

---

**(2015) 04 P&H CK 0060**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : CWP No. 2763 of 2008**

Geeta and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

---

**Date of Decision :** 01-04-2015

**Acts Referred:**

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

**Citation :** (2015) 3 RCR(Civil) 65

**Hon'ble Judges :** Lisa Gill, J.; Hemant Gupta, J.

**Bench :** Division Bench

**Advocate :** Shailendra Jain, Senior Advocate and Manu Chaudhary, for the Appellant; Lokesh Sinhal, Addl. AG, Advocates for the Respondent

**Final Decision :** Dismissed

---

## Judgement

Hemant Gupta, J.—Challenge in the present writ petition is to the notifications dated 26.08.2003 (Annexure P-5) and 10.08.2004 (Annexure P-7) issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short "the Act") respectively as well as the order dated 17.09.2007 (Annexure P-10) passed by the High Powered Committee - respondent No. 4 in terms of the order passed by this Court in an earlier writ petition bearing CWP No. 18991 of 2004 titled "Smt. Baleshwari etc. v. State of Haryana etc." decided on 16.07.2005, filed by the petitioners.

2. The petitioners, as legal heirs of Shri Parkash son of Shiv Lal, were the owners of land measuring 3 Biswas 17 Biswani comprising in Khasra No. 160/3 situated in the revenue estate of Village Nathupur, Tehsil and District Gurgaon. The petitioners claimed to have raised "A" class construction of a residential house consisting of about 11 rooms with verandah, hand-pump, main gate and pucca chabutra in the year 1984. The said land of the petitioners is situated adjoining to DLF Qutab Enclave, Phase II, Gurgaon, which is a residential colony having been carved out by M/s. DLF Universal Limited in terms of the license granted to it under the Haryana Development and Regulation of Urban Areas Act, 1975 (for

short "1975 Act") on the land of Village Nathupur. The area of the petitioners as well as the DLF Qutab Enclave, Phase II, Gurgaon is also known as Sector 25, Gurgaon.

3. The notification dated 26.08.2003 (Annexure P-5) has been issued under Section 4 of the Act intended to acquire the land of the petitioners situated at village Nathupur as well as the land of Villages Sarhol, Shahpur, Sikanderpur Ghosi and Dundahera, Tehsil and District Gurgaon for a public purpose namely "for the development and utilization of the land for residential, commercial, institutional and green belt, Sector 24, 25 and 25-A, Gurgaon". The objections under Section 5-A of the Act were filed by Satish, one of the co-sharers on 24.09.2003. It is also pleaded that one of the petitioners appeared before the Land Acquisition Collector - respondent No. 2 and his statement was got recorded, however, opportunity of hearing was not provided. Without affording effective opportunity of hearing, the respondents still proceeded ahead to issue notification under Section 6 of the Act on 10.08.2004.

4. The petitioners challenged both the notifications issued under Sections 4 and 6 of the Act by filing CWP No. 18991 of 2004, which was decided on 16.07.2005 with liberty to the petitioners to make a representation before the High Powered Committee ordered to be constituted by the State. The High Powered Committee decided the representation against the petitioners vide order dated 17.09.2007 (Annexure P-10). The acquisition is challenged on the ground that the constructed area of the petitioners is liable to be exempted from acquisition and that no proper and effective opportunity of hearing was granted to the petitioners.

5. In the written statement filed by the Land Acquisition Collector, Gurgaon on behalf of respondent Nos. 1 and 2, it has been pointed out that the land-owners, who had filed objections under Section 5-A of the Act were given full opportunity of hearing. It is pointed out that Satish son of Parkash - petitioner No. 2 was also given full opportunity of hearing of the objections. After considering the objections as per the provisions of the Act, the Land Acquisition Collector sent his report to the Government. Thereafter, the Government decided to issue the declaration under Section 6 of the Act. The High Powered Committee, after the orders of this Court found that the requirements of Haryana Urban Development Authority (HUDA) are more pressing to meet its social obligations. The said Committee after observing that the location of Cyber City is in this area, recognizes the fact that Information Technology is a traffic generating activity and there is a requirement for providing parking areas, pedestrian, pathways, cyclist tracks, open space and further widening of the road in the larger public interest. On merits, it is pointed out that the construction raised by the petitioners on the land in dispute is of "C" class at the time of issuance of notification under Section 4 of the Act and that there were only six rooms total measuring 60" x 10".

