SUPREME COURT OF INDIA

Hari Ram

Vs.

State of Haryana

C.A.No.5440 of 2000

(D.K. Jain and R. M. Lodha JJ.)

11.02.2010

JUDGEMENT

R.M. Lodha, J.

1. This group of eight appeals involves identical controversy and, hence, all these appeals were heard together and are being disposed of by a common judgment. As a matter of fact, five appeals (5440/2000, 5442/2000, 5443/2000, 5444/2000 and 5445/2000) have been disposed of vide common judgment dated August 13, 1998 by the Division Bench of the Punjab and Haryana High Court. The other three appeals (5449/2000 5441/2000 and 5446/2000) have been disposed of by the High Court vide separate judgments dated March 26, 1998, May 18, 1998 and August 13, 1998 respectively.

2. The facts have been set out in the impugned judgments and, therefore, we do not deem it necessary to repeat the same. Suffice, however, to say that large tract of land admeasuring 184.56 acres situate at Narnaul was proposed to be acquired for Urban Mini Estate by the Haryana Urban Development Authority (HUDA) and, for the said public purpose, notification under Section 4 of the Land Acquisition Act, 1894 (for short, `Act') was issued on October 30, 1992.

> "Many owners whose lands were sought to be acquired filed objections under Section 5-A of the Act before the concerned Land Acquisition Officer. Pursuant to these objections, land admeasuring 11.55 acres was excluded and declaration under 2 Section 6 of the Act was made in respect of 173.01 acres on October 28, 1993. Seventy eight landowners filed 32 writ petitions in the High Court of Punjab and Haryana challenging the notifications under Sections 4 and 6 of the Act on diverse grounds. Inter alia, in these writ petitions, the writ petitioners also prayed for release of their respective lands. At this stage, it may also be noticed that although declaration under Section 6 was made in respect of 173.01 acres but award was passed for land admeasuring 172.57 acres only as the State Government is said to have decided to

release land of 13 landowners admeasuring 0.44 acres for which ultimately release order was passed on February 28, 1997."

3. Reverting back to the writ petitions, it transpires that during their pendency, Chief Administrator, HUDA-cum- Director, Urban Estates stated before the Division Bench on January 8, 1998 that HUDA was prepared to appoint a committee to inspect the site and make recommendations whether the land of the writ petitioners could be released or not.

> "Accordingly, a Joint Inspection Committee was constituted comprising of Superintending Engineer, HUDA, Gurgaon; Land Acquisition Officer, Gurgaon and District Town and Country Planner, Narnaul under the Chairmanship of Administrator, HUDA, Gurgaon. The Committee carried out spot inspection of the land owned by the petitioners and submitted its report before the Division Bench on February 13, 1998. Insofar as the present appellants are concerned, the Joint Inspection Committee did not recommend release of their land from acquisition. The High Court took into consideration the report submitted by the Joint Inspection Committee and keeping in view the recommendations made by it ordered release of land in favour of 22 owners and dismissed the writ petition of other petitioners including the present appellants."

4. It is pertinent to mention here that at least four petitioners whose writ petitions were dismissed by the High Court on the ground that Joint Inspection Committee had not recommended release of their land, later on applied under Section 48 of the Act and by separate orders the Government released their land from acquisition. It also appears that some of the owners although did not challenge the acquisition in the 4 court but represented to the Government for release of their land from acquisition and their lands were also released.

5. During the pendency of these appeals, this Court vide order dated August 19, 2008, keeping in view the earlier orders passed by this Court and the affidavit in-reply dated June 27, 2008 (filed in Court on July 8, 2008) by Financial Commissioner and Principal Secretary to Government of Haryana, Town and Country Planning and Urban Estate Department, Chandigarh and the available material granted liberty to the appellants to make representation(s) to the State Government for release of their land from acquisition and the State Government was directed to consider such representation(s) and pass appropriate order/s within time granted therein.

6. In pursuance of the order dated August 19, 2008, the appellants made representations before the State Government. The lands owned by them admeasure between 300 sq. yards to 1600 sq. yards. However, the representations made by the appellants came to be rejected on September 29, 2008 on the basis of the policy dated October 26, 2007.

