

itself is a promotion post for Conductors and Adda Conductors and the petitioner had been a Booking Clerk since the year 1972 while the private respondents had come on promotion from conductor's post to the post of Booking Clerks only in the year 1985. They had also been shown below the petitioners in the order of seniority. The promotion granted in the year 1988 to the private respondents before granting the promotion to the petitioner to the higher post of Inspector was, therefore, clearly wrong and consequently the petitioner is entitled to treat himself as entitled to promotion on the day when the private respondents were promoted, namely, on 14th December, 1988.

(5) The writ petition is allowed directing respondent Nos. 1 and 2 to treat the petitioner as having been promoted on 14th December, 1988 the date when the private respondents Nos. 3 to 7, who were juniors to the petitioner had been promoted with the attendant monetary benefits. Learned counsel for the petitioner states that all of them have retired and therefore the decision shall have a bearing on the retiral benefits accruing to the petitioner. All the arrears of the benefits shall be calculated and paid to the petitioner within a period of 12 weeks from the date of receipt of copy of the order.

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R.N.R.

*Before M.M. Kumar & Jitendra Chauhan, JJ.*

**HISAR RAM NAGAR CO-OPERATIVE HOUSE BUILDING SOCIETY LTD., HISAR,—Petitioner**

*versus*

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

**C.W.P No. 10293 of 1992**

9th February, 2010

*Constitution of India, 1950—Art. 226—Land Acquisition Act, 1894—Ss. 4 & 6—Society purchasing land situated within municipal limits to develop a residential colony—Govt. issuing repeated notifications for acquisition of land—Petitioner's land excluded from acquisition as it was situated close to municipal & HUDA disposal works—No change in the facts and circumstances pleaded, therefore, once land was released, then it cannot be acquired*

*for same purpose unless it is shown by cogent evidence that there is change in circumstances—Petitioner/Society allotting land in shape of small plots to its members—Purpose of acquisition of land by State similar to one for which Society carving out plots—Plots of two members of Society stand already released from acquisition by Government—Petition allowed, notifications u/ss 4 & 6 quashed.*

*Held*, that the land in dispute is sought to be acquired since 1969 and the first notification was allowed to lapse by the respondent-State on the excuse that the scheme concerning Urban Estate II was in the process of completion. It did not require much imagination that the scheme was unlikely to complete when the notification under Section 4 of the Act was issued in 1969. The respondent, however, preferred to again issue notification under Section 4 of the Act in 1974 which again was permitted to lapse. The third attempt which resulted into issuance of notification under Sections 4 & 6 of the Act on 1st September, 1977 and 12th August, 1980 did not succeed as the acquisition was quashed by this High Court on 19th February, 1982. When the land was sought to be acquired fourth time in 1983 and in 1984, then the land belonging to the petitioner was released on the ground that no body was likely to have a plot allotted near the municipal and HUDA disposal works. The acquisition of the rest of the land was upheld along with the release of this land by a Full Bench of this Court. Thereafter, the land was purchased by the petitioner-Society,—*vide* registered sale deed on 16th June, 1990. The respondent yet again issued impugned notification on 21st March, 1991 and 18th March, 1992. The purpose of purchase of land by the Society was to develop a residential colony by allotting the plots to its members. The plots have already been allotted as is evident from the site plan. 160 Sq. yards plot is to be allotted to the members and the purpose of acquisition is also similar to the one for which the Society has carved out the plots. Therefore, the writ petition deserves to be allowed on this short ground alone because the plot of 160 Sq. yards is sought to be allotted to large number of employees who are in the lower income group. Moreover, the land was earlier released on the pretext that it was situated close to the Municipal Committee and HUDA disposal works. No change in the facts and circumstances has been pleaded. Therefore, once the land was released, then it cannot be acquired for the same purpose unless it is shown by cogent evidence that there is change in circumstances.

Another aspect of the matter is that plots of two members of the petitioner-Society stand already released from acquisition as is evident from the perusal of order dated 16th January, 2008. According to the aforesaid order, the Government had decided to release the land measuring 288 Sq. Yards belonging to S/Shri Tara Singh and Gurcharan Singh who are members of the petitioner-Society.