6. In the replication, the petitioners have asserted that vide impugned

notifications, apart from the land of the petitioners is situated in a strip shown in the Aks Sajra plan (Annexure P-14) of Village Nathupur, Tehsil and District Gurgaon. The land of Mangal Singh, Mahavir Singh, Gajraj Singh, Rajmal, Ramphal, Jiya Ram, Mahender and Raj was also acquired. It is pointed out that the land of Jiya Ram and another as well as of Ramphal, which is immediately adjoining to the land of the petitioners, stands released as a license to develop a residential plotted colony granted to M/s. DLF Limited in collaboration with such landowners vide letter dated 17.08.2009.

7. In an additional affidavit dated 08.09.2014 filed by Satish, one of the petitioners, it is pointed out that vide letter dated 25.07.2013, a license has been granted for setting up a residential plotted colony on the land falling in the revenue estate of Village Chakkarpur, Sarhaul, Nathupur and Sikanderpur Ghosi, which includes the land comprising in khasra Nos. 159/1/3 and 159/1/4 owned by Raju and Mohinder. It is also pointed out that in respect of land comprised in Khasra No. 160/5 and 160/6 owned by Rajmal and Gajraj respectively situated in the revenue estate of Village Nathupur, an agreement has been executed between M/s. DLF Home Developers Ltd. and the land-owners on 16.05.2014 for development of a residential plotted colony. It is also pointed out that Aks Shajra (Annexure P-14) shows that khasra numbers for which license has been granted are situated in the immediate vicinity of the land of the petitioner and come directly in the alignment of the alleged road and underpass that is sought to be constructed by the respondents on an urgent basis.

8. In another additional affidavit dated 29.09.2014 filed by Satish, it is averred that land falling in khasra No. 161/1/2, an award dated 21.07.2009 has already been announced but land has now been purchased by DLF Limited vide sale deed dated 13.08.2014 (Annexure P-22). The petitioners have attached a map plan (Annexure P-23), whereby all the obstructions, along the alignment of the alleged underpass sought to be constructed by the respondents on an urgent basis, have been listed. A perusal of the said map shows that on the passage of underpass, there are three obstructions i.e. one of the petitioners on khasra No. 160/3 and one each of Raju and Mohinder comprising in khasra Nos. 159/1/3 and 159/1/4.

9. The petitioners filed another additional affidavit dated 20.03.2015 to the effect that underpass proposed to be constructed goes outside the alignment of the 60 meter wide main road on the side of the petitioners with slight curve and that on the side of the land of the petitioners, an eight-lane road is proposed while on the opposite side, there is only a six-lane road, which is not being widened. It is alleged that eight-lane are proposed because there is a building of M/s. DLF Limited namely Epitome DLF Building No. 5 (Cyber Park), which is being saved by the respondents from being encompassed in the widening for the underpass at all costs to the extent of making the proposed alignment of the underpass completely injudicious and ludicrous. The petitioners have also produced map plan (Annexure P-24). It is also pleaded that the entire surrounding sectors and

even the said Metro Project namely DLF Phase II, Rapid Metro Station belongs to M/s. DLF Limited, which had undertaken the project of proposed underpass. Thus, M/s. DLF Limited is trying to forcefully acquire the lands of the land-owners, who did not bow down before its might by initiating the instant acquisition process.

10. An application was filed on behalf of the HUDA for advancing the date of hearing of the writ petition. Alongwith the said application lay out plan of the project known as "Up-gradation of HUDA Road from NH-8 to Sector 55/56, Gurgaon" has been annexed as Annexure A-1. A perusal of the said plan shows that the land of the petitioners in question falls on the left side of road meeting NH-8 Delhi-Jaipur. The land of the petitioners falls in the alignment of underpass at Point 1+500 and is the only obstruction in the completion of underpass.