7. We heard learned counsel for the parties at quite some length on various dates. The principal grievance raised by the appellants is that they have been discriminated by the State

Government in not releasing their land although land of similar situated persons in identical facts and circumstances has been released. On the other hand, Mr. Govind Goel, learned counsel for the respondents justified the action of the State Government and submitted that by an elaborate and speaking order, the State Government has rejected the appellants' prayer of release of their land from acquisition and there is no infirmity in the said order. Mr. Govind Goel, learned counsel contended that plea regarding discrimination is fallacious as release of land of few owners after the impugned judgment cannot provide permissible basis for advancing the plea of discrimination, especially in the absence of any legal right for release. In this regard, he relied upon decisions of this Court in the case of *Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain & Others*[1], *Jalandhar Improvement Trust v. Sampuran Singh*[2], *Union of India and Another v. International Trading Co. and Another*[3], *Ved Prakash and Others v. Ministry of Industry, Lucknow and Another*[4], *Anand Buttons Ltd. v. State of Haryana and Others*[5], *and Vishal Properties (P) Limited v. State of Uttar Pradesh and Others*[6].

He also referred to decisions of this Court in *Sube Singh and Others v. State of Haryana and Others*[7] *and Jagdish Chand & Anr. v. State of Haryana and Anr.*[8].

8. Mr. Govind Goel, learned counsel for the respondents also submitted that development planning and the parameters of release of constructed area along with proportionate area were kept in view while considering the representations made by the appellants. He would submit that instead of disturbing the entire layout plan and leaving the released area on the spot, the appellants have been offered a fully developed plot in the same sector of a size of land to which they became entitled on the basis of the constructed area in their land.

9. The only question that falls for our consideration in this group of appeals is whether the action of the State Government in rejecting the appellants' representations for withdrawal from acquisition of their land is an ultra vires act and discriminatory?

10. Section 48 of the Act empowers the Government to withdraw from the acquisition of the land provided possession has not been taken. The said power is given to the Government by a statutory provision and is not restricted by any condition except that such power must be exercised before possession is taken. The statutory provision contained in Section 48 does not provide for any particular procedure for withdrawal from acquisition.

11. Before we consider the question further, a look at the decisions cited by the learned counsel for the respondents at this stage would be appropriate. In the case of Secretary, Jaipur Development Authority, Jaipur1, the question that arose before this Court was whether High Court was right in directing allotment of the lands to the respondents therein since allotment made to others had become final and denial thereof 8 to the respondents would amount to violation of equality clause enshrined in Article 14 of the Constitution. Dealing with the said question, this Court observed:

"13. .....The intention behind the government actions and purposes is to further the public welfare and the national interest. Public good is synonymous with protection of the interests of the citizens as a territorial unit or nation as a whole. It also aims to further the public policies. The limitations of the policies are kept along with the public interest to prevent the exploitation or misuse or abuse of the office or the executive actions for personal gain or for illegal gratification.

14. The so-called public policy cannot be a camouflage for abuse of the power and trust entrusted with a public authority or public servant for the performance of public duties. Misuse implies doing of something improper."

12. In Jalandhar Improvement Trust2, this Court was concerned with the claim of the respondents being "local displaced persons" to a plot each in lieu of the lands acquired by the Trust. The plea of the respondents was that Trust had made similar preferential allotments as "local displaced persons" in favour of other persons. While considering the said claim of the respondents, this Court held, "if it was not within the scope of the rules then even those allotments in favour of other persons will not create a right in the respondents to claim equality with them; maybe, if the allotments were made wrongly 9 in favour of those persons, the same may become liable for cancellation, if permissible in law, but that will not create an enforceable right on the respondents to claim similar wrongful allotments in their favour".

13. While dealing with the scope of judicial review in the matter of policy decision of Government, this Court in International Trading Co.3 held:

"14. It is trite law that Article 14 of the Constitution applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional.

15. While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for a discernible reason, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualized than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle

emerging from the impugned action and if so, does it really satisfy the test of reasonableness.

16. Where a particular mode is prescribed for doing an act and there is no impediment in adopting the procedure, the deviation to act in a different manner which does not disclose any discernible principle which is reasonable itself shall be labelled as arbitrary. Every State action must be informed by reason and it follows that an act uninformed by reason is per se arbitrary."

