



CWP No. 13027 of 2005 (O&M)

-1-

2025:PHHC:046106-DB

**In the High Court of Punjab and Haryana at Chandigarh****CWP No. 13027 of 2005 (O&M)****Reserved on: 24.2.2025****Date of Decision: 01.4.2025**

Umesh Kumar Madhok

.....Petitioner

Versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI*****Argued by:*** Mr. Sanjeev Sharma, Senior Advocate with
Mr. Sandeep Singh, Advocate
for the petitioner.Mr. Ankur Mittal, Addl. A.G., Haryana,
Ms. Svaneel Jaswal, Addl. A.G. Haryana,
Mr. Pardeep Prakash Chahar, Sr. DAG, Haryana.
Mr. Saurabh Mago, DAG, Haryana,
Mr. Gaurav Bansal, DAG, Haryana and
Mr. Karan Jindal, AAG, Haryana
for the respondent-State.Mr. P.S. Chauhan, Advocate,
Mr. Ankur Mittal, Advocate,
Mr. Sandeep Chhabra, Advocate,
Ms. Gurcharan Kaur, Advocate,
Ms. Kushaldeep Kaur, Advocate and
Ms. Saanvi Singla, Advocate
for the respondent-HSVP.

SURESHWAR THAKUR, J.

1. Through the instant petition, the petitioner seeks the quashing of notification dated 13.7.2004 (Annexure P-1), and, also seeks the quashing of notification dated 11.7.2005 (Annexure P-2). The said notifications were respectively issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short 'the Act of 1894').



CWP No. 13027 of 2005 (O&M)

-2-

2025:PHHC:046106-DB

**Brief facts of the case**

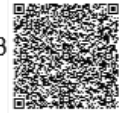
2. It is averred in the instant petition, that the petitioner's grandfather, who was a displaced person from West Pakistan, had purchased 4 kanals 8 marlas of land bearing khasra No. 51/23/2/1, 24/1 in village Ajrounda, Tehsil and District Faridabad, and, established a factory thereons, under the name of Madhok Timber Industries. The petitioner started construction of the factory building and completed the same in the year 1961. The petitioner was granted certificate for final/PMT registration, on 16.11.1963, and, the said factory was registered as Small Scale Industrial Unit No. 05/12/10515/PMT/SSI. It is further averred, that on 7.6.1962, a notification under Section 4 of the Act of 1894 became issued, however, no further proceedings were undertaken by the Government. Subsequently, the Estate Officer, Faridabad respectively on 27.4.1964 and on 15.5.1964, had issued notices under Sections 3 and 6 of the Punjab Scheduled Roads and Controlled Areas (Restriction and Un-regulated) Development Act, 1963 calling upon the petitioner to demolish the factory building on account of the alleged contravention of the provisions of the Act (supra).

3. It is further averred that on 22.1.1966, the respondents concerned, finalized and published in the Punjab Government Gazette (extra-ordinary), a master plan titled "Development Plan for Faridabad/Ballabgarh Controlled Areas", wherein, sector-wise development of the town of Faridabad was prescribed. The site of the petitioner's factory was also included in Sector-12, which was contemplated to be developed as a commercial sector. The petitioner approached the authorities concerned, for necessary permission to retain his factory at the existing site. However, in the meantime, on 8.9.1966, another notification under Section 4 of the Act

*CWP No. 13027 of 2005 (O&M)*

-3-

2025:PHHC:046106-DB



of 1894 became issued for acquiring the land in question for public purpose namely “Planned Development of the area of Sector-12 Faridabad/Ballabgarh Controlled Area”. The said notification was followed by a notification dated 6.12.1967 issued under Section 6 of the Act of 1894. The said acquisition proceedings were challenged by the petitioner by filing CWP No. 1465 of 1968, on the ground of discrimination. The said petition became allowed by this Court on 25.3.1969. The said decision was challenged by the State of Haryana by filing LPA No. 250 of 1969, which became dismissed on 22.9.1970. Being aggrieved from the verdict (supra) the State of Haryana preferred an SLP bearing SLP No. (Civil) 2865 of 1971, which was also dismissed by the Apex Court on 24.11.1971.

