

*Before Jasbir Singh & Augustine George Masih, JJ.*

**SANJEEV MAINI & ANOTHER,—Petitioners**

*versus*

**STATE OF HARYANA & OTHERS,—Respondents**

**C.W.P. No. 15086 of 2005**

6TH July, 2011

*Constitution of India - 226 - Land Acquisition Act, 1894 - Ss. 4, 5-A, 6, 11 & 16 - Notification issued for acquisition of land for development of Industrial Estate - As per Petitioner publication of notice U/s 4 was not made which deprived them of their right to file objections U/s 5-A - Subsequently declaration U/s 6 was made and award was also passed - Petitioners also alleged discrimination as several other similarly placed industrial units have been released from acquisition - Respondents asserted that proper compliance of Section 4 has been made and since Petitioners have not filed objections under Section 5-A and have approached Court after passing of award are not entitled to any relief - Moreover, possession of land has been handed over to HSIIDC on date of passing of award - During pendency of petition Respondent decided to release land of Petitioners who had filed objections and had approached Court before announcement of award - Insofar as those Petitioners who had approached Court after pronouncement of award, Government was not competent to release land and as such it was decided to allot land as per decision of Board of Directors - Petitions falling in first category were disposed of - Petitioners falling in the second category contended that provisions of Section 4 had not been complied with - Further contended that Section 16 of Act had also not been complied with - Respondent contended that since possession of land vested in State after pronouncement of the award, the land could not be released - Petition allowed.*

*Held,* That provisions of Section 4 had not been complied with and sufficient publicity of the acquisition had not been given as held in the judgment of the Supreme Court in (2011) 1 SCC 330. However, since the

Respondents have not disputed the fact that the units of the Petitioners are running the question for determination is whether the land is to be released or allotted to the Petitioners. In case the land is to be released then the same would be governed by the terms and conditions as laid down in M/s Surya Roshni Limited (CWP # 5006 of 2003) and if not then by para 11 (b) of the affidavit dated 19.4.2011. Further held that provisions of Section 16 had not been complied with as the Rapat Roznamcha did not prepared in the presence of independent witnesses nor did it bear the signatures of any such independent witnesses. Accordingly, it cannot be said that possession had been taken in accordance with law and the land vested with the Government. If the land did not vest with the Government there was no question of allotment and the same had to be released in favour of the Petitioners. Petition allowed.

(Para 10, 13, 14, 15, 16 & 17)

Shailendra Jain, Advocate, *for the petitioner(s)*.

Kamal Sehgal, Addl. A.G., Haryana, *for the respondents*.

**AUGUSTINE GEORGE MASIH, J.**

(1) By this order we propose to dispose of three writ petitions i.e. CWP No. 15086 of 2005 titled ‘Sanjeev Maini & another vs. State of Haryana & others’, CWP No. 881 of 2004 titled ‘M/s Super Alloys Products vs. The State of Haryana & others’ and CWP No.882 of 2004 titled M/s Super Ceramic Products and another vs. The State of Haryana & others, as issues involved therein are identical.

(2) Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as ‘the Act’) was issued on 23.1.2001 by the State of Haryana proposing to acquire an area of 253 acres, 4 Kanals, 2 Marlas of land for a public purpose for development of Industrial estate in village Sankhol, Tehsil Bahadurgarh, District Jhajjar at public expenses. As per the allegations in the writ petition and which has substantial weight are that there was no publication in the newspapers as mandated under Section 4 of the Act. However, as per the assertions of the respondent / State it was published in two newspapers namely ‘Bharat Janani’ and ‘Hari Bhoomi’. As the petitioners were not aware of the said notification, objections under

Section 5-A of the Act were not filed by them. Thereafter declaration under Section 6 of the Act was issued on 22.1.2002 for an area of 157 acres, 7 Kanals and 19 Marlas. Award was passed on 20.1.2004 for land measuring 154 Acres, 4 Kanals and 1 Marla.

(3) Petitioners in CWP No. 881 & 882 of 2004 approached this Court by filing writ petitions on 18.1.2004, which came up for hearing before this Court on 20.1.2004, when notice of motion was issued and dispossession of the petitioners was stayed. CWP No. 15086 of 2005 was filed on 19.9.2005, which was listed for hearing on 22.9.2005 and dispossession of the petitioners was stayed by this Court on the said date.

