

C.W.P.No. 7711 of 2006

Date of decision:30-3-2007

M/s Neelam Carpets and another Vs. The State of Haryana and others

**CORAM:- HON'BLE MR. JUSTICE K.S.GAREWAL  
HON'BLE MR. JUSTICE AJAI LAMBA**

Present: Shri Ashish Aggarwal, Advocate,  
for the petitioners.

Shri Ashish Kapoor and Shri R.S.Kundu,  
Additional Advocate General Haryana

**K.S.GAREWAL,J.**

This petition has been filed by M/s Neelam Carpets owned by Thana Ram through his son M.L.Arora. Thana Ram himself is also a co-petitioner.

Thana Ram secured half share in the acquired land through a decree passed by learned Sub Judge Ist Class, Panipat on February 17, 1989 and on the basis of this decree the mutation was entered in favour of Thana Ram by the Kanungo on March 2, 1989 (Annexures P-2 and P-1 respectively).

Notification under Section 4 of the Land Acquisition Act was issued on May 10, 1989 for acquisition of a large tract of land including Thana Ram's land, the public purpose stated in the notification was development and utilization of the land as industrial, institutional, residential and commercial for Sectors 6, 7 and 8, Panipat. Objections were filed by Thana Ram under Section 5-A giving details of the manner in which he acquired the property in question, the development of the property by him, construction of the boundary walls, construction of sheds with

office block, dying unit as well as clipping and latexing units at the costs of Rs. 2.89 lacs. Thana Ram had also set up an industrial carpet unit under the name and style of M/s Neelam Carpets. The unit was registered as a small scale unit with O.M.D.I.C., Panipat. It was stated in the objections that the land was surrounded by heavy industrial units such as spinning plants, handloom units and other heavy industries and the entire area was a commercial one and not agricultural. The petitioners' unit was providing employment to several workers. Therefore, the unit deserves to be released from acquisition. In any case the market value of the land in the vicinity is not less than Rs.500/- per sq. yards. The petitioners placed on record the report of a private valuer, copy of the sale deed, copy of the decree, photo copy of registration certificate, jamabandi and girdawaries. It was stated that the notification had not been properly published, the purpose for which the lands were acquired was not a public purpose. The land acquisition was malafide. It was lastly stated that the entire plot was constructed and covered so the land was liable to be released from acquisition. However, if it was acquired then compensation at the rate of Rs.500/- per square yard should be paid alongwith costs of construction, earth work, boundary wall etc. The objections were, however, disregarded and the acquisition proceedings continued. In the petition it was also pleaded that the District Town Planner had served a notice on the petitioners on March 30, 1989 regarding unauthorised construction of building. The business in the premises had been commenced in April 1989.

Declaration under Section 6 was issued on May 9, 1990. The Collector passed two awards. The first award was pronounced on May 7, 1992(Annexure P-9). This award did not cover lands which were under

litigation in respect of which the award could not be pronounced due to stay having been granted by Courts. The petitioners were also one of the persons in respect of whose land no award was pronounced because he too had filed a suit and obtained an injunction.

The petitioners suit was filed on April 27, 1992, just a few days before the award was pronounced, stay was granted to him on April 28, 1992, the stay was interim but kept on extending from time to time. The order was vacated on January 19, 1993, thereafter the stay application was dismissed on May 11, 1994 a few weeks later the award was pronounced on June 21, 1994. The petitioner was not to rest content.

An appeal was filed but dismissed by the learned Additional District Judge, Panipat on September 10, 1994. In the revision filed by the petitioners this Court granted some interim directions on October 10, 1994 and stayed the dispossession from the constructed portion only. This revision petition was finally disposed of on April 19, 2006. On this date the petitioners withdrew the original suit with liberty to seek such appropriate remedies as were available to them in accordance with law. Consequently C.W.P. 7710 of 2006 came be filed.

Learned counsel for the petitioners has argued that the construction was completed in April 1989 whereafter the carpet manufacturing unit known as Neelam Carpets was established. After narrating the above history, the learned counsel referred to the release of many other properties from acquisition which were similarly placed as the petitioners' property and placed on record a list of 99 sites which had been released from acquisition. It was argued that where similarly situated properties had been released, the petitioners' property could not be legally

acquired. The reason given by the respondents for acquiring the petitioners' property was that it fell in the proposed green belt. According to the counsel many of the properties mentioned in the petitioner's affidavit also fell in the green belt. Therefore, it was unjust and inequitable to acquire the petitioners' land.