(Para 12)

Jaswant Jain, Advocate, *for the petitioner.*

Kamal Sehgal, Addl. A.G, Haryana.

**M.M. KUMAR J.**

(1) The petitioner has approached this Court with a prayer for quashing Notification dated 21st March, 1991 (Annexure P7) issued under Section 4 of the Land Acquisition Act, 1894 (for brevity 'the Act'). A declaration was made under Section 6 of the Act on 18th March, 1992 (Annexure P8).

(2) Brief facts of the case which has led to the filing of the instant petition are that the petitioner is a Society registered under the Punjab Cooperative Societies Act, 1961 as applicable to the State of Haryana. The Society has purchased the land measuring 9 Kanals from Chaudhary Bhajan Lal, Former Chief Minister, Haryana and his wife, Smt. Jasma Devi,—*vide* a registered sale deed dated 16th May, 1990. The land purchased from Chaudhary Bhajan Lal is agricultural land measuring 3 kanal and 8 marlas situated at Hisar bearing hadbast No. 146 of Hisar Town bearing Khasra No. 4700/1 (1—10), 4702/1 (0—8) 4699/2 (0—15) and 15/127th share out of the land 6 kanals 7 marlas bearing Khasra No. 4705/1 which comes to 15 marlas. Similarly, the land measuring 5 kanal 12 marlas was purchased from Smt. Jasma Devi wife of Ch. Bhajan Lal, Chief Minister, Haryana bearing Khasra No. 4705/1 (6—7) haveing 112/127th share which comes to 5 kanals 12 marlas. The land is within the municipal limits of Hissar which is fully developed area, bounded by two-roads, *viz.*, Hissar-Delhi road which is a national highway and Hissar-Toshina road which is State Highway.

The fully developed modern commercial and residential modern town is in existence which is across the road, the model town has all facilities of well developed markets, schools, banks, various Government Offices, sewerage, water supply, electricity, telephone facilities etc. It is thus claimed that the land belonging to the petitioner is highly valuable.

(3) The petitioner has alleged that the land in dispute has been subjected to repeated notification for acquisitions. The first notification under Section 4 of the Act was issued on 15th November, 1969 which was published in the Haryana Government Gazette on 23rd December, 1969 (Annexure P1). However, it was allowed to lapse and no notification could be issued within a period of 3 years. Thereafter, again, another notification under Section 4 of the Act was issued on 25th August, 1974, proposing to acquire 2.16 acres of land which again was allowed to lapse. Another attempt was made by issuing notification dated 1st September, 1977 under Section 4 of the Act proposing to acquire the same land for the alleged public purpose of development and its utilization as residential area by the Haryana Urban Development Authority (Annexure P3). It is also alleged that no steps was taken for completing the acquisition. However, few days before the expiry of 3 years period, a declaration under Section 6 of the Act was made on 12th August, 1980, acquiring 2.12 acres of land (Annexure P4). The land owners challenged the aforesaid notification before this Court and both the notifications dated 1st September, 1977 and 12th August, 1980 (Annexures P3 & P4) were quashed by this Court on 19th February, 1982 in the case of **Ghansham Dass Goyal & Ors. versus State of Haryana & Anr. (1)**.

(4) Once again, fourth attempt was made and notification under Section 4 of the Act was again issued on 23rd May, 1983 (Annexure P5). The respondent-authorities issued declaration dated 20th November, 1984 under Section 6 of the Act (Annexure P6) for releasing the land belonging to influential persons which included the land belonging to persons like Chaudhary Bhajan Lal and his relations. Even other prominent persons like Bhagwat Swaroop and Mani Ram Mittal, who were affected by notification under Section 4 of the Act were granted benefit as their land was excluded

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(1) 1982 P.L.J. 146

from the notification issued under Section 6 of the Act. Again both the notifications were challenged before this Court by various land owners. The matter was referred to Full Bench of this Court which dismissed all the writ petitions. The judgment is reported name by **Ghansham Dass Goyal & ors. versus State of Haryana & Anr. (2)**. However, the land belonging to Chaudhary Bhajan Lal, the former Chief Minister of Haryana and his wife, which were purchased by the petitioner was left out from acquisition. The aforesaid fact has been recorded in Paragraphs 15-16 of the judgment which reads as under :—