(4) Challenge to the notifications and the award in these writ petitions is based on various grounds, out of which the primary ground, which has been pressed into service at the time of hearing was non-compliance of Section 4 of the Act, on the ground that the notification was mandated to be published in two newspapers, which on enquiry by the petitioners, was informed to them that it was published in two Hindi newspapers i.e. 'Bharat Janani' and 'Hari Bhoomi' on 19.2.2001 and 13.2.2001 respectively. It is the contention of the petitioners that newspaper 'Bharat Janani' had absolutely no circulation and it is only existing on papers. As regards 'Hari Bhoomi', it has been stated that it has very less circulation inasmuch as it had only 70 copies in circulation in the entire Tehsil of Bahadurgarh during January/February 2001 i.e. the relevant time. It has further been asserted that even proclamation was not done in the locality, which led to the petitioners losing their valuable right of filing objections under Section 5-A of the Act. Reliance has been placed on the report submitted on the enquiry marked by the Directorate of Advertising and Visual Publicity, Ministry of Information and Broadcasting, Government of India, copy of which has been placed on record as Annexure P-35, with covering letter as Annexure P-34. Wherein as per the report newspaper 'Hari Bhoomi' was in circulation, whereas newspaper 'Bharat Janani' was not in circulation and not even a single copy of the newspaper was available either with the news agencies, hawkers, shopkeepers, people or Library and none had heard and seen this newspaper. On the basis of this report, the assertion had been made that the provisions of Section 4 of the Act

have not been complied with vitiating the consequential proceedings resulting in the passing of the award. Ground of discrimination has also been pressed into service on the assertion that it has been acknowledged that the petitioners are running units over the land which is being sought to be acquired for industrial purposes and similarly placed 43 industrial units have been released from acquisition, whereas the land of the petitioners have been acquired.

(5) The claims of the petitioners stand disputed by the respondents, who have asserted that proper compliance of provisions of Section 4 of the Act has been made and the petitioners having not filed the objections under Section 5-A of the Act and have approached the Court after passing of the award, are not entitled to any benefit. It has further been asserted that the possession of the land had been taken by the State and handed over to Haryana State Industrial and Infrastructure Development Corporation Limited (hereinafter referred to as the HSIIDC) on the date of passing of the award i.e. 20.1.2004. This has been stated by the counsel for the State on the basis of *Rapat Roznamcha*, copy of which has been produced on record at the time of arguments.

(6) The acquisition was challenged by a number of landowners, who were primarily running industrial units. When these writ petitions came up for hearing before this Court on 24.1.2011, counsel for the State made a statement in the Court that the matter regarding release of land of the writ petitioners is under active consideration and sought time to get instructions. The case was thereafter taken up for hearing on 19.4.2011 when an affidavit of Sh. T.L. Satyaprakash, Joint Secretary to Government of Haryana, Industries and Commerce Department, Chandigarh dated 19.04.2011 was filed in Court, in CWP No. 7218 of 2002, which narrated the decision of the Government with reasons qua land of all petitioners in the writs under consideration, where in para 11 it has been stated that it was observed by the HSIIDC during the site visit that some of the petitioners had set up industrial units on the land in question. In the cases where there are running industrial units on the land under acquisition, it has been decided to release/allot the land. These cases were broadly categorized into two categories. The first category was where the petitioners availed the opportunity of filing objections under Section 5-A of the Act and approached this Court before the announcement of Award, it was decided to release the land. The second

category, was where the petitioners approached this Court after the announcement of the Award and possession had been taken over and the State Government was not competent to release the land, it was decided to allot the land as per the policy decision taken by the Board of Directors of HSIIDC in its meeting held on 22.10.2008 with a view to accommodate this type of cases. As per the decision, the land could be allotted by HSIIDC to the owner as per the approved pricing formula i.e. the basic price of the land to be reckoned at the level of compensation offered, add to it the amount of EDC and the IDC (which is also payable in CLU cases), and then load it by 45% on to the area to adjust for the nonsaleable area used for roads, infrastructure services, and other public utilities by way of infrastructure facilities in a developed industrial estate. Further conditions, which were common to all cases were also spelled out in para 12 of the said affidavit, which reads as follows :-

- “(i) The petitioners will transfer part of any land required for construction and widening of roads free of cost to HSIIDC;*
- (ii) If any exchange of land is required for proper integration of planning, the petitioners will not object to such a proposal of HSIIDC;*
- (iii) The petitioners will pay the development charges to HSIIDC as per policy decision applicable in such type of cases;*
- (iv) The petitioners will withdraw ongoing court cases.”*

