

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

(1) C.M.No.18509 of 2009 in
Civil Writ Petition No. 7540 of 2007

Daultabad Road Industrial Area Association (Regd.) & anr.

.....Non-applicants- Writ
Petitioners through Shri
S.P.Jain, Senior Advocate
with Shri Dheeraj Jain,
Advocate and Shri Daves
Moudgil, Advocate.

Versus

State of Haryana and others.

..... Applicants-Respondent
nos. 1 to 3 through
Shri Narender Hooda, Senior
Additional Advocate
General, Haryana with
Ms.Shalini Attri, Deputy
Advocate General, Haryana.
Respondent no.4 through
Shri H.R.Bhardwaj,
Advocate for Ms.Preeti
Khanna, Advocate.

(2) Civil Writ Petition No. 19371 of 2008

Cosco India Limited, Gurgaon.

..... Petitioner through Shri
Ashok Aggarwal, Senior
Advocate with Shri Adarsh
Jain, Advocate.

Versus

State of Haryana and another.

..... Respondents through Shri
Narender Hooda, Senior
Additional Advocate General,
Haryana with Ms.Shalini Attri,
Deputy Advocate General,
Haryana.

(3) Civil Writ Petition No. 19233 of 2009

M/S Cosco (India) Kamgar Union, Gurgaon.

..... Petitioner through Shri
Harsh Aggarwal, Advocate.

Versus

State of Haryana and others.

..... Respondents.

(4) C.O.C.P.No.246 of 2009

Daultabad Road Industrial Area Association (Regd.).

.....Petitioner through Shri
S.P.Jain, Senior Advocate
with Shri Dheeraj Jain,
Advocate and Shri Daves
Moudgil, Advocate.

Versus

Sh. Dharam Vir and others.

..... Respondent nos. 1 to 3
through
Shri Narender Hooda, Senior
Additional Advocate
General, Haryana with
Ms. Shalini Attri, Deputy
Advocate General, Haryana.
Respondent no.4 through
Shri H.R. Bhardwaj,
Advocate for Ms. Preeti
Khanna, Advocate.

Date of Decision: 23.12.2009

CORAM: HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE RAKESH KUMAR GARG

1. Whether Reporters of Local Newspapers 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?

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Mahesh Grover,J.

By this common judgment, C.M. No.18509 of 2009 filed in C.W.P. No.7540 of 2007; C.W.P. Nos. 19371 of 2008 & 19233 of 2009 and C.O.C.P. No. 246 of 2009 are being disposed of as identical questions of law and facts are involved therein.

The fountain-head petition being C.W.P.No.7540 of 2007, we propose to cull out the facts and the sequence which unfolded subsequently leading to filing of above two writ petitions, the civil miscellaneous application and the contempt petition mentioned above from it.

A public interest litigation was initiated by Daulatabad Road Industrial Area Association and its General Secretary invoking the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India by way of C.W.P.No.7540 of 2007, with a prayer for issuance of a writ of mandamus directing respondent nos. 1 to 3 therein to provide a passage of atleast 10 meters instead of three meters as proposed by them on both sides of the over-bridge for the smooth passage of the traffic during and after completion of the over bridge on Railway Line at Daulatabad Road, Gurgaon.

Notice of motion was issued in the said petition and during the course of proceedings on 31.5.2007, Shri Randhir Singh, Additional

Advocate General, Haryana had apprised the Court that a meeting was called by the Deputy Commissioner, Gurgaon with the petitioners so as to work out the modalities of extending the width of the road from 3 meters keeping in view the ground realities. The Court was also apprised of the fact that the stretch of the land in dispute is 180 meters only. Since the concern of the Court was only confined to the grievance of the petitioners in the said petition regarding smooth flows of the traffic by providing adequately wide road for the same, the Division Bench observed in the order dated 31.5.2007 that it was not to decide whether the area required was 100 meters or 180 meters and it was to be decided by the government taking into consideration the ground realities of the service road and congestion points involved on that point. It was, however, made clear that no parking, loading, unloading of vehicles or any kind of encroachments shall be allowed to take place by the Deputy Commissioner, Gurgaon on the service road till the alternate route was made operational.