11. With this factual background, the arguments raised by the parties need to be appreciated.

12. At the very outset, Mr. Sinhal, learned Additional Advocate General, Haryana raised an objection that the petitioners have sold the land in question vide sale deed dated 08.06.2005, therefore, they were neither the owners nor in possession of the land on the date of filing of the present petition i.e. 18.02.2008. The said sale deed dated 08.06.2005 has been attached with the additional affidavit dated 30.03.2015 filed on behalf of the Land Acquisition Collector, Gurgaon. The reliance is placed on the judgment in V. Chandrasekaran and Another Vs. The Administrative Officer and Others, , wherein it has been held to the following effect:

"15. The issue of maintainability of the writ petitions by the person who purchases the land subsequent to a notification being issued under Section 4 of the Act has been considered by this Court time and again. In Pt. Lila Ram Vs. The Union of India and Others, this Court held that, any one who deals with the land subsequent to a Section 4 notification being issued, does so, at his own peril. In Smt. Sneha Prabha etc. Vs. State of U.P. and Another, , this Court held that a Section 4 notification gives a notice to the public at large that the land in respect to which it has been issued, is needed for a public purpose, and it further points out that there will be "an impediment to any one to encumber the land acquired thereunder". The alienation thereafter does not bind the State or the beneficiary under the acquisition. The purchaser is entitled only to receive compensation. While deciding the said case, reliance was placed on an earlier judgment of this Court in Union of India (UOI) Vs. Shivkumar Bhargava and Others, .

16. Similarly, in U.P. Jal Nigam, Lucknow through its Chairman and another Vs. M/s. Kalra Properties (P) Ltd. Lucknow and others, , this Court held that, purchase of land after publication of a Section 4 notification in relation to such land, is void against the State and at the most, the purchaser may be a person interested in compensation, since he steps into the shoes of the erstwhile owner

and may therefore, merely claim compensation. [See also *Star Wire (India) Ltd. Vs. State of Haryana and Others*,

17. In *Ajay Krishan Shinghal, etc. etc. Vs. Union of India and Others*, , *Mahavir and Another Vs. Rural Institute, Amravati and Another*, , *Gian Chand Vs. Gopala and Others*, and *Meera Sahni Vs. Lt. Governor of Delhi and Others*, this Court categorically held that, a person who purchases land after the publication of a Section 4 notification with respect to it, is not entitled to challenge the proceedings for the reason, that his title is void and he can at best claim compensation on the basis of vendor's title. In view of this, the sale of land after issuance of a Section 4 notification is void and the purchaser cannot challenge the acquisition proceedings. (See also *Tika Ram and Others Vs. State of U.P. and Others etc. etc.*,

18. In view of the above, the law on the issue can be summarised to the effect that a person who purchases land subsequent to the issuance of a Section 4 notification with respect to it, is not competent to challenge the validity of the acquisition proceedings on any ground whatsoever, for the reason that the sale deed executed in his favour does not confer upon him, any title and at the most he can claim compensation on the basis of his vendor's title."

13. Though in aforesaid said case, the proceedings were initiated by the purchaser; whereas, in the present case, the proceedings have been initiated by the original owners. But after sale, the petitioners have no right, title or interest in the land in question, which they may seek to protect by way of the present writ petition. The petitioners have concealed such material fact in the writ petition. Therefore, such reason is sufficient to dismiss the writ petition on this ground alone.

14. However, since, we have heard counsel for the parties at length; we proceed to decide the present writ petition on merits as well.

15. Mr. Jain, learned Senior Advocate representing the petitioners, has vehemently argued that on the land in question, the petitioners have raised "A" class construction, but even if it is not "A" class construction, the classification for release of land of construction portion has not found favour with the Hon'ble Supreme Court judgment in *Sube Singh and Others Vs. State of Haryana and Others*, . Learned counsel for the petitioners has relied upon judgments in *B.E.M.L. Employees House Building Co-operative Society Ltd. Vs. State of Karnataka and Others*, ; *Amita Banta and Another Vs. State of Haryana and Others*, and *Hari Ram and Another Vs. State of Haryana and Others*, to argue that the petitioners are entitled to seek exemption of their land from acquisition. It is also argued that the purpose of acquisition in the notification under Section 4 of the Act is "for the development and utilization of the land for residential, commercial, institutional and green belt, Sector 24, 25 and 25-A, Gurgaon", whereas the High Powered Committee has rejected the objections on the ground that the land is required for parking. Therefore, it amounts to change of purpose

