

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.15922 of 2010 (O&M)

Date of Decision: 04.09.2013

Tara Singh & Ors.

. . . . Petitioners

VS.

State of Haryana & Ors.

. . . . Respondents

**CORAM: HONBLE MR.JUSTICE SURYA KANT
HONBLE MR.JUSTICE SURINDER GUPTA**

- 1. Whether Reporters of local papers may be allowed to see the judgment?*
- 2. To be referred to the Reporters or not?*
- 3. Whether the judgment should be reported in the Digest?*

Present: Mr. Jagbir Malik, Advocate for the petitioners
Ms. Palika Monga, DAG Haryana
Mr. Arun Walia, Advocate for HUDA

SURYA KANT J. (ORAL)

(1). The petitioners are aggrieved at acquisition of their land measuring 3B-10B comprising Khasra/Killa No.145/135/67/2 situated within the revenue estate of village Nagal Sodian, Pinjore, Tehsil Kalka, District Panchkula made vide notifications dated 26.09.2007 & 25.09.2008 issued under Sections 4&6 of the Land Acquisition Act, 1894 (in short, 'the Act'), respectively. The petitioners have impugned the notification only to the extent it acquires their land over which they are said to have constructed a residential house as depicted in photographs (Annexure P3).

(2). The respondents though have admitted in the written statement the existence of the structures as depicted in the photographs but according to them the same were constructed illegally after issuance of Section 4 notification.

(3). We have heard learned counsel for the parties, gone through the record and have seen the photographs minutely.

(4). In our considered view, the house(s) is apparently not less than 10 year old and possibly could not have been constructed after the year 2004.

(5). Otherwise also, there is no denial to the fact that the State Government itself has come with the policy decision dated 26th October, 2007, the relevant part whereof are as under:-

“2) Any request or application where structures have been constructed will only be considered for the release under Section 48 (1) provided the structure exists prior to section 4 and is inhabited.

3) Any factory or commercial establishment which existed prior to Section 4 will be considered for release.

4) Any religious institution or any building owned by community will also be considered for release.

5) xxx xxx xxx

6) xxx xxx xxx

(Emphasis applied)

(6). The afore-stated policy has been slightly modified on 24.01.2011 but the modified version has no bearing on the merits of these cases.

(7). The enforceability of these policy decisions is no longer *res integra* as the Hon'ble Supreme Court in **Patasi Devi versus State of Haryana and others, (2012) 9 SCC 503** has ruled that :-

“19. Before this Court it has been pleaded that on the date of issuance of preliminary notification the appellant's land was vacant, but, this statement cannot be relied upon for denying relief to her because no such averment was made in the counter-affidavit filed before the High Court. The policy framed by the Government of Haryana clearly stipulates release of the land on which construction had been raised prior to issuance of Section 4 notification. The appellant's case is covered by that policy. Therefore, her land ought to have been released as was done in the case of M/s Sharad Farm and Holdings (P) Ltd.....”

(8). The writ petition is accordingly allowed and the impugned notification *qua* the petitioner's land is quashed. This order, however, shall not be construed to mean that we have permitted the petitioners to misuse the residential house for 'commercial purposes'. In other words, the respondent-authorities shall be at liberty to take action in accordance with law, if the petitioners are found misusing the residential house(s) for any other purpose.

(9). Ordered accordingly. **Dasti**.

(Surya Kant)
Judge

04.09.2013
vishal shonkar

(Surinder Gupta)
Judge