That petition was finally disposed of on 17.10.2007 on the statement made by the learned counsel appearing for the State of Haryana, who had placed on record an order of the Haryana Public Works (B&R) Department, Chandigarh in which it was proposed that the land for providing the main service road 18 feet wide on both sides of the over bridge shall be acquired under the provisions of Section 17 of the Land Acquisition Act, 1894 (for short, 'the Act'). An official of the department, who was present in the Court, had undertaken further that by way of interim arrangement, 10 feet wide road shall be provided by the respondents which

shall be free from hindrances so as to enable the smooth ingress and egress to the factories on both sides of the road. Since the grievance of the petitioners had been adequately redressed, that petition was disposed of.

For the sake of reference, however, orders dated 31.5.2007 and 17.10.2007 passed in C.W.P.No.7540 of 2007 are extracted below as the petitioners, who have filed subsequent writ petitions, have made most of their submissions revolving around these two orders:-

“ Order dated 31.5.2007

Present: Shri S.P.Jain, Senior Advocate with Mr. Dheeraj Jain,
Advocate for the petitioners.

Shri Randhir Singh, Addl.A.G.,Haryana.

...

Mr.Randhir Singh, Addl.A.G. Haryana says that a meeting was called by the Deputy Commissioner, Gurgaon with the petitioners Association., He further contended that some time may be given so that modalities of extending the width of the road from 3 meters could be chalked out keeping in view the ground realities. Let the meeting take place and decision be taken within a period of four weeks so that width of service road is extended to minimum 18 feet.

Counsel for the petitioners says that necessary help shall be extended by the petitioners association to the respondents in this regard.

Mr.Randhir Singh, Addl.A.G. Haryana further says that stretch of land in dispute is 180 meter only. We are not to decide whether it is 100 meter or 180 meter. It is to be decided by the Government taking into consideration the ground realities of the service road and congestion points involved on that point. However, we make it clear that no parking, loading, unloading of vehicles or any kind of encroachments shall be allowed to take place by the Deputy Commissioner, Gurgaon on the service road till the alternate route, which according to the State Counsel has already been provided, is made operational, as the construction of Fly Over has already taken place.

During the pendency of this writ petition, minimum width of the road which has been provided by the respondents shall be kept clear from all hindrances.

Renotify for hearing on 12.0.7.2007.

Copy of the order be given dasti under the signatures of Bench Secretary.

Sd/-
(Vijender Jain)
Chief Justice

31.05.2007
Sd/-
(Mahesh Grover)
Judge

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Order dated 17.10.2007

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Present: Shri S.P.Jain, Senior Advocate with Mr. Dheeraj Jain,
Advocate for the petitioners.
Shri Randhir Singh, Addl.A.G., Haryana for the
respondents.

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Mr. Randhir Singh, Addl.A.G., Haryana has placed on
record an order of the Haryana Public Works (B&R)
Department, Chandigarh, wherein it is proposed that the land
will be acquired under Section 17 of the Land Acquisition
Act, 1894, so as to provide the main service road 18' wide on
both sides of the over bridge.

Our attention has been drawn towards an order passed by
this Court on 31.5.2007 during the pendency of this writ
petition, whereby we had directed that minimum width of the
road, which has been provided by the respondents shall be kept
clear from all hindrances. Junior Engineer of the concerned
department is present in Court. He undertakes that the
minimum width of 10' shall be provided by the respondents and
shall be kept clear from hindrances so as to enable the
petitioners for ingress and egress to the factories on both sides
of the road.

With these directions, the petition stands disposed of.

