# Patasi Devi vs State Of Haryana & Ors on 29 August, 2012

## Equivalent citations: AIR 2013 SUPREME COURT 856, 2012 (9) SCC 503, 2012 AIR SCW 5294, 2012 (4) AIR JHAR R 739, 2012 (8) SCALE 416, (2012) 2 CLR 813 (SC), (2013) 1 LANDLR 33, AIR 2012 SC (CIVIL) 2740, (2012) 5 ALL WC 5324, (2012) 4 ICC 1, (2013) 1 ANDHLD 20, (2012) 8 SCALE 416, (2013) 2 CIVLJ 371, (2012) 3 CURCC 181

## Bench: Sudhansu Jyoti Mukhopadhaya, G.S. Singhvi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6183 OF 2012
(Arising out of SLP(C)No.26705 of 2010

Patasi Devi ...Appellant

versus

State of Haryana & Ors. ...Respondents

O R D E R Leave granted.

By notification dated 15.12.2006 issued under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act'), the Government of Haryana proposed the acquisition of land measuring 231.04 acres (48.23 acres of village Bahayapur, 139.25 acres of village Para and 43.56 acres of village Bohar, Tehsil and District Rohtak) for the development of Residential Sector 36, Rohtak under the Haryana Urban Development Authority Act, 1977 by the Haryana Urban Development Authority (HUDA). After considering the report of the Land Acquisition Collector, who is supposed to have heard the objections filed by the landowners and other interested persons under Section 5A(1), the State Government issued declaration dated 14.12.2007 under Section 6 of the Act. The award was passed by the Land Acquisition Collector on 9.12.2009.

The appellant, who owned 14 kanals 8 marlas land situated in the revenue estate of Mouza Para, challenged the acquisition of her land in Writ Petition No. 2494/2010. She pleaded that in the garb of acquiring land for a public purpose, the State Government misused its power under Sections 4 and 6 of the Act for the benefit of respondent No.6 M/s. Ujjawal Coloniser Pvt. Ltd. of Delhi, who was constructing residential colony known as 'Sun City'; that her land should have been

exempted/released in terms of the policy framed by the State Government because she had constructed a house prior to the issuance of notification under Section 4(1) of the Act; that she has been discriminated inasmuch as land belonging to M/s. Sharad Farm and Holdings Pvt. Ltd. had been released vide letter dated 4.9.2008, but her land was not released and that the acquisition proceedings are vitiated due to non-application of mind by the functionaries of the State Government and violation of the rules of natural justice.

In the counter affidavit filed by respondent Nos. 1 and 3, an objection was raised to the maintainability of the writ petition on the ground that the same was filed after passing of the award. On merits, respondent Nos.1 and 3 did not dispute that the appellant's land was surrounded by the land of respondent No.6, who was developing residential colony but pleaded that the acquisition was for a public purpose i.e. development of Sector 36, Rohtak. The plea of discrimination raised by the appellant was contested by respondent Nos. 1 and 3 by asserting that the appellant had not filed objections under Section 5A(1).

The High Court did not decide the appellant's challenge to the acquisition of her land and dismissed the writ petition solely on the ground that it was filed after passing of the award. For arriving at this conclusion, the High Court relied upon the judgments of this Court in Municipal Corporation of Greater Bombay v. Industrial Development and Investment Company (P) Limited (1996) 11 SCC 501, Municipal Council, Ahmednagar, v. Shah Hyder Beig (2002) 2 SCC 48, C.Padma v. Deputy Secretary to the Government of Tamil Nadu (1997) 2 SCC 627, Star Wire (India) Ltd. v. State of Haryana (1996) 11 SCC 698 and M/s. Swaika Properties Pvt. Ltd. v. State of Rajasthan JT 2008 (2) SC 280.

We have heard learned counsel for the parties and scanned the record. We shall first consider the question whether the High Court was right in non-suiting the appellant without examining the merits of her challenge to the acquisition proceedings. For this purpose, it will be apposite to note that in the counter affidavit filed on behalf of respondent Nos.1 and 3 before the High Court it was nowhere pleaded that possession of the appellant’s land and house was taken by the particular official / officer on a particular date and was handed over to the Estate Officer, HUDA, Rohtak. Not only this, no document was produced evidencing dispossession of the appellant. This is the reason why the High Court did not record a finding that possession of the appellant's land had been taken after passing of the award.

