

A STATE OF HARYANA AND ANR.

v.

JAIPAL SINGH AND ORS.

AUGUST 14, 1996

B [K. RAMASWAMY AND S.B. MAJMUDAR, JJ.]

Land Acquisition Act, 1894 : Sections 4 & 23.

C *Land Acquisition—Notification for—Challenge to notification grounds—That there was policy decision to exclude from acquisition lands on which buildings have been constructed—Landowners' claim that they have constructed shops before notification—Notification quashed by High Court—Appeal—Held there is no general policy that all lands on which construction has come would be excluded from acquisition—But admission made across the bar that Government had decided to release from acquisition*
D *certain lands situated on Sharja plan—No material on record for identification of landowners' land—Direction for identification of lands—Held if lands are located on exempted area they shall be released from acquisition—In case their lands are outside exempted area enquiry should be made whether shops were constructed prior to notification under section 4(1)—If so they would be*
E *entitled to compensation in accordance with section 23(1) otherwise they would not be entitled for compensation.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11052 of 1996.

F From the Judgment and Order dated 11.2.92 of the Punjab & Haryana High Court in C.W.P. No. 6804 of 1991.

Prem Malhotra for the Appellants.

D.S. Tewatia, Ranbir Yadav and Ms. Madhu Tewatia for the
G Respondents.

The following Order of the Court was delivered :

Delay condoned.

H Leave granted.

We have heard learned counsel on both sides.

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Notification under Section 4(1) of Land Acquisition Act, 1894 (for short, the 'Act') was published on January 23, 1990 acquiring a large extent of the land for urbanisation and commercial purpose in Sectors No. 4A and 6 of Daruhera and Malpura Village in District Rewari. The respondents challenged the validity of the notification in the High Court on two grounds. Firstly, that there was a policy of the Government to exclude from acquisition the lands on which buildings have been constructed and secondly, the respondents had constructed shops before notification under Section 4(1) was published and, therefore, their land is liable to be excluded from the notification. The High Court in the impugned order made in Writ Petition No. 6804/91 on February 11, 1992 recorded a finding that the respondents had constructed the shops prior to the issue of the notification. There was general policy to exclude from acquisition the built-in areas. Therefore, it was held that they are liable to be excluded. The notification was quashed.

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We have repeatedly held in several judgments that there is no general policy as such that all the lands on which construction has come to be made are required to be deleted from the acquisition. But it was admitted across the Bar that a decision was taken not to acquire that A.B.C.D. land. The respondents placed on record the proceedings of the Director, Department of Urban Estate, Haryana in the letter dated February 12, 1992 wherein it was stated that the Government had decided to release the land to the west of line marked A.B.C.D. on the Sharja Plan sent to the Land Acquisition Officer. Accordingly, direction was given to the Land Acquisition Officer to take action to delete such of those lands within that area and submit a detailed report in that behalf.

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When we enquired from the counsel for the respondents to point out after locating the lands whether they are situated within the A.B.C.D. line marked on the Shajra Plan, the learned counsel with difficulty sought to place before us the identification and localisation of the land. But on the basis of scant material on record, we think that it would be hazardous for us to conclude whether or not the lands are existing within the aforesaid demarked Shajra Plan. Appropriate course would be that the respondents should make an application before the Secretary to Government, Haryana, Urban Estate Department, Haryana Civil Secretariat, Chandigarh within a

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- A period of 4 weeks from today giving the details of the location, whereat the lands are factually existing. The Secretary would have an enquiry made through either the Urban Estates Department or Land Acquisition Officer, as the case may be, or any appropriate authority, to localise and identify the existence of the lands in question belonging to the respondents. If the lands in fact are situated within the area to the west of A.B.C.D. line of Shajra Plan, as mentioned in the said letter, it would be obvious that in the light of the decision of the Government, the lands are required to be released from acquisition.

- C In case the Secretary found that the lands are situated outside the A.B.C.D. line of Shajra Plan, an enquiry has necessarily got to be made as to when these 14 shops came to be constructed by the respondents. If the shops were constructed prior to the publication of the impugned notification under Section 4(1), necessarily compensation has to be determined in accordance with the provisions of sub-section (1) of Section 23. In case the construction came to be made after the notification under Section 4(1), necessarily they cannot claim any compensation.

The first appellant is directed to dispose of that matter within a period of two months thereafter. The respondents are at liberty to place all the documents before the first appellant for consideration.

- E The appeal is accordingly disposed of with the above modification and direction but in the circumstances without costs.

T.N.A

Appeal disposed of.