Respondents filed their reply pleading that the petition had been filed after 12 years on May 16, 2006, long after of the award pronounced on June 21, 1994. The petition was liable to be dismissed on the ground of delay and laches. Petitioners had been heard by the Collector and given an opportunity to file objections. The Collector had made a report on the objections and sent his report to the Government for final decision. It was only after receiving the report from the Government that the declaration had been issued. Lands and buildings which could be adjusted in the plan had been left out from the acquisition, and which could not be adjusted were acquired. The petitioners' land fell in the green belt of the sectors and could not be exempted from acquisition.

Learned counsel for the petitioners has relied upon Raj Kumar Vs. Dipender Kaur Sethi (2005) 9 SCC 304 in support of his contentions. In Raj Kumar's case the matter was not one under the one Land Acquisition Act but was a suit for injunction which the plaintiff sought to amend to one for specific performance. The Supreme Court held that the amendment could be allowed and upheld the view that no fresh cause of action was being introduced and there was no question of injustice to the respondents. It is difficult to understand as to how this assists the petitioner in overcoming the acquisition proceedings. Learned counsel for the petitioners further relied upon B.E.M.L. Employees House Building Cooperative

Society Ltd. Vs. State of Karnatka and others AIR 2004 SC 5054 in order to argue that exclusion of some land from acquisition amounted to discrimination when the petitioners' land though similarly situated was included in the acquisition. Learned counsel for the petitioner further referred to Kishan Chand and others Vs. State of Haryana and others 2004 (3) RCR (Civil) 750 to submit that if the construction was found to be in existence prior to the publication of the notification, it would amount to discrimination when similarly constructed property was exempted. Reference was also made to Sukhdev Sharma etc. Vs. State of Haryana (1993-1) PLR 107 to argue that each and every averment in the petition must be specifically dealt with in the written statement. If a fact was not denied it shall be taken to be admitted. In the present case the two fold defence of the respondent has been that the challenge to the acquisition has been made after 12 years and the petitioners' property could not be released because it fell in the green belt. As regards the failure of the Land Acquisition Collector to give a proper hearing to the objections under Section 5-A, reference was made to Hindustan Petroleum Corporation Vs. Darius Shapur Chennai and others (2005) 7 SCC 627.

We feel that the type of hearing which the Collector allows to an objector depends upon the nature of objections themselves. The petitioner in the present case had filed detailed objections and described how his property was being used for manufacturing carpets, the amount spent on development of the property, the boundary wall and construction etc. but the point which the petitioner has completely missed is that the authorities had released 99 properties from acquisition. Such a step could have only been taken if the Collector had carefully scrutinized each

individual unit and then made a report accordingly. If the petitioner's property had not fallen in the green belt it too would have been released with much ado. The petitioner's property was acquired because it fell in the green belt. The Hindustan Petroleum Corporation case( *supra*) does not help the petitioner as the Collector had very patiently examined each and every objection and actually released 99 properties from acquisition which fell neither along any road nor within the green belt.

Lastly, it was argued by the petitioner that the alignment of the roads or the location of the green belt could be changed to save the property from acquisition. This seems to be an attractive plea which is based on judgment of this Court in *M/s Anil Engineering Works Vs. State of Haryana and others* CWP No. 3849 of 1996 decided by Division Bench on August 1, 1997. We do not think that *M/s Anil Engineering* case lays down any such principle that lands can be released by changing alignment of the roads and providing bends in the roads. The road in the present case is National Highway 1/ Grand Trunk Road from Calcutta to Amritsar (Peshawar). The green belt proposed to be provided along the said road was also a necessary feature of highways as it provided protection to the residents from noise and pollution caused by the traffic. We have taken all aspects into consideration and find that the petitioners by going before the wrong forum deprived of a good opportunity to launch an early challenge to the acquisition. It took the petitioners 12 years to realise the mistake. During this period a lot had changed. Persons who wanted to get their lands released got the relief which they wanted. 99 properties were released from acquisition as per the petitioners' own affidavit. Therefore, it becomes obvious that the authorities were extremely fair and generous in releasing properties from acquisition

where the circumstances so demanded. Petitioners' property did not fall under any of the parameters for release. Therefore, we find no reason to recommend release of the petitioner's property.

There is no merit in this writ petition and the same is dismissed.

**(K.S.GAREWAL)**  
**JUDGE**

**(AJAI LAMBA)**  
**JUDGE**

March 30, 2007  
RSK