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**(2014) 03 P&H CK 0195**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : CWP No. 17794 of 2006 (O&M)**

Amritpal Singh and Others

APPELLANT

Vs

The State of Haryana and Another

RESPONDENT

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**Date of Decision :** 31-03-2014

**Acts Referred:**

Land Acquisition Act, 1894 — Section 4, 48(1), 5A, 6

**Citation :** (2014) 03 P&H CK 0195

**Hon'ble Judges :** Surya Kant, J; Lisa Gill, J

**Bench :** Division Bench

**Advocate :** Palika Monga, DAG, Haryana and Mr. Arun Walia, Advocate for Respondent No. 2-HUDA, Advocate for the Respondent

**Final Decision :** Allowed

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## Judgement

Surya Kant, J.—This order shall dispose of CWP Nos. 17794 of 2006 and 654 of 2008 as the petitioners in both the writ petitions lay challenge to same set of acquisition notifications. However, the facts are being extracted from CWP No. 17794 of 2006.

2. The petitioners seek quashing of notifications dated 30.11.2004 and 28.11.2005 issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (in short, "the Act") whereby their land situated in village Khairpur, Tehsil and District Sirsa has been acquired for the public purpose of development of residential and commercial Sectors at Sirsa, by Haryana Urban Development Authority. The above said acquisition includes the small size plots and residential houses of the petitioners also.

3. The aggrieved petitioners have approached this Court inter alia contending that the acquisition is for the residential and commercial Sectors and they have already utilized their respective piece of land for that very public purpose, namely, by constructing residential houses. In support of their plea, the petitioners place reliance on photographs (Annexures P-1 to P-7).

4. The fact that the petitioners constructed their respective residential houses before issuance of Section 4 notification has been admitted by the respondents in para 2 of the reply on merits of the written statement dated 18.01.2007 which reads as follows: -

That the contents of para No. 2 of the Civil Writ Petition are wrong hence denied. The disputed land does not exist in the midst of thickly populated area moreover it exist in the scarcely habituated area. Although the construction on the disputed land was existing before the notification u/s. 4 of the Act yet it cannot be released because the disputed land exists in the midst of important development plan hence it cannot be adjusted in the development plan of the Sector. The petitioners will be awarded fair and adequate compensation as per prevailing market price in lieu of their land and buildings. Hence plea taken by the petitioners is not tenable.

5. The question that arises for consideration is whether the respondents can be permitted to acquire and demolish the residential houses comprising A-class construction, for the alleged purpose of development of residential and commercial Sectors?

6. It is noteworthy that the State of Haryana has taken a policy decision dated 26.10.2007 which reads as follows: -

After careful consideration of the facts and circumstances, the Government has felt the need to review the policy referred to above. The amended policy regarding release of land will be as under: -

1. Only those requests will be considered by the Government for release of land u/s 48(1) where objections u/s 5A were filed in following cases:-

a) Any request or application where structure has been constructed provided the structure existed prior to Section 4, is inhabited and is being used by the owner for his own residential purposes.

b) Any factory or commercial establishment which existed prior to section 4 provided it was functional at the time of Section 4 and is also functional at the moment.

c) Any religious institution or any building owned by community which is being used for community purposes.

2. That the Government may also consider release of land belonging to individual applicants involving self inhabited structures, factory or commercial establishment or community or religious buildings, where the owner has approached the Hon"ble High Court and has obtained stay dispossession/status quo or any restraint order. In such cases, the decision will be taken on the merits of each individual case keeping in view the benefit to the development agency in terms of providing linkages, services and in the interest of planned development. However, this clause will not be invoked for grant of licence for development of

colonies.

3. xx xx

7. The above said policy to the extent of release of existing structures found in existence at the time of initiation of acquisition process, has been approved by this Court in CWP No. 21572 of 2011 titled as Rohtas and others V/s. State of Haryana and others, decided on 04.09.2013.

8. In the instant case it is not in dispute that the petitioners constructed their respective residential houses before initiation of acquisition process. We are thus of the considered view that they are entitled to the benefit of the above-stated policy coupled with view taken by the Apex Court in Patasi Devi Vs. State of Haryana and Others, in the cited decision.

9. This Court has also held that the acquisition of residential houses cannot be judged merely on the parameters of power of eminent domain as it amounts to taking away the social shelter of the affected landowner and his family and thus referable to the decision of the Supreme Court in New Riviera Coop. Housing Society and Another Vs. Special Land Acquisition Officer and Others, .

10. For the reasons mentioned above, we allow these writ petitions and quash the impugned notifications to the extent of the constructions raised by the petitioners along with proportionate open space as may be needed for proper utility and enjoyment of the released land/property.

Ordered accordingly.