14. In *Ved Prakash and Others*[4], this Court directed the concerned authority to consider representations of the owners for release of their land from acquisition under Section 48 of the Act. This is how the Court considered the matter:

"17. It is no doubt true that conclusion on Point 1 raised in para 11 of the judgment in the case of Om Prakash was recorded against the State but ultimately effective and operative order is to be seen in paras 31 and 32 of the said judgment. The ultimate direction was to consider the representations of the appellants for releasing the lands from acquisition under Section 48(1) of the Act on being satisfied of the five aspects mentioned in para 31 of the judgment. It is also made clear in the said paragraph that this Court did not express any opinion on the question whether the appellants' lands had such abadi on the date of Section 4 notification which would attract the State policy of not acquiring such lands and whether such policy had continued thereafter at the stage of Section 6 notification of 7-1-1992 and whether such policy was still current and operative at the time when the appellants' representations came up for consideration of appropriate authorities of the State Government. It is further stated that it will be for the State authorities to take the informed decision in this connection.

In the same paragraph, it is stated that:

"We may not be understood to have stated anything on this aspect, nor are we suggesting that the State must release these lands from acquisition if the State authorities are not satisfied about the merits of the representations."

1 This Court went on to say in para 32 that the entire matter is left at large for the consideration of the State authorities on the appellants' representations. It is further stated that if the representations were made within the given time, then the appropriate authority of the State Government shall consider their representations regarding the feasibility of releasing of such lands from acquisition under Section 48(1) of the Act on the ground that there were "abadis" on these lands at the relevant time and are governed by any existing State policy for releasing such lands from acquisition.

18. Thus, it is clear that it was open to the State authorities to consider regarding the feasibility of releasing such lands from acquisition under Section 48(1) of the Act

after taking into consideration the observations made and directions given in paras 31 and 32 as aforementioned. We have already noticed above that the competent authority of the State gave hearing to the appellants, considered the evidence and material placed on record and examined the contentions raised on behalf of the parties in compliance with the directions given and observations made in paras 31 and 32 of the judgment of this Court. The State authority came to the conclusion for the reasons already stated above that having regard to various aspects including development scheme, it was found not feasible to release the lands of the appellants under Section 48(1) of the Act. The High Court did not find any good ground to disagree with the findings of fact recorded by the State authority and also found that the State authorities duly considered the directions given and observations made by this Court as contained in paras 31 and 32 of the judgment."

15. In *Anand Buttons Ltd.*[5], the contention advanced by the appellants before this Court was that the decision of the State Government in not granting exemption from acquisition to their lands was arbitrary, discriminatory and violative of Article 14 of the Constitution. Dealing with the said contention, this Court observed:

> "13. It is trite law that not only land but also structures on land can be acquired under the Act. As to whether in a given set of circumstances certain land should be exempted from acquisition only for the reason that some construction had been carried out, is a matter of policy, and not of law. If after considering all the circumstances, the State Government has taken the view that exemption of the lands of the appellants would render askew the development scheme of the industrial estate, it is not possible for the High Court or this Court to interfere with the satisfaction of the authorities concerned. We see no ground on which the appellants could have maintained that their lands should be exempted from acquisition. Even if three of the parties had been wrongly exempted from acquisition, that gives no right to the appellants to seek similar relief."

16. In the case of *Vishal Properties (P) Limited*[6], this Court reiterated the legal position that: (i) Article 14 is not meant to perpetuate an illegality. It provides for positive equality and not negative equality; (ii) Courts cannot issue a direction that the same mistake be perpetuated on the ground of discrimination or hardship; (iii) Any action/order contrary to law does not confer any right upon any person for similar treatment and; (iv) An order made in favour of a person in violation of the prescribed procedure cannot form a legal premise for any other person to claim parity with the said illegal or irregular order. A judicial forum cannot be used to perpetuate the illegalities.

17. In *Sube Singh*[7], while dealing with the contention that the decision of the State Government in not accepting the 1 prayer of the petitioners for exclusion of their property from acquisition is arbitrary and discriminatory inasmuch as in the case of owners of other lands lying within the area notified who had sought exclusion of their property on the ground of existing structures, the prayer was accepted and the lands were excluded from acquisition

and the response of the State Government that as per Policy, the State Government has excluded from acquisition, `A' Class constructions and since the constructions on the petitioners' land were either `B' Class or `C' Class, their land could not have been excluded, this Court held that such policy was not based on intelligible differentia and a rational basis germane to the purpose. It was held:

> "10. .....It remains to be seen whether the purported classification of existing structures into `A', `B' and `C' Classes is a reasonable classification having an intelligible differentia and a rational basis germane to the purpose. If the State Government fails to support its action on the touchstone of the above principle, then this decision has to be held as arbitrary and discriminatory. It is relevant to note here that the acquisition of the lands is for the purpose of planned development of the area which includes both residential and commercial purposes. That being the purpose of acquisition, it is difficult to accept the case of the State Government that certain types of structures which according to its own classification are of `A' Class can be allowed to remain while other structures situated in close vicinity and being used for same purposes (residential or commercial) should be demolished. At the cost of repetition, it may be stated here that no material was placed before us to show the basis of classification of the existing structures 1 on the lands proposed to be acquired. This assumes importance in view of the specific contention raised on behalf of the appellants that they have pucca structures with RC roofing, mosaic flooring etc. No attempt was also made from the side of the State Government to place any architectural plan of different types of structures proposed to be constructed on the land notified for acquisition in support of its contention that the structures which exist on the lands of the appellants could not be amalgamated into the plan.
>
> 11. On the facts and circumstances of the case revealed from the records, we are persuaded to accept the contention raised on behalf of the appellants that the rejection of the request of the appellants for exclusion of their land having structures on them was not based on a fair and reasonable consideration of the matter. We are of the view that such action of the Government is arbitrary and discriminatory....."

18. In the case of *Jagdish Chand*[8], this Court issued the directions as were given in the case of *Sube Singh*[7] but clarified that these directions are given on the particular facts of the case and are not intended for any general application.

19. It is an admitted case of the respondents that prior to October 26, 2007, the State of Haryana had no uniform policy governing the release of land from acquisition under Section 48 of the Act. Although learned counsel for the respondents submitted that matter relating to release of land from acquisition was governed from time to time by various guidelines/parameters set out in intra-office communications governing individual acquisition, no such guidelines/parameters 1 have been placed on record except a letter dated June 26, 1991 sent by the Chief Administrator, HUDA to the Additional Director, Urban

Estate, Haryana, Manimajra and the Chief Controller of Finance, HUDA, Manimajra pertaining to review progress of the various schemes of HUDA which reads thus:

> "1. That a land bank should be created in the current financial year. Chief Controller of Finance, HUDA should discuss the matter with Additional Director, Urban Estate for financial planning, so that land bank could be treated.
>
> 2. That during the current year 2000 acres more land can be acquired provided additional amount is advanced for the purpose.
>
> 3. That financial fore-cast should be prepared every month for land lying notified under section 6 of the Land Acquisition Act, should acquired. (sic)
>
> 4. That existing factories should not be acquired and should be released from the proceedings of the section 4 notification. Constructed area of `A' and `B' grade should be left out of acquisition.
>
> 5. That survey of existing construction be done before the notification under section 4 of the Land Acquisition Act.
>
> 6. That the area which is liable to be left out and of acquired (sic) should be left out at the time of decision on the report under section 5-A of the Land Acquisition Act. No notification earlier issued under Land Acquisition Act should lapse.
>
> 7. That reference under section 18 of the Land Acquisition Act should not be delayed. Pendency of reference has financial implication."

20. The only guideline discernible from the aforesaid letter dated June 26, 1991 is that survey of existing construction should be done before notification is issued under Section 4 of the Land Acquisition Act; that existing factory should not be acquired and it should be released from the proceedings of Section 4 notification and that constructed area of `A' and `B' grade should be left out of acquisition. In *Sube Singh*[7], this Court has already held that classification on the basis of nature of construction cannot be validly made and such policy is not based on intelligible differentia and a rational basis germane to the purpose. The policy articulated in the letter dated June 26, 1991, thus, hardly helps the respondents. Rather it is seen that neither the aforesaid policy nor any other policy has been followed by the State Government while releasing land of various landowners whose lands have been acquired in the same acquisition proceedings. As a matter of fact, the only policy that seems to have been followed is : you show me the face and I'll show you the rule. Insofar as policy of 2007 is concerned, apparently that has not been applied to any of the landowners whose land was acquired along with the appellants' 1 land under the same acquisition proceedings and released later on. We are pained to observe that when this Court directed to the State Government vide order dated August 19, 2008 to consider release of the land of the appellants from acquisition, obviously the State Government was required to consider the

representations of the appellants by applying the same standards as were applied to other landowners whose lands were acquired for the same purpose and under the same acquisition proceedings and released later on. However, the representations made by the appellants were rejected by relying upon the policy dated October 26, 2007 which on its face is erroneous and unsustainable in law.