Sd/-
(Vijender Jain)
Chief Justice

17.10.2007
Sd/-
(Mahesh Grover)
Judge"

C.W.P.No.19371 of 2008 came to be filed by Cosco India

Limited, Gurgaon challenging the acquisition of land which acquisition was initiated by the respondents therein under section 17(2)(c) of the Act invoking the emergency powers of the government to acquire the land for a public purpose which was for the providing of road as had been stated by them at the time of passing of order dated 17.10.2007 in C.W.P.No.7540 of 2007, reproduced above. The grievance of the petitioner in this petition is that the portion of the land which was sought to be acquired by the State of Haryana for the said purpose was likely to unsettle its operational unit as it would be required to dislocate its plant and machinery and boilers in such an eventuality. The petitioner has pointed out that it is ready to give two feet wide space free of cost and that this would increase the width of the service road to 15 feet on the right side, which would be sufficient to cater to the needs of the public. The acquisition has also been challenged on the ground that mere existence of emergency or unforeseen emergency, though a condition precedent for invoking the provisions of Section 17 of the Act, would not be sufficient to direct dispensation of enquiry under Section 5-A of the Act. It has been pleaded that dispensation of enquiry under Section 5-A was not based on material reasoning.

At the time of issuance of notice of motion in C.W.P.No.19371 of 2008, this Court was swayed by the representation of the petitioner that it was willing to provide 2 feet wide space belonging to it for merging the same into the road without claiming any compensation. On 23.12.2008, a statement was made by the counsel appearing for the State of Haryana that the offer of the petitioner for providing 2 feet wide space for merging the

same into the road instead of the area sought to be acquired without claiming any compensation is not objectionable, but it had to be approved by the government and, therefore, the Court granted time for the said purpose. Thereafter, the reply was filed to the writ petition in which it was stated in paragraph 2 of the preliminary submissions as under:-

“That as far as the request of the petitioner vide annexure P-5 & P-7 is concerned for his offering the land 2 to 2.5 feet free of cost by transferring in the name of Govt. of Haryana of PWD Department and also raising boundary wall and other construction at his own cost, the respondents have no objection in the matter in the interest of public and the State of Haryana as the heavy amount will be saved by the Govt. of Haryana. At present 10.5 to 12 feet land is available with the department and after adding 2 to 2.5 feet land, 13-14 feet land is sufficient for service road on right side for smooth flow of traffic and utility for the purpose purpose.”

But, since no approval had been granted despite the fact that the matter had been adjourned for the said purpose twice or thrice over, the writ petition was admitted and acquisition proceedings were stayed beyond the area mentioned in the reply of the state and as indicated in the aforementioned extract.

During this interregnum, when the proceedings for quashing of the acquisition proceedings was going on by way of C.W.P.No.19371 of 2008, the petitioners in C.W.P.No.7540 of 2007 filed C.O.C.P.No.246 of

2009 seeking to initiate proceedings under the Contempt of Courts Act, 1971 against the respondents mentioned therein for having violated the undertaking given before the Court on 17.10.2007, as also for not keeping the service road free from hindrances and also for not providing adequate width of the road as stated by them on that day.

In the reply filed to the contempt petition, it was pleaded that the State had initiated proceedings for acquisition for providing 18 feet wide passage and the possession of the land pursuant to these proceedings had also been taken except of a stretch of 90 meters marked as "D" in the map, Annexure R1 which belongs to M/S Cosco India Limited, petitioner in C.W.P.No.19371 of 2008 in which acquisition proceedings had been stayed by a Division Bench vide order dated 11.5.2009.

Interestingly when the officials of the respondent-State of Haryana were facing contempt proceedings, they moved C.M.No.18509 of 2009 for modification of orders dated 31.5.2007 and 17.10.2007 passed in C.W.P.No.7540 of 2007 and along therewith, they attached photographs of the site and a copy of the plan and pleaded in paragraphs 5, 6 and 7 thereof as under:-

"5. That the petitioners have only raised a controversy regarding a portion of 88.55 mtrs of the service road towards Gurgaon side where the Industrial units of M/S Cosco India Limited is situated. It may be mentioned that this industrial unit is in existence since 1978 and is manufacturing the sports goods. After the notification under section 4 and under section

17 of the Land Acquisition Act, 1894 were issued, it filed objections under section 5A of the Act inter-alia stating that their machinery is situated including boilers which are germane for manufacturer of their goods. The company raised a demand of about 6 crores as compensation. At the same time they proposed that they are willing to part with 2 feet of the portion of their property by removing of the boundary wall at their own cost and also without claiming any compensation of the area of 2 feet into 88.55 mtrs for the purpose of extension of the service road.

