

*IN THE HIGH COURT FOR THE STATES OF PUNJAB
AND HARYANA AT CHANDIGARH.*

CWP No.13543 of 1990. [O&M]
Date of Decision: 31st October, 2013.

Krishan Chand Jain & Ors. Petitioners through
Mr. Shailendra Jain, Advocate
Versus

State of Haryana & Ors. Respondents through
Ms. Palika Monga, DAG, Haryana.

**CORAM:HON'BLE MR. JUSTICE SURYA KANT
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?***

SURYA KANT, J.

The petitioners who are husband and wife seek quashing of the notifications dated 09.05.1988 and 04.05.1989 issued under Sections 4 and 6 of the Land Acquisition Act, 1894, respectively, to the extent of acquisition of their land measuring about 12 Biswas 15 Biswansis bearing Khasra Nos. 3871/1868/2/4/2 and 3871/1868/2/4/3 situated within the Municipal Limits of Gurgaon. The petitioners' land forms part of the 20.66 acres of land acquired vide impugned notifications for the development and its utilization as "residential and commercial Sector 13 at Gurgaon" under the Haryana Urban Development Authority Act, 1977.

[2]. The case of the petitioners is that earlier the State Government vide notifications dated 28.12.1976 and 26.12.1977 intended to acquire 413.13 acres of land in village Gurgaon for its development and utilization for residential and commercial area

which included the subject land but no award was passed and the acquisition was allowed to lapse. When the impugned notification under Section 4 expressing the intention to acquire the subject land was issued, the petitioners filed objections under Section 5-A, *inter-alia*, submitting that “*the acquisition of the land was not in the interest of the Government and that it was surrounded by the pucca boundary wall having construction prior to 1966 with a water supply and a sewerage system. Besides a show room, service station and office complex exists in the land. It is submitted that on the land owned by the petitioners, there exists first class construction consisting of a huge office cum show room complex with boundary wall. The said construction existed on the land in question much prior to the issuance of notification under Section 4 of the Act. The cost of existing construction is very huge and it is situated on main Delhi Gurgaon road in a posh commercial area*”.

[3]. The photo copy of the report of Land Acquisition Collector in respect of the objections submitted by the landowners unfolds that in the case of petitioners it was found that there were three rooms of 'B' class construction raised before the issuance of Section 4 notification and the petitioners sought the release of that construction as it was being used for residential purposes. The Land Acquisition Collector recommended to acquire the same as the construction was raised by the petitioners in violation of the Sector Planning. Declaration under Section 6 was consequently issued.

[4]. The aggrieved petitioners approached this Court and vide

order dated 29.10.1990 their dispossession and further proceedings were stayed. The petitioners, however, were restrained from raising further construction without prior permission of this Court.

[5]. The Land Acquisition Collector, Gurgaon has filed the written statement maintaining that due procedure has been followed while acquiring the petitioners' property for a *bona-fide* public purpose.

[6]. The petitioners have filed a comprehensive replication, *inter-alia*, pointing out that – [i] they have raised multi-storeyed 'A' class construction where the business of automobiles including agency of Two-Wheelers and of various other vehicles is being run and more than 75 persons have been employed therein. The photographs depicting the Show-rooms where different types of automobile activities are being run, have also been appended.

[7]. Before referring to the other averments made in the replication in *extenso*, one of the interesting plea taken by the petitioners firstly in the writ petition and then highlighted in the Replication deserves a special mention. The petitioners' own case in Para 3 of the writ petition is as follows:-

“3. That the land owned by the petitioners, which is sought to be acquired by the impugned notifications is situated in a fully developed locality surrounded by factories, residential houses, commercial complex and schools. Apart from above, the land in question is situated within a distance of 1000 yards from the Crest of the outer parapet of explosive area of 54 ASP, Air Force Station, Gurgaon. The land situated within 1000 yards is

subject to restriction upon the use and enjoyment thereof in view of the notification issued under Section 3 read with Section 7 of the Indian Works of Defence Act, 1903".
[Emphasis applied].