21. Now, we advert to the few instances of landowners who filed writ petitions before the High Court challenging the same notifications under Sections 4 and 6 of the Act and in whose matters Joint Inspection Committee did not recommend release of their lands from acquisition and the High Court dismissed their writ petitions, yet later on their lands were released from acquisition by the State Government on the 1 representations made by them in exercise of its power under Section 48 of the Act. Land of Smt. Ram Kala:

> "She is owner of land admeasuring 600 sq. yards. There is no construction in the said plot. She challenged the acquisition notifications vide CWP No. 18087 of 1995. The writ petition was dismissed by the High Court by common judgment dated August 13, 1998 as the Joint Inspection Committee had not recommended release of her land. She then applied for release of her land from acquisition under Section 48 of the Act. Vide order dated November 6, 2001, her land was released. The said order reads thus:
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> "From:
>
> Director, Urban Estate Department, Haryana, Panchkla.
>
> To Administrator, HUDA Gurgaon.
>
> Memo No.S-1-2001/8226 Dated Subject:- Release of land in Sector 1 Narnaul (Smt. Ram Kala w/o Hari Singh).
>
> On the above subject, in reference to your letter bearing Memo No.1650 dated 23.01.01.
>
> 2. In this regard, you are informed that the Government has agreed for release the land of Smt. Ram Kala w/o Shri Han Singh, Rio Narnaul, bearing Khasra No.872/ 1278, 1055/3, area 600 sq. yards, falling in Sector 1, Narnaul for residential purpose on the usual conditions.
>
> The condition of recovery of development charges proportionately would be applicable on the party.
>
> 3. In pursuance of letter bearing memo No.2280- 72 dated 04.08.86 and letter memo No.23640-63 dated `18.9.2000 and by keeping in view the instructions, first of all the amount of development charges is to be recovered from the party and thereafter to send the sanctioned agreement to the Head Office for finalizing the agreement.

4. Party would be required to comply with conditions of release as per the agreement to be executed.

Thus, you are requested to send the agreement after getting it executed from the party with regard to all general conditions.

Sd/- Additional Director Urban Estate Department Haryana, Panchkula."

Land of Mani Ram :

He is owner of plot of land admeasuring 800 sq. yards.

According to him, the plot had some commercial and residential construction. He challenged the acquisition notifications vide CWP No. 14583 of 1995. His writ petition was dismissed by the High Court on May 11, 1998 on the basis of the report of the Joint Inspection Committee as it did not recommend release of his land. He, thereafter, applied for release of his land from 2 acquisition to the State Government under Section 48. His representation was accepted and release order came to be issued (except road portion) on July 9, 2003 on the condition that he would utilize the land for conforming use.

Land of Sumitra Devi :

She is owner of plot of 400 sq. yards having no construction at all. She challenged the acquisition notifications along with one of the appellants herein - Hari Ram (Civil Appeal No. 5440 of 2000) and one Naresh Kumar. Insofar as Naresh Kumar is concerned, who was owner of land admeasuring 500 sq. yards, the Joint Inspection Committee recommended exclusion of his land from acquisition and, accordingly, High Court granted relief to Naresh Kumar. However, insofar as Hari Ram and Sumitra Devi are concerned, their writ petition was dismissed as the Joint Inspection Committee had not recommended their land to be released from acquisition. In respect of the land owned by Sumitra Devi, Joint Inspection Committee gave its report thus:

"The land of the petitioner measures 400 sq. yards in area, the location of which is shown on tentative layout plan at No. 19C. The plot is vacant at site except boundary wall.

The details of plot are shown in the site sketch plan at 2 Annexure 19C. The committee does not recommend its release."

As regards Hari Ram (one of the appellants), the report reads thus :

"The land of the petitioners measure 400 sq. yards in area, the location of which is shown on tentative layout plan at no. 19B. A small room (6' x 6') along with boundary wall stand constructed at site prior to notification of land u/s 4.

The small room is not inhabited by anyone. The construction details are shown in the site sketch plan at Annexure 19B.

The committee does not recommend its release from acquisition."