“15. Mr. Jaswant Jain, learned counsel, appearing in CWP Nos. 5627 & 5628 of 1984 sought to raise an additional argument that a discriminatory treatment has been meted out to the petitioners, inasmuch as the land beneath the houses of the petitioners is being acquired, while the land of some other persons on which houses are standing ; has been left out. In support of his contention, reference was made to the averments made in para 14 of the writ petition, which reads as under :

“That to the surprise of the petitioners, the respondents authority issued yet another notification dated 20th November, 1984 under Section 6 of the Act whereby the land measuring 159.75 acres was finally acquired and the said land included the lands/houses of the petitioners. It is pertinent to mention here that the houses of Bhagwat Sarup and that of wife of Mani Ram Mittal bearing the same Khasra No. i.e. 4693 Min where the hosues of the petitioners are situated and where these houses belonging to the petitioners which are in between the houses of Bhagwat Sarup and Mani Ram Mittal have been left from acquisition. Similarly, Tara Chand and Balbir’s houses situated in between the houses of the petitioners have been left from acquisition. Similarly land bearing Khasra Nos. 4698, 4702, 4703 and 4704 belonging to the Chief Minister, Haryana Chaudhary Bhagjan Lal and his relations and other co-sharers have been

left from acquisition while issuing notifications under S. 6 of the Act. The aforesaid Khasra Nos. were excluded while issuing notification under S. 6 of the Act and thus the petitioners have been discriminated as against those whose houses/lands have been left from acquisition while issuing notification under S. 6 of the Act. Moreover, the notification under S. 6 of the Act has been issued without considering the objections filed by the petitioners under S.5-A of the Act and without affording them any opportunity of hearing. A copy of the notification issued under S.6 of the Act, dated 20th of November, 1984 is attached herewith as Annexure-P/7 of this writ petition.”

16. The reply to the aforesaid para is in the following terms :—

“That in reply to para No. 14 of the writ petition it is submitted that the land and the houses which could be adjusted in the layout plan were adjusted and released from acquisition proceedings. The averments of the petitioners that houses belonging to them are in between the houses of Bhagwat Sarup and Mani Ram Mittal is misconceived, hence denied being incorrect. As already submitted, there is no residential house belonging to the petitioners on the spot. Rather there is only factory shed and boundary walls. It is further submitted that Khasra Nos. 4702, 4703 and 4704-Min were excluded from the notification under S. 6 of the Act as these Khasra Nos. were situated close to the Municipal and H.U.D.A. Disposal works and so it was thought advisable to drop acquisition proceedings *qua* this particular land, as nobody would like to be allotted residential plots near the disposal works, because of its foul and nasty smell. Due to this reason even land other than these 3 fields Nos. *viz.* 4702, 4703 and 4704 min have also not been included in the notification issued under Section 6 of the Act. As regards Khasra Nos. 4698 and 4704, it is submitted that parts of these Khasra Nos. are also being acquired by the respondent. As regards the

residential house of Shri Balbir Singh and Shri Tara Chand these were located on Delhi Road and about one furlong away from the land of the petitioners. The residential houses of these two persons were left out of acquisition being a standard construction and these could be adjusted in the proposed layout plan. The averments of the petitioners that they have been discriminated against and that notification under Section 6 of the Act has been issued without considering the objections under Section 5-A of the Act are highly misconceived, hence denied being incorrect.”

(5) The basic reason for excluding the land from acquisition was that it was situated close to the Municipal and HUDA disposal works. Therefore, it was thought well to drop the acquisition proceedings in respect of this land as no one would like allotment of residential plots near the disposal works on account of its foul and nasty smell.