[8]. In the Replication which has been filed as late as on 20.07.2011, the petitioners have further averred in Para 2 that :-

*"the respondent has not come to Court with clean hand and vaguely denied that the land belonging to the petitioner falls within 1000 yards boundary around the defence area. The petitioner has also received notice from the Collector, Gurgaon under Section 9 of the Indian Works of Defence Act, 1903, in the year 1988. The copy of the same is annexed herewith and marked as **Annexure P-8**. The said document clearly evidences the fact that land belonging to petitioner falls within 1000 yards around the defence area and was having construction in the year 1988. It is matter of record that the aforesaid notice under Section 9 [Annexure P-8] was challenged by the petitioner by way of Civil Writ Petition No. 7289 of 1988 and the demolition of the petitioner's property was stayed by this Hon'ble Court vide order dated 26.08.1988. The true typed copy of the order dated 26.08.1988 is annexed herewith and marked as **ANNEXURE P-9**. The aforesaid Civil Writ Petition was disposed of by this Hon'ble Court by way of common judgment passed in Civil Writ Petition No. 6669 of 1988 titled as 'Anup Singh and Others Vs. Union of India and another'. The true typed copy of the same has already been filed before this Hon'ble Court as Annexure P-5 by way of CM No. 8516-17 of 2011. The said judgment clearly shows that the Hon'ble Court has directed the Collector, Gurgaon, not to initiate any demolition action in terms of the notices under Section 9 [Annexure P-8] till*

such or similar action is initiated/taken against Maruti Udyog Limited, residents of Sector 14 developed by HUDA, HSEB Sub Station and other similarly situated buildings/land within a distance of 1000 yards from the crest of the outer parapet of Explosives Area No. 54, A.S.P., Air Force Station, Gurgaon. The land of the petitioner hence, can not be used for any sort of planned/new development since the same falls within a distance of 1000 yards from the defence area".
[Emphasis applied]

[9]. It is, thus, an admitted and pleaded case of the petitioners that their land/structure is located within a distance of 1000 yards from the crest of the outer parapet of ammunition depot at 54 ASP, Air Force Station, Gurgaon. The notification imposing restrictions on raising construction within a radius of 1000 yards and for demolition of any unauthorized construction raised there was also undisputably issued under Section 3 read with Section 7[b] of the Indian Works of Defence Act, 1903 on 29th August, 1987 and a show cause notice was issued to the petitioners by the Collector, Gurgaon which they challenged before this court in **CWP No. 6669 of 1988.** That writ petition was disposed of with certain directions to which, we will advert to a little later.

[10]. The above stated plea has been taken by the petitioners so as to contend that [i] their illegal or unauthorized construction raised in violation of the notification dated 29th August, 1987 issued under Section 3 read with Section 7[b] of the Defence Act, 1903, can not be demolished in the light of the conditional protection granted by this Court and [ii] the respondents can not acquire the said land to

utilize it for development of a Residential or Commercial Sector, as such utilization would be in total disregard and violation of the above said notification issued under the 1903 Act.

[11]. The question whether landowners can take advantage of restrictions imposed under Sections 3 and 7[b] of 1903 Act for challenging the acquisition of their land, was elaborately considered by this Court in **CWP No. 13217 of 2009 [Virender Kumar & Ors. Vs. State of Haryana & Ors.]** and other connected cases decided on 15.12.2010 where acquisition of land for development of *Shri Mata Sheetla Devi Shrine Complex* and other public utilities in Gurgaon, was assailed. Having noticed that the writ petitioners in that case had raised construction within 900 meters radius of the ammunition depot, it was held that :-

“The constructions raised in violation of notification can be demolished without compensation but constructions existing on the date of notification can not be demolished without prior compensation. Absence of taking of steps for making of award does not affect validity and enforcement of notification under Section 3 read with Section 7[b] of the Defence Act. However, the affected party is entitled to a direction for taking of steps for making of award and for compensation for the delay. In the absence of notice under Section 9 of the Defence Act within the stipulated period and making of the award or giving compensation, do not have the effect of lapsing of the notification. A large scale illegal constructions in violation of the notification do not create any equity in favour of the petitioners.