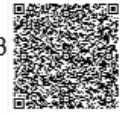
4. Furthermore, it is averred that even when the SLP (supra) was pending before the Apex Court, another notification under the Act of 1894 became issued on 7.7.1971, which was followed by a notification dated 4.2.1972, issued under Section 6 of the Act of 1894. The petitioner again challenged the said proceedings by filing CWP No. 845 of 1972 along with other writ petitions, before this Court. Vide order dated 8.12.1972, the said writ petitions were allowed, and, the notifications (supra) became quashed by this Court.

5. In addition, it is averred that on 16.10.1980, thus the fourth set of notification under Section 4 of the Act was issued. The petitioner filed objections under Section 5-A of the Act of 1894. However, subsequently on 7.6.1982, the said notification became withdrawn by the government.

6. On 8.6.1982, another notification under Section 4 of the Act of 1894 was issued, which became followed by a declaration issued on 20.12.1982 under Section 6 of the Act of 1894. The petitioner along with

*CWP No. 13027 of 2005 (O&M)**-4-*

2025:PHHC:046106-DB



other factory owners challenged the said notifications by filing CWP No. 2170 of 1983 and other connected petitions. Vide order dated 11.10.1996, the said writ petitions were allowed by this Court. The State of Haryana challenged the said judgment by filing an SLP before the Apex Court. However, the said SLP also became dismissed by the Apex Court.

7. It is further averred that the State of Haryana on 13.7.2004 again issued the present notification under Section 4 of the Act. On 20.9.2004, the petitioner submitted his objections under Section 5-A of the Act of 1894, which became received by the respondents on 30.9.2004. However, the respondents concerned, without affording an opportunity of hearing to the petitioner, and, without passing any order on the objections (supra), issued another notification dated 11.7.2005 under Section 6 of the Act of 1894.

Submissions on behalf of the learned senior counsel for the petitioner

8. The learned counsel for the petitioner submits-

(i) That as per Section 4 of the Act of 1894, the lands can be acquired only 'for any public purposes', whereas, the impugned notifications became issued for the purpose of Haryana Urban Development Authority, which is an authority constituted under the Haryana Urban Development Authority Act, 1977 (for short 'the Act of 1977').

(ii) That despite since 1962, the Government of Haryana has made several attempts, thus by repeatedly unsuccessfully issuing notifications respectively under Sections 4 and 6 of the Act of 1894, thus to subject the present lands to acquisition, yet the earlier malafidely made notifications, rather not stopping the respondents concerned, to re-subject the lands for the relevant public purposes, whereupon the said earlier repeatedly



CWP No. 13027 of 2005 (O&M)

-5-

2025:PHHC:046106-DB



made unsuccessful endeavours, besides the instant endeavour too, but are *ex facie* manifestative that thereby the power of eminent domain becoming exercised *sub coloris officio*.

(iii) That despite this Court vide order dated 11.10.1996, imposing a cost of Rs. 5000/- each, upon the respondents concerned, for unnecessarily dragging the petitioner, and, other factory owners to the Court, yet the State of Haryana re-issuing the present impugned notifications, to acquire the same land, which is the subject matter of the earlier litigation.

(iv) That M/s Busching Schemitz Pvt. Ltd. (petitioner in a connected matter) has sold its land to M/s Ashutosh Infra Pvt. Ltd., and the respondents have taken steps to release/exchange the said piece of land, rather for the same being developed into a commercial site.

(v) That the action of the respondents concerned, smacks of arbitrariness and malafides, therefore the same is illegal, null and void in the eyes of law.

9. Therefore, it is prayed that the impugned notifications be quashed and set aside.

Submissions on behalf of the learned State counsel

10. The learned State counsel submits-

(i) That the earlier unsuccessfully made notifications, thus not acting as an estoppel upon the respondents to re-deploy the powers of eminent domain, especially when the subject lands furthered the public purposes.

(ii) That the land in disputed has been notified for the public purpose for the development and utilization of land as residential and commercial Sector-12, Faridabad, and, the said land is essential to complete



CWP No. 13027 of 2005 (O&M)

-6-

2025:PHHC:046106-DB



the development work as per planning. However, the land in dispute is intended to be used by the petitioner for the industrial purpose.