6. That this proposal was examined by the respondents in order to avoid any litigation. After the completion of fly over at the spot if an area of 2 feet is included in the already existing about 12 feet lane, the total width of the service land becomes 14 feet. It may also be mentioned that in view of the undertaking given in the Hon'ble Court that 10 feet wide service lane will be maintained for the ingress & egress of the factories of the association, it was experienced that 10 feet width was sufficient for the smooth flow of traffic. After due deliberations, it was decided that the width of the service road to the extent of 14 feet will be sufficient enough to cater for the smooth flow of one way traffic through the service lane. It may also be mentioned that maximum width of goods trailer is 8-1/2 feet. The goods trailer could easily pass beneath the fly over and

after taking a turn towards the service lane could freely move in the service land having a width of about 14 feet. For the convenience of the Hon'ble Court a copy of plan regarding the service lane is being attached as Annexure R-1/3 and photographs are being attached as R-1/4 (Colly).

7. That M/S Cosco India Limited approached the Hon'ble Court in CWP No.19371 of 2008 and the Hon'ble Court was pleased to stay acquisition of the land beyond 2 feet as proposed by them. The Respondent has also submitted that an area of about 14 feet wide of the service lane can be considered sufficient for the smooth flow of one way traffic as decided by the Respondent after realizing the ground realities at the spot in order to stream line the smooth flow of traffic on both sides of the fly over passing over the railway crossing. A copy of the order dated 11.5.2009 passed by the Hon'ble Court in CWP No.19371 of 2008 is attached as Annexure R-1/5.”

From the reading of the above reproduced extracts, it is evident that the official respondents have sought to project by way of these averments that 14 feet service land would be available after M/S Cosco India Limited provides 2 feet area for the purpose as per their statement made in the Court and this proposal was acceptable to the State and the service land of 14 feet width would be sufficient for the smooth movement of the traffic. Some photographs have also been annexed showing the movement of the traffic on the road to justify its width.

In paragraph 9 of C.M.No.18509 of 2009, the officials of the State of Haryana, in order to further seek justification of the modification of orders dated 31.5.2007 and 17.10.2007, have stated as under:-

“..... It may also be stated that although the respondent have taken all steps to provide 18 feet wide service lane on both sides of the fly over but where the construction were of such a nature that even without acquiring the land beneath the same, the width of road less than 18 feet was sufficient to cater for the free and smooth flow of one way traffic through the service lane on both sides of the fly over. It does not appeal to reason that the petitioners who had filed the above noted writ petition in a public interest litigation have been stiff in their stand qua one industrial unit, the lesser width of the service lane has been found to be sufficient for the smooth flow of traffic. The respondents being a welfare state are to take every step for the welfare of its subjects and respondents are duty bound to honour the directions of the Hon'ble Court. However, it may be stated that when the directions were issued by the Hon'ble Court the construction of the fly over was going on and the actual position at the spot became clear after the completion of the fly over when it became road worthy. The decision to regulate traffic by one way traffic was also taken for the smooth and continuous flow of traffic through service lane. The petitioner association was more than satisfied when the width

of the service lane was 10 feet for ingress and egress to their factories.”

Almost at the same time, C.M. Nos. 19208 and 19209 of 2009 were filed in C.W.P.No.19371 of 2009 for amendment of the written statement and for vacation of stay. It may be mentioned here that these applications are being disposed of separately.

On 13.11.2009, this Court directed issuance of notice in C.M.No.18509 of 2009 and directed the same to be posted before the appropriate Bench hearing C.W.P.No.19371 of 2008 as it pertained to the same controversy. C.O.C.P. No.246 of 2009 was also directed to be transferred and listed along with the above C.M. and the writ petition.

In this manner, all these matters got to be clubbed.