In the counter affidavit filed before this Court, respondent Nos. 1 and 3 have, for the first time, averred that possession of the acquired land was handed over to Estate Officer, HUDA, Rohtak on the date of award and as per official assessment report the construction had been raised after the issue of notification under Section 4. This statement is contained in para 6 of the counter affidavit, which is reproduced below:

> “6. That the award related to the abovesaid notification was announced on 9.12.2009 and the possession was handed over to Estate Officer, HUDA, Rohtak on the same day. It is relevant to mention here that as per the official assessment report of the constructed area regarding the above said notification the land of the petitioner was

vacant at the time of u/s-4 and the construction has been raised after the survey and issuance of the notification u/s-4. However since it is also subsequent to declaration of the area as controlled area and the same is without permission and unauthorized one." In the separate counter affidavit filed by Estate Officer, HUDA, Rohatak (respondent No.2) before this Court, a similar averment has been made albeit without disclosing the name of the person who is said to have delivered possession of the acquired land to him on the date of the award. Not only this, while making that averment in para 5(v) of the counter affidavit, the officer has used white fluid to score out something recorded after the words "handed over to the answering respondent". By doing so the concerned officer has tried to hide the truth from this Court. That apart, what is most surprising is that neither before the High Court nor before this Court the official respondents have produced any document to show that actual or even symbolic possession of the acquired land was taken by the particular officer/official and the same was handed over to the particular officer of HUDA. Therefore, there is no escape from the conclusion that respondent Nos.1 to 3 have failed to discharge the onus to prove that after passing of the award, possession of the acquired land had been taken and delivered to the Estate Officer, HUDA.

In Banda Development Authority, Banda v. Moti Lal Agarwal (2011) 5 SCC 394, this Court considered as to what should be the mode of taking possession of the land acquired under the Act, referred to the judgments in Balwant Narayan Bhagde v. M.D. Bhagwat (1976) 1 SCC 700, Balmokand Khatri Educational and Industrial Trust v. State of Punjab (1996) 4 SCC 212 , P.K. Kalburqi v. State of Karnataka (2005) 12 SCC 489, NTPC Ltd. v. Mahesh Dutta (2009) 8 SCC 339, Sita Ram Bhandar Society v. Govt. of NCT of Delhi (2009) 10 SCC 501, Brij Pal Bhargava v. State of UP (2011)5 SCC 413 and culled out the following principles:

"i) No hard and fast rule can be laid down as to what act would constitute taking of possession of the acquired land.

ii) If the acquired land is vacant, the act of the concerned State authority to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.

iii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the concerned authority will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the concerned authority will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.

iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.

v) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3A) and substantial portion of the acquired land has been utilised in furtherance of the particular public purpose, then the Court may reasonably presume that possession of the acquired land has been taken." In Prahlad Singh v. Union of India (2011) 5 SCC 386, the Court considered as to when the acquired land can be treated to have vested in the State, referred to various judgments on the issue of taking of possession including the judgment in Banda Development Authority, Banda (supra) and observed:

"If the present case is examined in the light of the facts which have been brought on record and the principles laid down in the judgment in Banda Development Authority case it is not possible to sustain the finding and conclusion recorded by the High Court that the acquired land had vested in the State Government because the actual and physical possession of the acquired land always remained with the appellants and no evidence has been produced by the respondents to show that possession was taken by preparing a panchnama in the presence of independent witnesses and their signatures were obtained on the panchnama." At the cost of repetition, we consider it necessary to observe that in the present case no evidence was produced by the official respondents before the High Court to show that possession of the appellant's land and the house constructed over it had been taken by the competent authority between 9.12.2009, i.e., the date on which the award was passed and 20.1.2010, i.e., the date on which the writ petition was filed before the High Court. Indeed, it was not even the pleaded case of the official respondents that the house constructed by the appellant was lying vacant on the date of award and some official had put lock over it evidencing the taking over of possession.