The intention and purpose of the Defence Act is apparent

and laudable. Since works of defence are vital installations which directly relate to the safety, security, sovereignty and integrity of the country, it can not be compromised with in any manner and in no circumstances, can be diluted or overlooked. The reason why this Act was enacted is not far to find. A mere look at the objectives specified in the Preamble of the Constitution of India, which contains the basic structures of the Constitution, reflect the purpose for which India was constituted. Sovereignty, unity and integrity of the nation specifically form part of the Preamble. By reducing it to mere words without any force or effect would be destroying the spirit of the Constitution, which can not be permitted in any situation. Casual and unconcerned approach in this regard is neither expected nor acceptable”.

[12]. This Court further held that :-

“We are, thus, of the opinion that the interest of the nation exceeds all personal interests and personal interests should make way to the national interest. The Ammunition Depot is a strategic defence installation and in the very nature of things, the matter of its location is a delicate and sensitive issue involving the defence and security of the country which can not be compromised with under any circumstances. The Statutory and Executive Authorities who are mandated under law to implement, oversee and maintain the statutory provisions, have totally shut their eyes and have allowed illegal constructions to mushroom within the restricted area. What is most surprising and astonishing is that those very illegal constructions which have been made by the land owners within the restricted area on their land, have been granted legitimacy by exempting their land from

acquisition merely because construction was in existence on the land when notification under Section 4 of the LA Act was issued, when it is the specific stand of the District Town Planner [HQ], Haryana – respondent No. 4 that 900 meters wide strip of land around the Ammunition Depot has been kept free from urbanization under the provisions of the Defence Act as per notification dated 8.1.1996 pertaining to the Final Development Plan of Gurgaon and now in the Final Development Plan 2021-AD for the controlled areas of Gurgaon Manesar Urban Complex notified vide notification dated 5.2.2007 prepared as per the provisions of the 1963 Act”.

[13]. This very issue again came up for consideration before this Court in the context of constructions raised within the radius of 1000 yards of ammunition depot near Amritsar in **CWP No. 23259 of 2011 [Bakshish Singh & Ors. Vs. Union of India & Ors.]** decided on 30th July, 2013 and it was held that:-

“11] As regard to the alleged violation of Article 19 (1) (g) of the Constitution, it seems to us that the 1903 Act squarely falls within the four-corners of Article 19 (6) of the Constitution as the restrictions on raising of construction over the land abutting an Ammunition Depot are imposed in the interest of 'general public'.

12] Amritsar district comprises border area. The strategic location of Ammunition Depot is essentially in the interest of security of the Nation. Such like locations need to provide not only unobstructed access to Army in the need of hours, but the inhabitation of its adjoining area also poses a grave endanger to human lives in the event of any untoward accident”.

[14]. Yet another Coordinate Bench of this Court in **CWP No.**

14339 of 2011 [Goyal Estate and Promoters Pvt. Ltd. & Ors. Vs.

State of Haryana & Ors.] decided on 31.10.2011 declined to protect the structures/buildings acquired under the Land Acquisition Act, 1894 observing as follows:-

“It has come on record that the petitioners have set up illegal colony on the land in question by violating the provisions of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 and the Haryana Development and Regulation of Urban Areas Act, 1975. In the interlocutory order dated 08.08.2011, the aforesaid fact has been recorded and the opinion has been expressed that on account of violation of law for which even prosecution has been provided, the petitioners would not be entitled to get any relief in equitable jurisdiction of this Court. The matter was adjourned for today because some other matter has also been pending.

3. After going through the record and the averments made in the application filed by the petitioners, aforesaid violation of various provisions of the Acts has been affirmed and there is no denial of the same.”

[15]. The construction raised by the petitioners undeniably is in violation of the restrictions imposed under the 1903 Act. We may now refer to the decision dated 18.03.1991 of a learned Single Judge rendered in a bunch of writ petitions including that of the petitioners wherein show cause notices served on them by the Collector, Gurgaon for violation of provisions of the 1903 Act, were challenged. The learned Single Judge disposed of those cases with the following directions:-

“In view of my findings recorded above, the learned counsel for the petitioners did not press for his other submissions raised by him in the writ petition. This writ petition is disposed of accordingly with the direction that no action in pursuance to the notice issued under Section 9 of the Act [Annexure P/2] dated 15.07.1988 be taken against the petitioners till such or similar action is initiated /taken against Maruti Udyog Limited, residents of Sector 14 developed by HUDA, H.S.E.B. Sub Station and other similarly situated buildings/land within a distance of 1000 yards from the crest of the outer parapet of Explosives Area of No. 54, ASP, Air Force Station, Gurgaon”.