(iii) That in CM No. 17393 of 2019, the petitioner has raised a ground of discrimination by stating that during the pendency of the bunch of writ petitions, one of the petitioners therein i.e. M/s Busching Schemitz Pvt. Ltd., had further sold the said land to M/s Ashutosh Infra Pvt. Ltd., and, subsequently, the said land became released and exchanged for developing a commercial site. However, the land measuring 7040.6 sq. mtrs., belonging to M/s Ashutosh Infra Pvt. Ltd., who purchased it vide sale deed 24.6.2005, from M/s Busching Schemitz Pvt. Ltd., was partly released vide order dated 3.4.2008, passed by the Director, Urban Estates, Haryana, and, the remaining land was exchanged by HUDA, as the same was affecting 30 meter green belt, shopping mall. Subsequently after the passing of the said release order, the writ petition bearing CWP no. 12929 of 2005 filed by M/s Ashutosh Infra Pvt. Ltd. was dismissed as withdrawn on 18.7.2008. Therefore, the plea of discrimination, raised by the petitioner, is liable to be rejected.

Inferences of this Court

11. The repeated endeavours of the respondents concerned, to subject the disputed lands to acquisition commenced in the year 1962. However, the said made endeavour, which became succeeded by subsequent endeavours ending upto the year 1982, whereons, the Hon'ble Supreme Court of India upheld the verdicts recorded by this Court, thus annulling the acquisition notifications, but were naturally thus unsuccessful or ill endeavours. Since 1962 upto now the respondents concerned, thus have consistently made unsuccessful endeavours to subject the present lands to



CWP No. 13027 of 2005 (O&M)

-7-

2025:PHHC:046106-DB



acquisition, despite other sites being also available for theirs being subjected to acquisition for the relevant public purposes, yet theirs being not opted by the respondents concerned, to become acquired by the respondents concerned. Resultantly, the effect of the present subject lands rather becoming singularly chosen for being subjected to acquisition for the relevant public purposes, whereas, despite the availability of other lands in the apposite vicinity, yet theirs being either omitted to be subjected to acquisition or being released from acquisition, but is that, thereby the power of eminent domain becoming *prima facie* exercised with *sub coloris officio*, and, theretos no reverence can be assigned.

12. Though, it has been vociferously contended before this Court by the learned State counsel, that the present sites are an integral part of the layout plan, and, would provide essential amenity to the colony, and, it also becomes contended that this Court may not tinker with the subject layout plan.

13. However, though *prima facie* the said argument has some force but in the factual scenario (*supra*) which exists before this Court, which loudly speaks of the power of eminent domain becoming misemployed, besides becoming employed with malafides, and, also being infected with the vices of discrimination, and, arbitrariness, thereupons an inference becomes aroused, that the said argument has to *prima facie* succumb to the *supra* made inference(s) by this Court.

14. Now predominantly, though the writ petition filed by M/s Ashutosh Infra Pvt. Ltd. bearing CWP No. 12929 of 2005, has been withdrawn. Nonetheless since the lands involved in the writ petition (*supra*)