A somewhat similar question was considered by this Court in Raghbir Singh Sehrawat v. State of Haryana (2012) 1 SCC 792. In that case also, the High Court had non-suited the writ petitioner on the ground that possession of the acquired land had been taken by the concerned officers and the same will be deemed to have vested in the State Government free from all encumbrances. This Court took cognizance of the entries recorded in khasra girdawari revealed existence of crops on the acquired land and observed:

"The respondents have not produced any other evidence to show that actual possession of the land, on which crop was standing, had been taken after giving notice to the appellant or that he was present at the site when possession of the acquired land was delivered to the Senior Manager of HSIIDC. Indeed, it is not even

the case of the respondents that any independent witness was present at the time of taking possession of the acquired land.

The Land Acquisition Collector and his subordinates may claim credit of having acted swiftly inasmuch as immediately after the pronouncement of the award, possession of the acquired land of Village Jatheri is said to have been taken from the landowners and handed over to the officer of HSIIDC but keeping in view the fact that crop was standing on the land, the exercise undertaken by the respondents showing delivery of possession cannot but be treated as farce and inconsequential. We have no doubt that if the High Court had summoned the relevant records and scrutinised the same, it would not have summarily dismissed the writ petition on the premise that possession of the acquired land had been taken and the same vested in the State Government." The Court then referred to the judgments in Municipal Corporation of Greater Bombay v. Industrial Development and Investment Company (P) Limited (supra), Star Wire (India) Ltd. v. State of Haryana (supra), C.Padma v. Deputy Secretary to the Government of Tamil Nadu (supra), Municipal Council, Ahmednagar, v. Shah Hyder Beig (supra) and M/s Swaika Properties Pvt. Ltd. v. State of Rajasthan (supra), on which reliance has been placed by the High Court and observed:

"In all the cases, challenge to the acquisition proceedings was negatived primarily on the ground of delay. An additional factor which influenced this Court was that physical possession of the acquired land had been taken by the authorities concerned. In none of these cases, the landowners appear to have questioned the legality of the mode adopted by the authorities concerned for taking possession of the acquired land. Therefore, these judgments cannot be relied upon for sustaining the High Court's negation of the appellant's challenge to the acquisition of his land." In view of the above discussion, we hold that the High Court was not right in holding that the writ petition of the appellant was not maintainable because the same was filed after passing of the award.

As a sequel to the aforementioned conclusion, we may have set aside the impugned order and remitted the matter to the High Court for disposal of the writ petition on merits but having carefully gone through the pleadings of the parties and the material produced before this Court, we are satisfied that the acquisition of the appellant's land is vitiated due to colourable exercise of power by the State Government. No doubt, the notifications issued under Sections 4 and 6 of the Act recite that the land was acquired for a public purpose, namely, development of Sector 36, Rohtak, but the real object of the acquisition was to benefit a colonizer i.e. respondent No.6, who had undertaken to develop the area into a residential colony. In para 5 and 6(iv) of the writ petition, the appellant had made the following averments:

"5. That it would be worthwhile to point out here that the land which has been sought to be acquired vide the impugned notification is surrounded by the land of Ujjawal Coloniser

- respondent No. 6 from all sides and the residential colony named Sun City is being developed by the respondent No. 6 and land situated in the Sun City was also acquired by the State Government and then it was handed over to respondent No. 6 who is a well known colonizer and the respondent No. 6 also approached the petitioner for selling her land to him and the petitioner refused to accept the said proposal of the respondent No. 6 and now the land which the respondent No. 6 failed to purchased from its owners has been got acquired for extension of Section 36, Rohtak with clear understanding that same would be further handed over to respondent No. 6 after completion of its acquisition and there is a secret agreement between the State authorities and respondent No. 6.