and, thus, not tenable in law. It is also argued that the power of acquisition is colourable, as the land has been acquired for the benefit of M/s. DLF Limited to enhance the value of its projects situated on both sides of road. The fact that adjoining land-owners have entered into collaboration agreement and sold their land to M/s. DLF Limited shows that it is M/s. DLF Limited, who is perusing the acquisition for its own purposes rather than in larger public interest. It is also argued that the hearing of the objections filed under Section 5-A of the Act was not granted to the land-owners nor was the objections dealt with objectively. The decision of the High Powered Committee was sought to be disputed on the ground that at least one Member of the High Powered Committee was not present, when the arguments were heard. Therefore, the decision is by a Committee, which has not heard the petitioners in terms of the orders of this Court.

16. The land of the petitioners and some other land-owners was the subject matter of acquisition vide notifications dated 26.08.2003 (Annexure P-5) and 10.08.2004 (Annexure P-7) issued under Sections 4 and 6 of the Act. The name of the land-owner; particulars of land; number of writ petition filed and the decision thereon, in tabulated form, are as under:

17. We have heard learned counsel for the parties and also perused the record produced by learned counsel appearing for the State. We do not find any merit in the petition. The argument that the petitioners were not given opportunity of hearing while deciding the objections is not meritorious. The objections were filed by one of the petitioners i.e. Satish son of late Shri Parkash through Mr. Rao Meer Singh, Advocate, on 24.09.2003. He has given his statement that whatever objections he has raised in his petition be read as his objections in the personal hearing as well. It may be noticed it is the said Satish, who has filed three additional affidavits before this court after the filing of the present writ petition. A perusal of the objections appended with the writ petition shows that the same are to the effect that the notification has been issued without making survey at the spot and that entire chunk of the land including land of the petitioners has been urbanized and developed and that the petitioners have raised "A" class construction and also a temple on the land in question. The land is said to be closed to abadi deh of Village Nathupur and, therefore, being extension of abadi is exempt in law from acquisition. After considering such objections, the State has proceeded to issue declaration under Section 6 of the Act. However, a Division Bench of this Court vide order dated 16.07.2005 ordered fresh consideration of the objections by a High Powered Committee. The High Powered Committee recorded the following minutes on 17.05.2006:

"Sh. Shalander Jain, Advocate, appeared on behalf of petitioners in these cases. In CWP No. 15441/04 the counsel submitted that DLF has developed the land around his client's land. He pleaded that plot No. 13, 7 and 12 are of his client and around these plots some other plots are already developed. He also submitted that the land has been acquired for public purpose i.e. for the

development of sector 24, 25 and 25 A. He also clarified that even though petitioners have carved out the plots illegally, but the same cannot be acquired. He further contended that no personal hearing was accorded to his client U/S 5-A of the Land Acquisition Act. He also submitted that if the department could release the land of DLF his client land also should be released in order to remove discrimination.

In CWP No. 16442, he submitted that there are two plots i.e. plot No. 10 and 11. In plot No. 10 house is already there. He further contended that more than 180 Sq. Yds. area should be released for his client beneficial enjoyment. He also submitted the written submissions in this case which is taken on record.

In CWP No. 18991/04, the counsel made only one plea that on the area "A" class construction in there and this construction is needed for his client residential purpose.

In respect of CWP No. 15025/04 the counsel has submitted the written submissions for the case of petitioners, which have been taken on record.

Argument heard. Cases to come up for order."