(7) While dealing with the cases of the petitioners in CWP No. 15086 of 2005, it was stated in the affidavit, as follows :-

**11.7 CWP No. 15086 of 2005- Sanjeev Maini and another**

*The petitioner No. 1 (one of the lessees) is owner of half part of land comprising in Khasra No. 36//13/1(6- 14) and 18/1(1-18) of village Sankhol, teshil Bahadurgarh, district Jhajjar and has challenged the acquisition of these land parcels along with M/s Super Freeze (petitioner No.2-lessor). In this case, the landowners did not avail the opportunity of*

*filing objections under Section 5-A of the Act, therefore, their claims for release of land were not considered at the time of issue of the Section 6 declarations. The LAC, Jhajjar, announced the Award of the land on 20.01.2004. The petitioner company had obtained the change in land use permission vide letter dated 30.09.1997 (Annexure P-11) for the subject land.*

*It may also be submitted here that the petitioner had approached the Hon'ble Court after the announcement of the Award and the Hon'ble Court vide order dated 22.09.2005 had stayed the dispossession of the land i.e. after 20.01.2004, the date of completion of handing over of possession.*

*It is further submitted that as the possession of the land stands transferred to the HSIIDC, the State Government is not competent to release these land parcels as per the provisions of Section 48 of the Land Acquisition Act, 1894. However, the Government also recognizes that it is a running industrial unit established prior to the issuance of Section 4 notification.*

*It may be submitted here that this case is similar to the one explained at paragraph No. 11(b) of this affidavit. As per the policy decision taken by the Board of Directors of HSIIDC in its meeting held on 22.10.2008 with a view to accommodating above type of cases, it is agreeable to allot the land to these landowners in view of the above policy decision subject to the conditions mentioned in paragraph 12 of this affidavit.*

*The land pockets of the petitioner are shown in layout plan annexed as Annexure R-2 for kind perusal of the Hon'ble Court.”*

(8) The writ petitions, which fell in the first category as per para 11(a) of the affidavit dated 19.4.2011, were disposed of as having been rendered infructuous, however, cases which fell in second category, counsel for the petitioners sought time to seek instructions.

(9) Claims of the petitioners in CWP Nos. 881 and 882 of 2004 were dealt with in the affidavit dated 17.2.2011 filed in CWP No. 5006 of 2003, M/s. Surya Roshni Ltd. vs. State of Haryana & Ors. In this affidavit in paras 6.1 and 6.2 it was stated as follows :-

**“6.1 CWP No. 5006 of 2003 Surya Roshni v. State of Haryana & Ors.**

*Land measuring 13 acres 11 marlas of M/s Surya Roshni Limited has been offered to be released by the Government subject to the fulfillment of the following terms and conditions :-*

- “(i) The Company will obtain change of land use permission from the Director, Town and Country Planning, Urban Local Bodies, Haryana. The change of land use permission and compounding shall be got done within a period of three months positively.*
- (ii) The company will pay statutory levies and development charges levied by the Town and Country Planning/Urban Local Bodies, Haryana and the HSIIDC;*
- (iii) The Company will transfer any portion of land, for completion or development of a road network or any infrastructure facility to be created, to the HSIIDC free of costs; and*
- (iv) The company will enter into an exchange agreement if any portion of the above land is required for integration of planning and laying of infrastructure services.”*

*The above offer was communicated to M/s Surya Roshni Ltd. vide letter dated 28.12.2010 regarding release of their land from acquisition proceedings. It is submitted for the kind attention of the Hon’ble Court that the company vide its letter dated 10.02.2011 (A typed copy and a photocopy of the original letter along with affidavit of the petitioner company is enclosed as Annexure R-5 colly.) has accepted*

*the terms and conditions of release of their land. A layout plan showing the land of the petitioner company, and marked as land pocket No.4, has been enclosed as Annexure R-6 for kind perusal of the Hon'ble Court."*

**“6.2 (a) CWP No. 881 of 2004- M/s Super Alloy Products v. State of Haryana & Ors; and**

**(b) CWP No. 882 of 2004- M/s Super Ceramic Products v. State of Haryana & ors.**

*In these cases, the landowners did not avail the opportunity of filing objections under Section 5-A of the Act, therefore, their claims for release of land were not considered at the time of issue of the Section 6 declarations. The HSIIDC has reported after the site visit that these landowners have set up industrial units but some of their land portions are forming part of 30 meters wide statutory green belt along NH-10 and are sandwiched between the released land of M/s Surya Roshni and Ganpati Dham (Award quashed) and these land portions cannot be integrated with the larger pocket of acquired land in possession of the HSIIDC.*