Smt. Sumitra Devi then made representation to the State Government for release of her land from acquisition under Section 48 of the Act. Initially part of the land was released from acquisition but later on by order dated February 7, 2004, her entire land stood released from acquisition."

22. The State Government had also released land of few landowners whose lands were acquired under the same acquisition notifications and there was no challenge to the acquisition by them but they made representation under Section 48 of the Act for release of their lands and that prayer was acceded to. One of such instances is that of landowner Vinod Kumar who is owner of the land admeasuring 800 sq. yards having construction of one room and kitchen. His land 2 was released from acquisition by the State Government on May 6, 1999 by the following order;

"From:

Director, Urban Estate Department, Haryana, Panchkula.

To Administrator, Haryana, Panchkula.

Gurgaon.

Memo No.3506 dated 06.05.1999 Subject:- Release of land in Sector 1 Narnaul --Shri Vinod Kumar On the above subject, in reference to your letter bearing Memo No. T.P.-98/21765 dated 24.12.98.

In this matter, the Government has decided to return the land of Khasra No.1052 measuring 800 sq. yards/ built up area belonging to Shri Vinod Kumar Gupta in Sector 1 Narnaul by releasing from acquisition proceedings. All conditions would be applicable on the applicant and the applicant would have to pay the proportionate development charges of this land to Haryana Urban Development Authority. So you are requested to get the agreement executed from the party for all conditions.

Sd/- Addl. Director Urban Estate Department Haryana, Panchkula."

23. There are various orders placed on record evidencing release of lands from acquisition by the State Government out of same acquisition proceedings. It is not 2 necessary to multiply such orders; reference to one of such orders would suffice. As early as on February 28, 1997, land of 13 landowners was released from acquisition. The said release order reads thus:

> "From The Director, Urban Estate Deptt., Haryana Panchkula.
>
> To The Administrator Haryana Urban Development Authority Gurgaon.
>
> Memo No.: 1-971 Dated: 28.02.1997 Sub: FOR RELEASING THE LAND ACQUIRED IN SECTION 1 NARNAUL In connection with aforesaid subject.
> In this connection a decision has been taken by the Government and it has agreed to release the land/ structure of the below mentioned applicants acquired in sector-1 Narnaul. A1 the conditions of release will be applicable on the applicants and they will also have to pay the development charges to HUDA according to rules. An agreement be also got executed from the parties regarding conditions of release. All the parties will have to withdraw their cases from the court. The details of the land released is as under:- Sr. No. Name of Party Khasra No. Area
>
> 1. Rao Gulab Singh s 1273 300 Sq. Yard
>
> 2. Sh. Surender Singh 1294 300 - do- son Sh. Surajbhan 2
>
> 3. Smt. Krishna Devi 1294 300 -do- w/o Bhup Singh
>
> 4. Sh. Ravinder Singh 1294 300 -do- s/o Sh. Naresh Singh
>
> 5. Sh. Om Parkash Son 1297/2 300 -do- of Sh Mukh Ram 1100, 1101
>
> 6. Sh. Ranbr Singh 1297/2 210 -do- son of Sh. Khushi Ram
>
> 7. Smt. Babli Devi and 1097/2 300 -do- Ram Chander 1100, 1101
>
> 8. Sh Bhm Singh s/o 1384 300 Sq.Yard Harwai Lal
>
> 9. Mewa Singh 1320 150 -do-
>
> 10. Matadin&Prithvi Singh 1320 300 -do-
>
> 11. Sh. Rohtash 1265/2 240 -do-
>
> 12. R.K.Punia 1057/2 400 -do-

13. Sh. K.K. Yadav 1058 1200 -do- You may also verify, if you so like the detail of the land released by the Govt. by its decision from the original record from the Land Acquisition Officer, Gurgaon. Copy of the letter Sr. No._____ Dated _____ from the Land Acquisition Officer Gurgaon alongwith a copy of the list of released land is attached herewith.

Dy. Director Urban Estate Deptt. Haryana Panchkula."

24. As a matter of fact, lands of more than 40 landowners out of the same acquisition proceedings have been released by the State Government under Section 48 of the Act.