(6) After the purchase of land by the petitioner on 16th May, 1990, the respondent-State again resorted to acquisition by issuing notification dated 21st March, 1991 under Section 4 of the Act (Annexure P7) and eventually, acquiring the same by issuing declaration dated 18th March, 1992 (Annexure P8). It is appropriate to mention that the petitioner-Society filed objection under Section 5-A of the Act. A specific objection was raised that the land has been purchased by the petitioner-Society because it was released from after a conscious decision was taken to exclude it from the notification issued under Section 6 as the land was situated close to the municipal and HUDA disposal works. Meanwhile, the land has been allotted in the shape of small plots to its members for construction of their residential houses and construction on the allotted plots by some members have already been raised. The petitioner also requested for grant of personal hearing to the objections submitted by it. However, the declaration was issued under Section 6 of the Act on 18th March, 1992. The petitioner has also levelled allegations of *mala fide* inasmuch as it has been stated that as long as the land remain with the former Chief Minister, Chaudhary Bhajan Lal and his wife, then it was not acquired but after the purchase of the same by the petitioner-Society, the same has been subjected to acquisition. The

petitioner also pleaded discrimination inasmuch as the site plan, khasra numbers adjacent to the acquired land have been excluded. For illustration, Khasra No. 4700/Min. South, 4701/1, 4702/Min. South 4703, 4704 and 4705/Min. South have been cited which are marked with red colour on the site plan (Annexure P9).

(7) In the written statement filed by respondents, facts have not been disputed. With regard to allowing the notification to lapse, which was issued on 23rd December, 1969 (Annexure P1), the justification given is that the Government took a decision at a later stage that the land in question along with other land would be acquired if the scheme for Urban Estate-II has been executed. Similar explanation has been furnished with regard to notification issued on 28th May, 1974. It has been clarified that the scheme of Urban Estate-II which was likely to be concluded up to the end of 1975, could not be completed till then. It has been submitted that only 600 plots out of 3137 plots were sold under that scheme. The allegation of *mala fide* in allowing the scheme to lapse has been denied. It has also not been disputed that the notification issued on 1st September, 1977 and 12th August, 1980 were quashed by this Court on 19th February, 1982 in the case of Ghansham Dass Goyal (*supra*) 1982 PLJ 146. With regard to releasing the land of influential persons as alleged by the petitioner, the respondent has submitted that the land and houses which could be adjusted in the scheme were released from acquisition and,— *vide* notification dated 20th November, 1984 issued under Section 6 of the Act, land measuring 159.75 acres were finally acquired. It has also been denied that any objection under Section 5-A was filed by the petitioner against the impugned notification. However, some of the plot holders of the petitioner-Society had filed their objection under Section 5-A. It has also not been disputed that the land of some of the plot holders have been released from acquisition.

(8) At the stage of motion hearing, a Division Bench of this Court had stayed dispossession of the petitioner,— *vide* order dated 31st July, 1992. The stay order continued to operate when the petition was admitted for hearing on 5th November, 1992.



(9) We have heard the learned counsel for the parties at considerable length.

(10) Mr. Jaswant Jain, learned counsel for the petitioner, has argued that once the land was released from acquisition, then it cannot be acquired once again for the same purpose unless there is change in circumstances warranting acquisition of land. For the aforesaid proposition, Mr. Jain has placed reliance upon the observation made by this Court in Paragraph 8 of the judgment rendered in the case of **Roshan Lal & ors. versus State of Haryana & ors.** (3). He has further submitted that when the land is sought to be acquired for a purpose for which it has already been utilized by the petitioner, then it is not proper to acquire the land for a similar purpose by the respondent-State. In support of his submission, learned counsel has placed reliance on a judgment of Hon'ble the Supreme Court rendered in the case of **Ghaziabad Sheromani Sahkari Avas Samiti Limited etc. versus State of U.P. etc.** (4), and a judgment of this Court rendered by learned Single Judge in the case of **National Fertilizers Employees Co-operative Housing Society Limited versus State of Haryana** (5). Learned counsel has placed reliance on the facts that plot measuring about 160 Sq.yards (with variations in one or two plots) have already been allotted to the members of the petitioner-Society and they have also raised construction. According to the learned counsel, once the petitioner-Society has allotted the plots and its members have built the same, it would not be proper to acquire the land which would result into demolition of huge construction. Mr. Jain has concluded his argument by submitting that discrimination is writ large as the plots belonging to the members of the petitioner-Society, S/Shri Tara Singh and Gurcharan Singh were released from acquisition who have filed CWP No. 850 & 851 of 1994 which have been disposed of. However, the respondent-State has released the acquired land of S/Shri Tara Singh and Gurcharan Singh by order dated 16th January, 2008 (Annexure P13).

