IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

C.W.P. No. 15409 of 2007

DATE OF DECISION: November 28, 2008

Man Singh

…Petitioner

Versus

State of Haryana and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE JORA SINGH

Present: Mr. J.S. Yadav, Advocate,
for the petitioner.

Mr. Ashish Kapoor, Addl. AG, Haryana,
for respondent No. 1.

Mr. Dinesh Nagar, Advocate,
for respondent Nos. 2 & 3.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes

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

3. Whether the judgment should be reported in the Digest? Yes

M.M. KUMAR, J.

1. The petitioner has approached this Court with a prayer for quashing order dated 11.5.2007 (P-19) passed by the Estate Officer, HUDA, Gurgaon-respondent No. 3, declining his request for allotment of a residential plot under the 'Oustees Quota'.

2. Brief facts of the case are that the land belonging to the petitioner, measuring 21 Kanals 7 Marlas, situated at village Kanehi, Tehsil and District Gurgaon, was acquired in pursuance to notifications dated 20.4.1990 and 18.4.1991 (P-5 & P-6) issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (for brevity, 'the Act'). The public purpose of acquiring the land was to develop residential and institutional area of Sectors 44 to 46, Gurgaon. The petitioner had filed objections under Section 5-A of the Act and land measuring 4 Kanals 17 Marlas was released from acquisition, which did not form part of declaration issued under Section 6 of the Act. On 8.3.2004, the petitioner applied for allotment of one kanal residential plot in Sector 45, Gurgaon, under the oustees policy and also deposited a sum of Rs. 2,76,276/-. His case was not being considered, which resulted in filing of C.W.P. No. 2229 of 2005, which was disposed of on 1.8.2006 and direction was issued to the Estate Officer, HUDA, Gurgaon for re-consideration of his claim. The impugned order has been passed in pursuance to the aforementioned direction. His claim has been rejected on the ground that under the policy once his land has been released from acquisition then he would not be eligible for allotment under the oustees quota. The operative part of the order passed by the Estate Officer reads as under:-

> "1. Sh. Man Singh has applied for allotment of one Kanal plot under the oustees policy. His case was reconsidered and same was rejected by the screening Committee because 4 Kanal 17 Marla land of petitioner has been released U/S 5-A of the LA Act. It is policy

matter that if the land of any land owner is released from acquisition, he/she would not be eligible to avail of any benefit under oustees policy (irrespective of the area of land released).

After considering the fact I am of the considered view that Sh. Man Singh does not fulfill the condition laid down in the policy of HUDA for allotment of plot under the oustees policy as per detail brought out above. The petitioner is not entitled for allotment of plot under the oustees policy. The representation of the petitioner is disposed of accordingly and the amount deposited by the petitioner Rs. 2,76,276/- is being refunded."

3. Mr. J.S. Yadav, learned counsel for the petitioner has argued that the reasoning adopted by the Estate Officer in the impugned order suffers from acute legal infirmity as the land of the petitioner measuring 4 Kanals 17 Marlas cannot be deemed to be released because it was not acquired at the first place. According to learned counsel the land can be deemed to be released if power under Section 48 of the Act has been exercised after the appropriate Government is satisfied and has declared that the land is needed for a public purpose in pursuance to Section 6 of the Act. Learned counsel has argued that in the absence of any such declaration under Section 6 of the Act, the land of the petitioner cannot be deemed to be acquired.

4. Mr. Ashish Kapoor and Mr. Dinesh Nagar, learned counsel for the respondents, however, have drawn our attention to para 1 of the preliminary objection of the written statement and

argued that as per the policy of the State Government, dated 18.3.1992 (P-9) if the land of a land owner has been released from acquisition he could not remain eligible to apply for allotment of a plot under Oustees' quota as per the policy. According to the learned counsel order passed by the Estate Officer does not suffer from any legal infirmity.

5. Having heard learned counsel at a considerable length and perusal of the policy, we are of the considered view that this petition lacks merit and is, thus, liable to be dismissed. The land belonging to the petitioner alongwith other co-sharer was acquired in the year 1990. However, no declaration under Section 6 of the Act in respect of land measuring 4 Kanals 17 Marlas belonging to the petitioner and his co-sharer, was issued because the objections filed by the petitioner under Section 5-A of the Act found favour with the Land Acquisition Collector as well as with the State Government. In the policy dated 18.3.1992 (P-9), clause (iv) is explicit and it makes those oustees in-eligible for allotment of a plot if any part of their land was released from acquisition. It may be profitale to read clause (iv), which is as under:-

> "iv) If the land of any land owners is released from acquisition, he/she would not be eligible to avail of any benefit under this policy (irrespective of the area of land released)."

6. On acceptance of objections filed by the petitioner under Section 5-A of the Act, sufficient area of 4 Kanals 17 Marlas of the land was released from acquisition at the stage of issuance of declaration under Section 6 of the Act. Once more than 4 Kanals of

land has been released then the acquisition of the rest of the land and its consequential development by the respondents would enure to the benefits of the petitioner. The basic purpose of allotment of a plot under oustees quota is to ensure that the land owner is not uprooted and he is left with sufficient area for residential or other purposes. The surrounded land acquired by the respondents is subjected to development which would also enure to the benefit of the released land. Therefore, the allotment of plot to such land owner has rightly been declined under the oustees quota. Moreover, the State has framed a policy and the Courts cannot interfere with policy matters unless it is concluded that the policy is violative of Article 14 of the Constitution or against the fundamental rights of citizen. Therefore, we are of the view that the impugned order does not suffer from any legal infirmity warranting interference of this Court.

7. The argument of the learned counsel for the petitioner that the land would not be deemed to be released until and unless power under Section 48(2) of the Act is exercised, has failed to impress us because the acquisition process would commence on the publication of notification under Section 4 of the Act. Such a notification is issued on the formation of an opinion by the appropriate Government that land in question is needed or is likely to be needed for any public purpose etc. It is a different matter that eventually when notification under Section 6 of the Act is published then a declaration is made that the land is required for a public purpose. At that stage the objections under Section 5-A of the Act have been filed and are considered. There is ever possibility of excluding the land from acquisition on the basis of objections under

Section 5-A of the Act. Moreover, the notification issued under Section 4 of the Act would be rendered superfluous if we accept the interpretation that the procedure of acquisition does not commence with the issuance of notification under Section 4 of the Act because the price of the land is to be fixed with reference to the date of notification issued under that Section. Moreover, without issuing any notification under Section 4 no declaration under Section 6 could be made. Even in the cases of urgency/emergency notification under Sections 4 and 6 have to be issued with a gap of one day, as is evident from the perusal of Section 17(4) of the Act. If the acquisition was not to commence with issuance of notification under Section 4(1) then such a view could not have been taken. Therefore, we find no merit in the contention raised by the learned counsel for the petitioner and the same is hereby rejected.

8. For the reasons aforementioned, this petition fails and the same is dismissed.

(M.M. KUMAR)
JUDGE

(JORA SINGH)
JUDGE

November 28, 2008
Pkapoor