6(iv) That the acquisition of land for public purpose is just an eyewash. In fact, the land is being acquired for semi-public, commercial purpose etc. It is also so reflected from the lay out plan of Section 36 and marked in red. The semi public purpose is for giving the land to the private developers cannot be termed as a public purpose in the real sense and earlier also the land was acquired for development of Sector 36 in a similar fashion and after acquisition the same was handed over to the respondent No. 6 and the land of the petitioner is surrounded by the land of Sun City by three sides and cannot be choose for any purpose except to acquire the same and hand over it to the respondent No. 6 and the acquisition proceedings are not meant for public purpose in true sense and the authorities are bent upon to help the respondent No. 6 in an illegal and arbitrary manner." In the counter affidavit filed by Land Acquisition Collector, Urban Estates, Haryana, Rohtak on behalf of respondent Nos.1 and 3, it was claimed that the procedural requirement contained in Sections 4 and 6 of the Act had been fully satisfied and reference to Section 17(1) in the declaration issued under Section 6 was a mistake and further that no discrimination had been practised in acquiring the land. However, it was not denied that the appellant's land is surrounded by the land of respondent No.6, who was developing residential colony under the name and style 'Sun City' and earlier also the land acquired for the development of Sector 36, Rohtak was transferred to respondent No.6. This shows that in the guise of acquiring land for a public purpose, the State Government had acquired the land for being handed over to the private coloniser. In other words, the State Government had misused the provisions of Sections 4 and 6 of the Act for making land available to a private developer. We may hasten to add that if the land was to be acquired for a company, then the official respondents were bound to comply with the provisions contained in Chapter 7 of the Act, which was admittedly not done in the instant case.

We also find merit in the appellant's plea that the official respondents are guilty of practising discrimination in the matter of release of land. In paragraphs 6(v) and 6(vi) of the writ petition the appellant had made the following averments:

"6(v) That the petitioner who is having only small piece of land/ residential house would be deprived of the roof and the construction made by the petitioner is of A

> Class and has been raised prior to the issuance of Notification u/s 4 of the Act i.e. 15.12.2006. Photographs showing construction of the House of A Class, is annexed herewith as Annexure P/5. As per the policy of the State Government dated 30.9.2007, copy of which is annexed as Annexure P/6, the structure which have been constructed prior to the issuance of the notification u/s 4 and is inhabited could be released u/s 48(1) of the Act ibid but the respondents have ignored its own instructions and for releasing the land the pick and choose policy has been adopted by the authorities and the land of M/s Sharad Farm and Holdings Pvt. Ltd. has also been released arbitrarily after notification u/s 6 of the Act as is reflected from letter dated 4.9.2008, copy of which is annexed as Annexure P/7 and furthermore the constructed house of the petitioner has been acquired but the vacant land of some influential person have been left out and the State Government is not justified in acquiring the land in question for further handing over the same to the private developers for commercial gains at the cost of the life/livelihood of the petitioner and the impugned notification has not been issued for a bonafide purpose and is a result of connivance of the authorities with the respondent No. 4 to 6 and it is not permissible under law.

The release of land of the petitioner would not create any hurdle in the scheme of the respondents.

6(vi) That the construction of the house of the petitioner is prior to the notification u/s 4 of the Land Acquisition Act. The Land Acquisition Collector in similar circumstances also recommended the release of the land and the same was not included while issuing the notification u/s 6 of the Land Acquisition Act and it has been incorporated while issuing notices u/s 9 of the Act ibid, copy of recommendations of the L.A.C is attached herewith as Annexure P/8. There is, thus, a total non-application of mind. According to the notification u/s 6 ibid Killa No. 23(7-12) is stated to have been acquired but while in the notice under Section 9 of the Act ibid whole of the area has been shown to have been acquired. Even the recommendations of the L.A.C. for release of the constructed area has also been ignored without any basis." In the counter affidavit filed on behalf of respondent Nos.1 and 3, the above reproduced averments were not denied. This is evinced from paragraphs 6(v) and 6(vi) of the counter affidavit, which are extracted below:

> "6(v). That the contents of Para no. 6(v) of the civil writ Petition are wrong and denied. However, the state Govt, has absolute right to acquire the land for public purpose and the disputed land is also being acquired for serving public purpose i.e. Sector-36 Rohtak. However petitioner has never filed the objection regarding his house.
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> 6(vi). That the contents of para no. 6(vi) of the civil writ petition are wrong and denied. However, it is submitted that there exists a public purpose for which the land has been acquired and there is no illegality or infirmity in the decision of the state. No discrimination has been done with any of the land owners." 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 land on which construction had been raised prior to 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 Pvt. Ltd.

In the result, the appeal is allowed and the impugned order is set aside. The acquisition of the appellant's land is declared illegal and is quashed. The parties are left to bear their own costs.

.....J, [G.S. SINGHVI] .....J, [SUDHANSU JYOTI MUKHOPADHAYA] New Delhi, 29th August, 2012.