that once the same*

*purpose is being achieved for which the land is sought to be acquired, then coupled with many other circumstances as exist in the present case, the respondents could not be permitted to acquire the land for similar purpose for which permission for change of land use has already been granted. The petitioner-company has also deposited huge amount.”*

23. It has been submitted during the course of arguments that SLP in the Hon'ble Supreme Court is pending against this judgment. Even otherwise, the facts of the above case are quite different and distinguishable.

24. Reference has also been made to the observations in case ***Busching Schmitz Private Limited vs. State of Haryana, 1997(1) RCR (Civil) 558*** wherein a big industry was set up in Faridabad Complex in 1963 with the foreign collaboration after making huge investments. This Court in paras 28 & 29 observed as follows:-

*“28. As is clear from the factual narration in the preceding paragraphs, right from the beginning, petitioners got clearance from various authorities for their factory, building and its existence from time to time. Everything was done after prior notice to and getting the approval of these authorities, particularly, the Director, Town and Country Planning, Haryana. Factory of the petitioners was duly permitted and accommodated within the Scheme of Sector 12 of the Faridabad Complex; firstly, by permission of the change of land use within the provisions of this Scheme and, secondly, by its exclusion from the acquisition proceedings which had been started by the Government vide notification dated 23.9.1966, issued under section 4 of the Act, for the very public purpose. Successive notifications issued thereafter were also for the same purpose. Petitioners spent lacs of rupees in setting up the factory and expansion of the building, plant and machinery relying upon the exclusion of the land from acquisition and*

*grant of permission for change in the land use. Once sanction is given under the law, it could not be recalled after the petitioners had changed their position to their detriment by investing huge amounts on the basis of the assurances given by the Government and Government authorities. Principle of estoppel, under the circumstances, would come into play and the respondents have to be restrained from acquiring the land on the principle of estoppel as well.*

*29. The threatened acquisition would tantamount to destruction of an existing factory, which had already been accepted by the Government as being engaged in an activity conducive to the public benefit. Nothing has been brought on the record to show that the petitioner-establishment is causing any nuisance to the residents of the area or that its activities are not conducive to the public purpose.”*

25. The facts of the above cited case and of the present case are quite distinguishable as in this case the acquisition is for a predominant public purpose and the CLU of the acquired land was allowed for setting up of go-down. There is no document to suggest that the petitioners have made any heavy investment over the acquired land.

26. As and when some planned development project is taken up by the State predominantly for public purpose like the one in the present case the Court has to weigh the private interests vis-a-vis public interests and in all eventuality it is the later which has to prevail. The interest of the petitioners can be well protected by the State by considering their request under rules, if preferred, for allowing them the permission of change of land use for the equivalent land i.e. 10Kanal-9Marlas, which has come under acquisition. The petitioners have about 69 Kanals of land at the spot. The purpose of obtaining permission for change of land use was to built

godown. About 1/4<sup>th</sup> of the land regarding which the permission for change of land user had been allowed has come under acquisition.

27. We find no merit in the case of the petitioners.

28. Dismissed.

29. However, the petitioners may, if so advised, approach the authorities of Town and Country Planning, Haryana to consider their request to allow change of land use for their other adjoining land in lieu of acquired land measuring 10Kanal-9Marlas which has come under acquisition after the grant of permission of change of land use. Such application if filed will be considered sympathetically and decided by the respondents No. 1 and 2 under rules and policy.

**(Surya Kant)**  
**Judge**

**(Surinder Gupta)**  
**Judge**

**October 31, 2013**

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