18. The High Powered Committee in its decision found that six rooms with roof of Kari and Tukri in an area of 60 x 10 feet has been constructed in Khasra No. 160/3 prior to Section 4 notification. It has been also observed that no land/construction shall be released from acquisition, which is required for carrying out internal/external development of the sector such as construction of road, water supply, water treatment plant, electric sub-station and sewer disposal work etc. The Committee proceeded to observe as under:

"8. This site of the applicant falls on the 60 meters road emanating from the National Highway No. 8 and is just about half a KM away from the NH-8. A number of commercial establishments and IT units have come up on this road. The names of some of the prominent commercial/IT buildings in this area are Gateway Tower, Ericsson Tower, Building 9-A, Infinity Tower, Building 9-B, Cyber Green Tower, Building 7, Building 5 etc. Besides these some group housing towers area is also located in close proximity of this land. There is a huge requirement of parking and at present even a part of the 60 meter wide road is being utilized unauthorizedly for parking purposes. Even the central verge and berms on both sides of the road are being used for parking. Keeping in view the parking difficulty it has become absolutely necessary to provide space for parking along the 60 meters wide road. The land of the applicant after acquisition will be utilized for the said purpose alongwith the land falling under Civil Writ Petition No. 15704/04, 15199/04, 15051/04, 15078/04, 15688/04 and 15474/04, HUDA is entitled to create a parking along this road to alleviate the city of the parking hazards and also in the interest of public safety. This 60 meter road, on which the land of the applicant is located, is the main arterial road which connects the NH-8 to the 150 meter wide North Eastern Peripheral road of Gurgaon Urban Complex. The creation of parking along this road is also essential requirement of

the residents keeping in view the location of Cyber City in this area. The Committee recognizes the fact that the information technology is traffic generating activity. In view of the fact that there is requirement of providing parking areas, pedestrian, pathways, cyclist tracks, open spaces and future widening of the road in the larger public interest and also taking into consideration that acquisition proceedings have been undertaken in accordance with law, the High Powered Committee decided to reject the representation. The applicants/representationists be informed accordingly." 19. The earlier petition filed by the petitioners in which High Powered Committee was constituted was CWP No. 18991 of 2004. Before the Committee only one argument was raised by the counsel, who argued before this Court as well as before the Committee, that the area has "A" class construction and is required for residential purposes. It is correct that Mr. D.S. Deshi IAS, Financial Commissioner, Town and Country Planning Department, Haryana, was not the member, who heard the arguments on 17.05.2006, but keeping in view the fact that majority members were the same and the argument raised is to seek exemption only for the reason that the building is of "A" class construction, the issue is required to be examined is; whether the petitioners have suffered any prejudice on account of decision by a three Members' Committee of which one Member was not, who has heard the arguments. We find that the minutes recorded on 17.05.2006 records the sole contention of the petitioners that the area has "A" class construction. In the light of the stand of the petitioners in an additional affidavit dated 20.03.2015 that the land of the petitioners falls within 60 meter wide road, we do not find that any prejudice has been caused to the petitioners as the requirement of the land is for road though it is sought to be argued that the curve is deep and out of alignment of 60 meter wide road. Therefore, even if the construction is "A" class, the same could be acquired for construction of underpass road. The angle at which the curve is required is for the experts to determine. Neither the petitioners nor this court has any expertise to return a finding that the curve is deep and has been designed so as to include the land of the petitioners. The plan has other underpass as well. Prima facie, we find that all the underpasses have the same angle of curves.

20. In Sube Singh case (supra), the Court has struck down the classification of the construction raised as "A", "B" and "C" to hold that the land, which is required for construction of a road or hospital can be acquired. In Jagdish Chand v. State of Haryana (2005) 10 SCC 162, the Court held that the direction to exempt structure from acquisition will not come in the way of authorities if required for the purpose of road and hospital and other civic amenities. It has been held:

"8. In view of what is stated above, we do not find any good reason as to why directions as given in the case of Sube Singh and Others Vs. State of Haryana and Others, should not be given in these cases as well, subject to certain restrictions to take care of the planned development of the area. Accordingly, the impugned judgments are set aside and the appeals are allowed in the following

terms:

1. The Secretary, Urban Estates Department, State of Haryana is directed to consider the objections of the appellants only so far it relates to exclusion of the land to the extent occupied by the structure and appropriate open area around the structure for the beneficial enjoyment of the appellants. However, this direction shall not come in the way of the authorities in removing the structures, if required for the purposes of road, hospital and other civic amenities.

2. The Secretary, Urban Estates Department shall decide not only the existence of the structures prior to Section 4(1) notification or subsequent to, he shall also decide the extent of structure which existed prior to Section 4(1) notification.