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(3) (2003-3) PLR 199

(4) AIR 1990 S.C. 645

(5) (1998) 3 PLR 618

(11) Mr. Kamal Sehgal, Addl. A.G., Haryana has argued that the case of the petitioner was considered and only that area which had A&B Class construction was released from acquisition. According to the learned counsel for the State, the petitioners' land had been included in notification under Section 6 of the Act because it had 'C' Class construction. In that regard, he has drawn our attention to Paragraph 20 of the written statement.

(12) After hearing learned counsel for the parties and perusing the record, we are of the view that the acquisition proceedings in respect of the land belonging to the petitioner, initiated by the respondent-State cannot be sustained. It is well settled that the issuance of repeated notifications for acquisition of land results into pegging down the price and it is not judicially acceptable. In the present case, the land in dispute is sought to be acquired since 1969 and the first notification was allowed to lapse by the respondent-State on the excuse that the scheme concerning Urban Estate-II was in the process of completion. It did not require much imagination that the scheme was unlikely to complete when the notification under Section 4 of the Act was issued in 1969. The respondent, however, preferred to again issue notification under Section 4 of the Act in 1974 which again was permitted to lapse. The third attempt which resulted into issuance of notification under Sections 4 & 6 of the Act on 1st September, 1977 and 12th August, 1980 did not succeed as the acquisition was quashed by this High Court on 19th February, 1982. When the land was sought to be acquired fourth time in 1983 and in 1984 (Annexures P5 & P6), then the land belonging to the petitioner was released on the ground that no body was likely to have a plot allotted near the municipal and HUDA disposal works. The acquisition of the rest of the land was upheld along with the release of this land by a Full Bench of this Court in the case of Ghansham Dass Goyal (*supra*). Thereafter, the land was purchased by the petitioner-Society,—*vide* registered sale deed on 16th June, 1990. The respondent yet again issued impugned notification on 21st March, 1991 and 18th March, 1992 (Annexure P7 & P8). The purpose of purchase of land by the Society was to develop a residential colony by allotting the plots to its members. The plots have already been

allotted as is evident from the site plan (Annexure P10). The plot measures about 160 sq. yards and construction have also been raised on these plots. It was in somewhat similar circumstances that Hon'ble the Supreme Court in the case of **Ghaziabad Sheromani Sahkari Avas Samiti Limited's case** (*supra*) has quashed the notification issued Section 4 & 6 of the Act after recording its satisfaction about the genuineness of the grievance made by the members of various house building societies which were to cater to the need of low pay group. In the present case also, 160 sq. yards plot is to be allotted to the members and the purpose of acquisition is also similar to the one for which the Society has carved out the plots. The aforesaid view of Hon'ble the Supreme Court has been followed by this Court in **National Fertilizers Employees Co-operative House Building Society Limited's** (*supra*) case. Therefore, the writ petition deserves to be allowed on this short ground alone because the plot of 160 Sq. Yards is sought to be allotted to large number of employees who are in the lower income group. Moreover, the land was earlier released on the pretext that it was situated close to the Municipal Committee and HUDA disposal works. No change in the facts and circumstances has been pleaded. Therefore, once the land was released, then it cannot be acquired for the same purpose unless it is shown by cogent evidence that there is change in circumstances. For the aforesaid view, we draw support from the observation made in Paragraph 8 of the judgment in **Roshan Lal's case** (*supra*). Another aspect of the matter is that plots of two members of the petitioner-Society stands already released from acquisition as is evident from the perusal of order dated 16th January, 2008. According to the aforesaid order, the Government had decided to release the land measuring 288 sq. yards belonging to S/Shri Tara Singh and Gurcharan Singh who are members of the petitioner-Society.

(13) For the reasons aforementioned, this petition succeeds. The notification dated 21st March, 1991 (Annexure P7) and 18th March, 1992 (Annexure P8), issued under Section 4 & 6 of the Act, are hereby quashed. The parties are left to bear their own costs.

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**R.N.R.**