*CWP No. 13027 of 2005 (O&M)*

-8-

2025:PHHC:046106-DB



instituted by M/s Ashutosh Infra Pvt. Ltd., when are also covered by an acquisition notification, thus similar to the acquisition notification, as made vis-a-vis the present subject lands. Resultantly, when the then learned State counsel despite the fact, that after the investment of complete right, title and interest over the subject lands, in the acquiring authority, thus pursuant to the issuance of an acquisition notification under Section 4 of the Act of 1894, rather failed to awaken this Court about the malafide effect of the sale deed executed by M/s Busching Schemitz Pvt. Ltd. vis-a-vis M/s Ashutosh Infra Pvt. Ltd. Therefore, though the said writ petition became ultimately dismissed as withdrawn on the ground, that the vendee from M/s Busching Schemitz Pvt. Ltd., rather post the acquisition of title through a defective sale deed dated 24.6.2005, ensured part release of the therein subject lands, besides had entered into an exchange with HUDA. As such, all the supra appositely made release orders, as also the supra made exchanges of the lands also covered by an acquisition notification, thus similar to the present subject acquisition notification, to the considered mind of this Court, rather are portrayals of gross unmindfulness of the officers of the departments concerned, to effectively instruct the learned State counsel, vis-a-vis the supra ill-effects, and, also is a gross failure of performance of duty by the then State counsel, to awaken this Court about the impact, qua thus post the issuance of the acquisition notification, there being no right, title and interest in M/s Busching Schemitz Pvt. Ltd., to alienate the therein lands vis-a-vis M/s Ashutosh Infra Pvt. Ltd., nor there being any valid conferment of a right, title and interest, thus pursuant to sale deed dated 24.6.2005 vis-a-vis the vendee concerned i.e. M/s Ashutosh Infra Pvt. Ltd., nor the subsequently made release orders or exchanges but acquiring any lawful force.



CWP No. 13027 of 2005 (O&M)

-9-

2025:PHHC:046106-DB



15. The further telling consequence of the above made inference by this Court, is that, the supra inference qua the present subject lands becoming singularly chosen or becoming repeatedly targeted since the year 1962 uptill now, thus for the public purposes concerned, rather therefroms acquiring an added strength. In sequel, this Court firmly concludes that the exercising of power of *eminent domain* vis-a-vis the present subject land, rather is a misemployed power. Consequently, the ground of discrimination raised by the present petitioner by filing CM No. 17393 of 2019, does have some tenacity. Moreover therebys, thus the perpetrations of discrimination by the respondents concerned, vis-a-vis the present petitioner but also strikingly emerges to the forefront.

16. Lastly, the learned State counsel has vigorously argued that since in terms of the relevant zonal plan, the relevant sector is reserved for the residential purpose, and, in case the industry, which is to be established over the subject lands, is permitted to operate, thereupon there would be an impermissible change of user. However, the said argument is misfounded, as the subject lands are covered under the notification for acquisition, thereupon, unless in the zonal layout plan approved by the Town and Country Planning Department, there was exclusivity of reservation qua construction of residential premises thereovers, thereupon the raising of an industrial unit over the present subject lands, thus could not be termed to be begetting violation of the zonal plan, which was required to be approved by the Town and Country Planning Department. Since there is no such apposite reservation, nor when the said approved apposite reservation has been placed on record, with the detailings therein vis-a-vis the exclusivity of user of the entire zone for residential purposes, wherebys the raising of an industrial



CWP No. 13027 of 2005 (O&M)

-10-

2025:PHHC:046106-DB



unit over the present subject lands, became declared to be impermissible.

17. In consequence, the raising of an industrial unit over the subject lands when does not fall foul of the relevant statutory provisions, nor falls foul of the relevant zonal reservation, thereupon the said argument pales into insignificance, especially when the industry operated by M/s Ashutosh Infra Pvt. Ltd., rather is already existing on a part of the area concerned. Nonetheless, for protecting the interests of the inhabitants of the dwelling units, which become constructed in the area concerned, rather from the deleterious effects of effluent discharges, if any, from the apposite industry, thus the present petitioner is directed to, if not already obtained, thus obtain the requisite pollution clearance certificate from the Pollution Board concerned. The said permission, if not earlier granted, be lawfully considered to be granted to the petitioner, thus within 15 days from today, but after granting an opportunity of hearing to the present petitioner. The terms and conditions set-forth therein be strictly abided by the present petitioner, unless the previous permission is already granted and compliance thereto becomes meted by the present petitioner.

Final order

18. In summa, this Court finds merit in the instant petition, and, is constrained to allow it. Consequently, the instant petition is allowed, but with exemplary compensation of Rs. 5.00 lacs (Rupees Five lacs) becoming paid to the present petitioner by the respondents concerned. The impugned notifications are quashed, and, set aside. In case, the sectoral roads are required to be carved out, thereupon it is open for the State to choose such other lands which would sub-serve the said public purpose.



CWP No. 13027 of 2005 (O&M)

-11-

2025:PHHC:046106-DB



19. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(VIKAS SURI)
JUDGE

April 01, 2025
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No