*It may be submitted here that a policy decision was taken by the Board of Directors of HSIIDC in its meeting held on 22.10.2008 with a view to accommodating above type of cases (e.g. where the plots were put to conforming use i.e. Industrial but where the process of acquisition stood completed with the announcement of the award and taking over of the possession of the land in question). In such a situation, as per the above noted policy decision, the land could be allotted by the HSIIDC to the owner as per the approved pricing formula i.e. the basic price of the land to be reckoned at the level of compensation offered, add to it the amount of EDC and the IDC (which is also payable in CLU cases), and then load it by 45% on to the area to adjust for the nonsaleable area used for roads, infrastructure services, and other public utilities by way of infrastructure facilities in a developed industrial estate.*



*The State Government has agreed to allot the land to these landowners in view of the above policy decision subject to certain terms and conditions. A layout plan showing the land of the petitioner companies, marked as land pocket Nos. 8 and 10 has been enclosed as Annexure R-6 for kind perusal of the Hon'ble Court.*

(10) Counsel for the petitioners in these three cases, when were taken up for hearing, primarily had raised objection to the condition of load up of 45%, which was mentioned in the affidavits, which the petitioners were required to bear. Apart from assailing the imposition of this condition to the case of the petitioners, he pressed his arguments on non-compliance of Section 4 of the Act by placing reliance on the judgment of the Hon'ble Supreme Court in the case of **Special Deputy Collector, Land Acquisition C.M.D.A. versus J. Sivaprakasam and others (1)**. His further submission is that the land did not vest in the Government unless the possession is taken thereof in compliance with Section 16 of the Act. The Rapat Roznamcha dated 20.1.2004, which has been produced in Court only shows that it had been prepared by and in presence of officials alone and there is no independent witness, as mandated under the law and spelled out by the Hon'ble Supreme Court in the case of **Banda Development Authority, Banda versus Moti Lal Agarwal and others (2)**, which has been followed by the Hon'ble Supreme Court in the case of **Prahlad Singh and others versus Union of India and others (3)**. On this basis he contends that placing of petitioners in the second category of cases was not correct. He submits that CWP Nos. 881 and 882 of 2004 were filed in this Court on 18.1.2004 and the dispossession of the petitioners was stayed by this Court on 20.1.2004 on the same day when the award was passed. The factum of the physical possession of the land being with the petitioners has not been disputed, counsel for petitioners accordingly submits, that the petitioners were required to be placed in the first category of cases, as the land did not vest in the Government and, therefore, question of allotment of land to the petitioners does not arise but it should have been released to them. Referring to the conditions, which have been imposed by the HSIIDC in the case of similarly

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(1) 2011 (1) SCC 330

(2) 2011 (5) SCC 394

(3) 2011 (5) SCC 386

placed industry namely M/s Surya Roshni Limited petitioner in CWP No. 5006 of 2003, he contends that same conditions are acceptable to the petitioners in these three writ petitions and should be similarly dealt with by the respondents.

(11) Mr. Sehgal, admits that petitioners in CWP Nos. 881 and 882 of 2004 approached this Court prior to the passing of the award. However, he has asserted that the case of the petitioners are different as the land had vested in the State after the possession was taken as per the Rapat Roznamcha dated 20.1.2003, the date the award was pronounced. If the land vested in the Government it could only be allotted to the petitioners and not released as has been sought by the petitioners.

(12) We have heard the learned counsel for the parties and have gone through the records of the cases.

(13) Although, the submissions made by the counsel for the petitioners asserting that Section 4 of the Act was not duly complied with on the basis of the report Annexure P-35, on an enquiry conducted as per the instructions of the Directorate of Advertising and Visual Publicity, Ministry of Information and Broadcasting, Government of India, has weight, which has been referred to above, and we could have proceeded to hold so following the judgment of the Hon'ble Supreme Court in the case of *Special Deputy Collector, Land Acquisition C.M.D.A.* Case (supra) but in the light of the fact that the respondents are not disputing the fact that the unit of the petitioners are running and the respondents are also willing not to acquire the land of the petitioners, the only question is whether the land is to be released or is to be allotted to the petitioners. If it is to be released to the petitioners, the petitioners would be governed by the same terms & conditions as in the case of M/s Surya Roshni Limited CWP No. 5006 of 2003 and if not then by para 11(b) of the affidavit dated 19.4.2011.

