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**(2013) 08 P&H CK 0440**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : CWP No. 6517 of 1990 (O and M)**

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| Bijender Singh and Others    | Vs | APPELLANT  |
| State of Haryana and Another |    | RESPONDENT |

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**Date of Decision :** 14-08-2013

**Acts Referred:**

Land Acquisition Act, 1894 — Section 4, 6

**Citation :** (2013) 08 P&H CK 0440

**Hon'ble Judges :** Surya Kant, J; Surinder Gupta, J

**Bench :** Division Bench

**Advocate :** Adarsh Jain, for the Appellant; S.S. Pattar, D.A.G. Haryana, for the Respondent

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## Judgement

Surya Kant, J.—The petitioner impugns the notifications dated 02.12.1988 and 29.11.1989 issued under Sections 4 & 6 of the Land Acquisition Act, 1894 (in short, "the Act"), respectively for acquisition of land measuring 6 kanal 7 marla comprising in Khewat No. 115/119 Khatoni No. 181, Killa No. 23/1/1 situated within the revenue estate of Moza Mawai, Tehsil Ballabgarh, Faridabad. The above-stated land has been acquired for its development and utilization by HUDA as residential area in Sector 29, Faridabad. The only plea taken by the petitioners to question the subject acquisition is that on about 10 marla piece of their acquired land some construction has been raised and all of them being brothers, have also carved out plots on the acquired land for construction of their residential houses.

2. The Land Acquisition Collector in his reply/affidavit has taken a categorical plea that land of the petitioners was lying completely vacant at the time of notification u/s 4 of the Act though subsequently an area to the extent of 7 marla has been described as gair mumkin in jamabandi. In the additional affidavit dated 29.06.2013 filed by Rajinder Kumar Gahlot, Land Acquisition Officer, Urban Estates, Haryana, Faridabad, it is averred that the site in question is a part of lay out plan and is reserved for allotment to Air Force and Naval Housing Board/

Society so as to provide housing to defence personnel serving in the Indian Air Force and Indian Navy. A copy of lay out plan has also been appended as Annexure R-II.

3. We have heard learned counsel for the parties and perused the record.

4. The site plan (Annexure R-II) clearly exhibits that the petitioners' land is surrounded on three sides by the land already allotted/earmarked for Air Force and Naval Housing Board, Army Welfare Housing Organisation and SOS Children Village of India. On front side there exists green-belt followed by the Ring Road.

5. It is not a case where any adjoining land has been released before or after acquisition. In fact the entire notified area has been utilized by the respondents for the "public purpose" of its acquisition. As regards the one-room structure constructed on a part of the land, the Land Acquisition Collector in his latest affidavit has stated on oath that the petitioners are using the subject site as a Nursery. No photograph of the alleged residential house are on record. In fact the petitioners' own case is that no residential house has been constructed rather as per their site plan (Annexure P5) one room has been built-up in one of the corners of the land. Their case is that they have divided the land into 7 residential plots.

6. Since the respondents have decided to utilize the acquired land for a bona fide "public purpose" and as there is no procedural illegality committed in the acquisition process, we do not find any legal infirmity in the impugned notifications.

7. Faced with this learned counsel for the petitioners relies upon the Government policy notified on 9th November, 2010 by the Revenue and Disaster Management Department which contains provision for "Rehabilitation" and "Resettlement" of the displaced landowners. Some of the salient feature of the aforesaid policy are to the following effect:-

"D. Rehabilitation and Resettlement Policy:

5. Allotment of residential plots in cases where a self-occupied residential house is acquired for unavoidable reasons:

i) Recognising the sensitivity involved in acquisition of built-up residential houses/structures for unavoidable reasons, the Government has decided to accord the highest priority to the resettlement of this category of persons. In the first instance, all efforts will be made by the acquiring departments to leave out the residential structures existing in the form of clusters from acquisition except where it becomes absolutely unavoidable either due to its stand-alone character or its location being within the Right of Way of infrastructure projects such as roads, canals, railway line etc.;

ii) Accordingly, it has been decided that wherever any self-occupied residential structure/house has to be acquired for unavoidable reasons in the process of

acquisition of land by the Government for any purpose, such owners of built-up residential structures would be offered assured allotment of residential plots as per the following scale:

iii) As the affected persons would be entitled to compensation on account of acquisition of land and the structures constructed thereon, the price/cost of the plots to be allotted in favour of the affected persons as per above scale would be payable by the allottee;

iv) The benefit of allotment of a residential plot in this category would be admissible only if the acquired residential house/structure was self-occupied and was in existence on the date of issue of Section 4 Notification, and further subject to the condition that such residential house had not been constructed by way of any encroachment on the public/community/government land. The self-occupation of such house by the landowner's family as their regular residence would be an essential condition for this purpose. Residential structures used for rental purposes or those in the form of kothras in the fields would not be reckoned as "residential houses" for this purpose;

v) While assessing the entitlement for size of the plot to be allotted, the land under the existing residential house only would be taken into account and not the appurtenant facilities for other farm operations. Further, while computing the area under such Residential House, the plinth area of the constructed house and equal area towards admissible open space shall be taken into account. Appendix-4 may be referred for the basis of calculation of area;

vi) Development and allotment of the residential plots under this part would be the responsibility of the acquiring Department/agency. Such plots, to the extent, possible, would be carved out in the area adjoining/in close vicinity of the village abdi deh so that the displaced/rehabilitated persons continue to remain a part of their social milieu. While HUDA, HSIIDC, and the HSAMB would plan their residential blocks for this part as well as for the "oustee" category as one cluster, the other acquiring departments would have to acquire additional land specifically for this purpose also;

vii) The rates of Plots allotted under this category by HUDA and the HSIIDC shall be 20% lesser than the nodal price of the plot determined for the general public. In all other cases, the rates of plots would be determined by the allotting agency based on the actual costs taking into account (a) the cost of acquisition of land, (b) costs incurred on provision of minimum amenities/services, and (c) loading of the areas under roads/streets/services and utilities on to the plotted area.

The affected landowner would be required to submit his claim in the prescribed Application Form-4.

8. We find that in terms of the above-stated policy the affected landowner(s) is/are entitled to allotment of a residential plot in the urban area for which the land has been acquired. Since in the instant case land of the petitioners has been

acquired for utilization and development of residential Sector 29, Faridabad, we see no reason to deny the benefit of the above-stated policy to the petitioners. Consequently, while upholding the acquisition, we direct the respondents to consider the claim of the petitioners for the allotment of residential plot in terms of the above-stated policy dated 9th November, 2010 in an Urban Sector of Faridabad. The claim of the petitioners regarding allotment of residential plot shall be determined within a period of three months from the date of receipt of a certified copy of this order.

9. We hasten to add that the petitioners shall not be denied the benefit of policy dated 09.11.2010 on the premise that it has been issued much after the subject acquisition. We say so for the reason that the acquisition has not attained finality as not only the dispossession of the petitioners but further proceedings were also stayed by this Court vide order dated May 4, 1990. Consequently, no award has been passed so far. Otherwise also, the acquisition being sub judice before this Court and the policy decision dated 9th November, 2010 having been taken during the pendency of these proceedings, the petitioners cannot be denied the benefit of the said policy. Disposed of accordingly. Dasti.