3. It is also open to the authorities to make adjustment or readjustment of plots for the purpose of planned development and in case it becomes necessary to give a little additional area from the plots to the appellants, the appellants shall be bound to take that additional area and also be bound to pay cost of such area as is chargeable to other allottees. The appellants shall also be bound to pay the developmental charges as is charged from other allottees. It is open to the parties to place documents or material in support of their contentions.

9. We expect that as far as possible, the respondents shall try to retain the structures, unless it becomes difficult for them to have a planned development without removing them in view of what is stated above."

21. Thus, the land in question is being acquired for road; therefore, nature of construction cannot stall the project of building road and/or the ancillary services. The judgment in B.E.M.L. Employees House Building Co-operative Society Ltd. case (supra), referred to by the petitioners, does not advance the argument raised, as it is not a case of pick and choose, but of acquisition of land for a larger public interest of having an underpass with ancillary services.

22. The requirement of the land is for road or the ancillary services attached to road, therefore, the same can be acquired. A perusal of the plan Annexure P-24 shows that the land of the petitioners is touching the underpass and part of the green area adjoining the underpass. A perusal of the lay out plan (Annexure A-1) in respect of the project known as "Up-gradation of HUD A Road from NH-8 to Sector 55/56, Gurgaon" shows that the land of the petitioners falls on the left side of road meeting NH-8 Delhi-Jaipur. The land of the petitioners falls in the alignment of underpass at Point 1+500 and is the only obstruction in the completion of underpass. Thus, the requirement of the land is for road or/and ancillaries green belt.

23. The notifications, in the present case, were also disputed in CWP No. 21519 of 2012 titled "Archna Gupta v. The State of Haryana and others" decided on 29.11.2013. In the said case, the land was situated in Village Shahpur, Tehsil and District Gurgaon. The challenge to the acquisition is on the ground that the land is sought to be acquired not for a public purpose, but for a private purpose of M/

s. DLF Universal Limited or that opportunity of hearing was not granted. The Court recorded that no part of the land shall be released in favour of respondent No. 5 or any other private builder. For the reasons recorded therein, we do not find that the objections raised by the petitioners in respect of use of land by the private developer are sustainable.

24. The argument that in respect of four similarly situated landowners, M/s. DLF Limited entered into collaboration agreement with two land-owners and consequently has been granted license, whereas in respect of two others, M/S DLF Limited has purchased land, therefore, the land is being acquired by M/s. DLF Limited for its benefit. We do not find any merit in the said stand as well. Mr. R.S. Rai, learned Senior counsel representing M/s. DLF Limited and Mr. Sinhal, learned Additional Advocate General, Haryana, were categorical that the land will not be used for any other purpose except for road alignment or for keeping it as a green belt. It is asserted that it is M/s. DLF Limited, who is executing the work of DLF Phase II, Rapid Metro Station and that Metro Station is in the close vicinity of the land in question and that the land in question is required for executing the works relating to the said purpose. M/s. DLF Limited in order to complete the Metro Project has applied for a license by entering into collaboration agreement with the other land-owners only to facilitate the completion of project of Metro.

25. Even, during the course of arguments, learned counsel for the petitioners have stated that the petitioners have no objection to enter into collaboration agreement with M/s. DLF, but on its terms. Therefore, it appears that the sole purpose of the writ petitioners is to extract money for their benefit at the cost of stalling the Rapid Metro Project.

26. Learned counsel for the petitioners has argued that there is change of purpose than what was notified under Section 4 of the Act and than what is found by the High Powered Committee. It is contended that though change of public purpose can be effected after the vesting of land with the State Government, but there cannot be any change of purpose at the time of publication of notification under Section 6 of the Act. We do not find any merit in the said argument as well. The purpose of acquisition is "for the development and utilization of the land for residential, commercial, institutional and green belt, Sector 24, 25 and 25-A, Gurgaon", which includes development of open areas and parks etc. Still further, when the purpose of acquisition is residential, commercial and institutional, it will include roads as well as the open or green areas. Though, the notification itself contemplated green belt as a purpose for acquisition in the notification issued under Section 4 of the Act.

27. In view of the above discussion, we do not find any merit in the present writ petition. The same is accordingly dismissed.