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DHARAM PAL

v.

STATE OF HARYANA AND ORS.

(Civil Appeal No. 7287 of 2008)

B

DECEMBER 15, 2008

[DR. ARIJIT PASAYAT AND DR. MUKUNDKAM
SHARMA, JJ.]

Land Acquisition Act, 1894:

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ss.4 and 6 – Notifications under – Writ petition challenging legality of Notifications on the ground that constructions made by writ petitioner was acquired whereas similar kind of constructions made with regard to others similarly situated persons were left out – Dismissed – It was held in Jagdish Chand case that there was no justification to exclude the structures of one class and not to exclude the structure of other classes – Relying on that case, the impugned judgment of High Court is set aside – Appeal disposed of with directions to State to consider objections of writ petitioner only so far as they relate to exclusion of the land to the extent occupied by the structure and also to decide the existence and extent of structure which existed prior to s.4(1) Notification – The directions would be applicable only to such cases where the residential structures were made prior to issuance of s.4(1) Notification and appellant was actually residing there.*

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Jagdish Chand and Anr. v. State of Haryana and Anr. 2005(10) SCC 162 and Sube Singh and Ors. v. State of Haryana and Ors. 2001(7) SCC 545, relied on.

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Case Law Reference:

2005(10) SCC 162	relied on	Paras 3, 4, 5
2001(7) SCC 545	relied on	Paras 3, 5

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7287 of 2008.

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From the Judgment and final Order dated 20.2.2004 of the High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition No. 10939 of 2003. A

Naresh Kaushik and Lalita Kaushik for the Appellant.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted. B

2. Challenge in this appeal is to the order passed by a Division Bench of the Punjab and Haryana High Court dismissing the writ petition questioning legality of the Notification dated 24.8.2000 issued under Section 4 of the Land Acquisition Act, 1894 (in short the 'Act') as also the declaration under Section 6 of the Act dated 22.8.2001. The only ground which was pressed into service during arguments was that the construction made by the appellant has been acquired whereas similar kind of constructions made with regard to others similarly situated persons have been left out. The High Court did not find any substance in the plea and dismissed it. C D

3. During the course of hearing, learned counsel for the appellant placed strong reliance on the judgment of this Court in *Jagdish Chand & Anr. v. State of Haryana and Anr.* (2005 (10) SCC 162). This Court in *Jagdish Chand's* case (supra) relied on earlier judgment of this Court in *Sube Singh & Ors. v. State of Haryana and Ors.* (2001 (7) SCC 545). E

4. Though, no one appeared for the respondent-State and its functionaries in spite of service of notice, a counter affidavit has been filed. In *Jagdish Chand's* case (supra) it was observed as follows: F

"6. This Court in a similar situation, though on a different ground, dealing with the structures of three different classes, found that there was no justification to exclude the structures of Class 'A' only and not to exclude structures of Classes 'B' and 'C'. In that background, and on the facts of those cases, gave the directions as contained in paragraph 12 of the aforementioned case¹ which reads: (SCC p. 549) G

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A "12. In the result, the appeals are allowed. The judgments
under challenge are set aside, the orders passed by the
State Government rejecting the representation of the
appellants are quashed. The Secretary, Urban Estates
B Department, State of Haryana, Respondent 1 herein, is
directed to consider the objection petitions filed by the
appellants for exclusion of their properties from acquisition
and pass appropriate order excluding such lands having
structures on them excepting any land which is required
for construction of a road or hospital. Respondent 1 shall
C give opportunity of hearing to the appellants before taking
the decision. The exercise shall be completed
expeditiously if possible within three months. There will,
however, be no order as to costs."

D 5. In view of what has been stated in *Jagdish Chand's*
case and *Sube Singh's* case (supra), we set aside the
impugned judgment of the High Court and dispose of the
appeal on the following terms:

E (1) The Secretary, Urban Estates Department, State of
Haryana is directed to consider the objections of the
appellant only so far as 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 appellant. However, this direction shall not come in
the way of the authorities in removing the structures, if
F required for the purposes of road, hospital and other civic
amenities.

G (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.

H (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 appellant. The
appellant shall be bound to take that additional area and

also be bound to pay the cost of such area as is chargeable to other allottees. The appellant 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. A

6. 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. B

7. The above directions will be applicable only to such of the cases where the residential structures are made prior to the issuance of Section 4(1) notification and the appellant is actually residing there. However, in case of any dispute as to whether the structures were made prior to Section 4(1) notification or later, the Secretary, Urban Estates Department shall determine that question after affording opportunities to both the parties, uninfluenced by observations made in the impugned orders of the High Court. C D

8. We make it clear that these directions are given on the peculiar facts of these cases and are not intended for any general application. E

9. The appeal is disposed of accordingly.

D.G.

Appeal disposed of.