[16]. In our considered opinion, the order reproduced above, does not and can not give the colour of legitimacy to the constructions raised in violation of notifications issued under the 1903 Act. It rather acknowledges the *ex-facie* illegality. The limited protection granted was that the petitioners' construction could be demolished simultaneously along with other such like illegal constructions. Any wider interpretation of this order would run contrary to the two Division Bench decisions cited above and in that event the view taken by learned Single Judge stands impliedly overruled.

[17]. That no premium can be attached to an unauthorized construction even if crores of rupees were spent, has been authoritatively laid down by the Supreme Court in **Shanti Sports Club and Anr. Vs. Union of India & Ors., 2009[15] SCC, 705**, Para 53 whereof holds that:-

“53. Unfortunately, despite repeated judgments by this

Court and High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans etc., have received encouragement and support from the State apparatus. As and when the Courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance of laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorized constructions, those in power have come forward to protect the wrong doers either by issuing administrative orders or enacting laws for regularization of illegal and unauthorized constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorized constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions”.

[18]. Counsel for the parties also pointed out that the question of demolition of unauthorized and illegal constructions raised in violation of the notifications issued under the 1903 Defence Act and falling within the municipal limits of Faridabad and Gurgaon, is under consideration before this Court in a Public Interest Litigation in **CWP Nos. 15171-18679 of 2010 [Suresh Goel & Ors. Vs. Union of India & Ors.]**. A pointed reference has been made to the interlocutory

order dated 31.07.2013 whereby Chief Secretary, Haryana has been directed to interact with the Ministry of Defence, Government of India for the constitution of a Committee to resolve the impasse. It appears to us that such an interim direction would not lend any support to the petitioners' case. The fact that the restrictions imposed under the Defence Act were in vogue when the petitioners raised construction in defiance thereto, being an admitted fact, no colour of legitimacy can be given to such constructions at this stage.

[19]. It may be true that giving effect to the Government Policies dated 26.10.2007 as modified on 24.01.2011 and which have been held to be enforceable in **Patasi Devi & Ors. Vs. State of Haryana & Ors. 2012[9] SCC, 503**, this Court has passed 'n' number of orders for the release of residential houses and other structures found in existence at the time of Section 4 notification. One such order dated 17.07.2013 passed in **CWP No. 19999 of 2012 [Ram Kishan & Ors. Vs. State of Haryana & Ors.]** and other connected cases pertaining to acquisition of land of Sector 37-C, Gurgaon has been heavily relied upon by learned counsel for the petitioners also. It goes without saying that in a case of irregular constructions say for want of permission by the Competent Authority, the petitioners could seek the benefit of above stated Government policies for the release of the subject structures. The cited cases are, however, totally distinguishable due to the peculiarity of facts and a brazen violation of the substantive provisions of the Defence Act. The two decisions in **Shanti Sports Club and Suresh Goel's cases**

[supra], unequivocally hold that provisions of the Defence Act must have over-riding effect over the local laws or the executive policies and the private interests must be subservient to the national interest embedded in the Defence Act.

[20]. Since the construction raised by the petitioners are patently illegal and being in violation of the notifications and provisions of the Defence Act, the benefit of State Government policies can not be extended to the petitioners. Similarly, their plea that the State Government also intends to utilize the acquired land to develop it as a residential or commercial sector and on that analogy the construction raised by the petitioners also stands legalised, can not be accepted as it would perpetuate illegality contrary to the dictum of Apex Court in Shanti Sports Club's case[supra]. Contrarily, the ground of discrimination can be well eliminated by directing the respondents that the acquired land/property shall be kept free from all types of constructions and shall be developed as an open green area without compromising with the national security and safety.

[21]. For the reasons afore-stated, we do not find any merit in this writ petition and consequently dismiss the same.

(SURYA KANT)
JUDGE

October 31, 2013.
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(SURINDER GUPTA)
JUDGE