"Some of the release orders have been passed in respect of landowners who had not challenged the acquisition proceedings and some of them had challenged the acquisition proceedings before the High Court and whose cases were not recommended by Joint Inspection Committee for withdrawal from acquisition and whose writ petitions were dismissed. Some of these landowners had only vacant plots of land and there was no construction at all. In most of these cases, the award has been passed and, thereafter, the State Government has withdrawn from acquisition. It is not the case of the respondents that withdrawal from acquisition in favour of such landowners has been in violation of any statutory provision or contrary to law. It is also not their case that the release of land from acquisition in favour of such landowners was wrong action on their part or it was done due to some mistake or a result of fraud or corrupt motive. There is nothing to even remotely suggest that the persons whose lands have been released have derived the benefit illegally. As noticed above, prior to October 26, 2007, the State Government did not have uniform policy concerning withdrawal from acquisition. As regards the guidelines provided in the letter dated June 26, 1991, this Court has already held that classification on the basis of nature of construction cannot be validly made and such policy is not based on intelligible differentia and a rational basis. What 2 appears from the available material is that for release of the lands under the subject acquisition, no policy has been adhered to. This leads to an irresistible conclusion that no firm policy with regard to release of land from acquisition existed. It is true that any action or order contrary to law does not confer any right upon any person for similar treatment. It is equally true that a landowner whose land has been acquired for public purpose by following the prescribed procedure cannot claim as a matter of right for release of his/her land from acquisition but where the State Government exercises its power under Section 48 of the Act for withdrawal from acquisition in respect of a particular land, the landowners who are similarly situated have right of similar treatment by the State Government. Equality of citizens' rights is one of the fundamental pillars on which edifice of rule of law rests. All actions of the State have to be fair and for legitimate reasons. The Government has obligation of acting with substantial fairness and consistency in considering the representations of the landowners for withdrawal from acquisition whose lands have been acquired under the same acquisition proceedings. The State Government cannot pick 2 and choose some landowners and release their land from

acquisition and deny the same benefit to other landowners by creating artificial distinction. Passing different orders in exercise of its power under Section 48 of the Act in respect of persons similarly situated relating to same acquisition proceedings and for same public purpose is definitely violative of Article 14 of the Constitution and must be held to be discriminatory. More so, it is not even the case of the respondents that release of land from acquisition in favour of various landowners, as noticed above, was in violation of any statutory provision or actuated with ulterior motive or done due to some mistake or contrary to any public interest. As a matter of fact, vide order dated August 19, 2008, this Court gave an opportunity to the State Government to consider the representations of the appellants for release of their land and pass appropriate order but the State Government considered their representations in light of the policy dated October 26, 2007 ignoring and overlooking the fact that for none of the landowners whose lands have been released from acquisition, the policy dated October 26, 2007 was applied. The State Government has sought to set up make 2 believe grounds to justify its action that development planning has been kept into consideration and that the appellants have been offered developed plots of double the area of construction while the fact of the matter is that in some cases where the plots were vacant and had no construction, the entire plot has been released from acquisition and also the cases where one room or two rooms construction was existing, the whole of plot has been released. While releasing land of more than 40 landowners having plots of size from 150 sq. yards to 1500 sq. yards, if development plan did not get materially disturbed in the opinion of the State Government, the same opinion must hold good for the appellants' lands as well. It is unfair on the part of the State Government in not considering representations of the appellants by applying the same standards which were applied to other landowners while withdrawing from acquisition of their land under the same acquisition proceedings. If this Court does not correct the wrong action of the State Government, it may leave citizens with the belief that what counts for the citizens is right contacts with right persons in the State Government and that judicial proceedings are not 2 efficacious. The action of State Government in treating the present appellants differently although they are situated similar to the landowners whose lands have been released can not be countenanced and has to be declared bad in law."

25. Consequently, these appeals are allowed and the order of the State Government dated September 29, 2008 is set aside. The respondent no.1 (State of Haryana) is directed to issue appropriate order/s concerning the appellants' lands on the same terms and in the same manner as has been done in the matters of Sumitra Devi, Ram Kala, Mani Ram and others.

"Obviously, the portion of the lands which in the layout plan forms part of roads or common sites or public utility area shall not be considered for release. No order as to costs."

[1]*(1997) 1 SCC 35* [2]*(1999) 3 SCC 494*
[3]*(2003) 5 SCC 437* [4]*(2003) 9 SCC 542*
[5]*(2005) 9 SCC 164* [6]*(2007) 11 SCC 172*
[7]*(2001) 7 SCC 545* [8]*(2005) 10 SCC 162*