(14) As per Section 16 of the Act, once the Collector has made an award under Section 11 of the Act, he can take possession of the acquired land. It is only upon taking possession by the Collector that the acquired land shall vest absolutely in the Government free from all incumbrances. The question as to when it could be said that the possession

of the acquired land had been taken by the Land Acquisition Collector, the Hon'ble Supreme Court in the case of ***Banda Development Authority, Banda*** (supra) in para 37 has held as follows :-

- “(i) No hard-and-fast rule can be laid down as to what act would constitute taking of possession of the acquired land.*
- (ii) If the acquired land is vacant, the act of the State authority concerned to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.*
- (iii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the authority concerned will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the authority concerned will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.*
- (iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.*
- (v) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3-A) and substantial portion of the acquired land has been utilised in furtherance of the particular public purpose, then the court may reasonably presume that possession of the acquired land has been taken.”*

(15) What is, therefore, mandated as per the above is that when large track of land is acquired it would be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document. It is not in dispute that the industrial units in these writs were running when the notification under Section 4 of the Act was issued and are so till date. It is also not disputed that no notice was issued to the petitioners while taking possession. In the present case *Rapat Roznamcha* had been produced by the counsel for the State during the course of hearing which although indicates that possession of the land except in the cases where stay orders passed by this Court in various writ petitions have been received by them, was taken and handed over to the beneficiary i.e. HSIIDC but this document does not indicate that it was prepared in the presence of any independent witness, nor is there any signature available of independent witnesses thereon. The *Rapat Roznamcha* was prepared in the presence of and signed by (1) Field Kanungo, Bahadurgarh, (2) Patwari Halqa, (3) Rampal Singh, Manager Industrial Area, Kundli, (4) Suresh, Village Development Officer, District Industries Centre, Bahadurgarh (5) Sh. K.K. Sharma District Revenue Officer-cum-Land Acquisition Collector, (6) Satvir Singh, Patwari, HSIDC and (7) Kulwant Singh Patwari, HSIDC.

(16) Accordingly, it cannot be said that the possession of the land had been taken by the Land Acquisition Collector in accordance with law and the land vested with the Government. If the land of the petitioners did not vest with the Government there was no question of allotting the same but was required to be released in favour of the petitioners as per the policy decision taken by the Board of Directors of HSIIDC in its meeting held on 22.10.2008. It has not been disputed that the land of Surya Roshni Limited stands released, which in the light of the above, is similarly placed as the petitioners and the conditions imposed in the case of Surya Roshni Ltd. would apply to the case of the petitioners. These conditions which stand reproduced above as part of the affidavit dated 17.2.2011, have been accepted by the counsel for the petitioners during the course of hearing to be conditions for release of land of the petitioners. However, it needs to be added here that in CWP No. 15086 of 2005 it has been admitted by the respondents that the company had been granted change in land use permission vide letter dated 30.9.1997 for the land in question.

(17) That apart, we have gone through the site plan depicting the situation as it now exists after the filing of affidavit dated 19.4.2011 and disposal of writ petitions, the land in question in these writ petitions stands sandwiched between the lands released/allotted and cannot be put to the use for which the land is sought to be acquired. In the light of the conditions accepted by the petitioners as in the case of Surya Roshni Limited (CWP No. 5006 of 2003) the planning, infrastructural facilities/services would also not be affected in any manner.

(18) The writ petitions are thus allowed in the above terms.

Copy of this order be placed on the record of other cases.

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**M. Jain**

***Before M. M. Kumar & A. N. Jindal, JJ.***

**LACHHMI NARAIN GUPTA AND OTHERS,—*Petitioners***

***versus***

**JARNAIL SINGH AND OTHERS,—*Respondents***

**C.W.P. No. 13218 of 2009**

15Th July, 2011

***Constitution of India - Art. 14, 15, 16, 16(1), 16(4-A), 16(4-B), 73, 77(3), 226 & 335 - Central Administrative Tribunals Act, 1985 - S.21 - Government of India (Transaction of Business) Rules, 1961 - RL.3 & 4 - Tax Inspectors (General Category) have impugned order passed by CAT issuing directions for consideration of cases of Inspectors belonging to schedule caste category for promotion to post of Income Tax Officer on the basis of their own merit which has resulted in consumption of general category post as against roster point promotion, relaxed qualification promotion and other concessions - Directions issued - Petition disposed of.***

***Held,*** That the controversy whether the provision for reservation in promotion could be made by the State/Union of India without imposing any conditions has been settled by the Supreme Court in Indra Sawhney