Thereafter, another writ petition, i.e., C.W.P.No.19233 of 2009 was filed by M/S Cosco (India) Kamgar Union, Gurgaon, seeking a writ of mandamus directing the respondents not to acquire more than 2 feet strip along with the Railway bridge. On 15.12.2009, it was also ordered to be listed along with the above mentioned matters.

It is, prima facie, clear from the above reproduced facts that the respondent-State of Haryana was blowing hot and cold at the same time and it almost seemed that an attempt was being made to confuse and jumble the facts in order to mislead the Court. On one hand, a statement was given regarding acquisition of land to provide 18 feet wide road and steps had also been initiated in this regard, but at the same time, the officials of the State were trying to defeat this purpose by saying that 18 feet road was not

necessary and only necessity was to provide 14 feet wide road which was sufficient and for that purpose, 2 feet wide area which was being offered by M/S Cosco India Limited, free of cost, was adequate.

However, to allay all impressions and in order to appreciate the controversy, the arguments of the parties were heard.

When the final submissions were being made on 17.12.2009, Shri Narender Hooda, learned Senior Additional Advocate General, Haryana, made a statement at the Bar that they are abiding by the acquisition proceedings initiated by them under Section 17(4) of the Act to provide 18 feet wide road on both sides and that all subsequent averments made by them in their affidavits by the officials of the State of Haryana in other proceedings, i.e., C.W.P. No.19371 of 2008, C.O.C.P.No.246 of 2009 and C.M.No.18509 of 2009, be not considered in view of this statement. He, thus, contended that in view of this statement, the controversy be set at rest and all other statements or affidavits be ignored.

Shri Ashok Aggarwal, learned Senior Advocate appearing for M/S Cosco India Limited made strenuous efforts to justify his challenge to the acquisition proceedings, but surprisingly, he made no attempt to launch any legally sustainable challenge to the acquisition proceedings except to interpret orders dated 31.5.2007 and 17.10.2007 passed in C.W.P.No.7540 of 2007 to say that the State had been asked to provide adequate infrastructure in the shape of the road and the necessity of 18 feet road was not stated in their statement before the Court. He pointed out to the fact that 14 feet wide road was sufficient to take care of the movement of the heavy

vehicles and for that purpose, he relied upon photographs Annexure R1 to R7 which were attached by Shri R.S.Yadav, Superintending Engineer, Gurgaon Circle, PWD (B&R), Gurgaon along with his affidavit filed in reply to C.O.C.P.No.246 of 2009.

Shri S.P.Jain, learned Senior Advocate appearing for Daultabad Road Industrial Area Association, however, contended that the matter had been concluded when the Additional Advocate General, Haryana had made a statement before the Court on 31.5.2007 and 17.10.2007 in C.W.P.No.7540 of 2007 and the concern of the petitioners was adequately addressed by such a statement and that pursuant thereto, the acquisition proceedings for 18 feet road had also been initiated, but it was the wavering stand of the State of Haryana which is obviously due to the connivance with the petitioner-M/S Cosco India Limited, that the interest of the public was sought to be defeated.

We have considered the matter in its entirety. We would have ordinarily examined the conflicting averments made on sworn affidavits before this Court in the aforesaid proceedings which were at variance with each other, more in depth, but refrain from doing so for the simple reason that Shri Narender Hooda, learned Senior Additional Advocate General, Haryana, who has put in appearance on behalf of the State and its officers, has made a categorical statement that earlier pleadings be ignored and that they had been made in a bona fide belief that 14 feet wide road would be sufficient, but on a re-consideration of the matter, it seems that the same may not be entirely sufficient and 18 feet wide space which was the initial

assessment would be sufficient and for which acquisition proceedings have been justifiably initiated and that M/S Cosco India Limited cannot really have any justifiable challenge.

We propose to accept the fair stand now being taken by the State of Haryana.

Once we accept this statement of the learned Senior Additional Advocate General, then we are left to examine the challenge in C.W.P. No.19371 of 2008. It has been observed earlier that in this writ petition, the petitioner has not made any serious legal challenge except for saying that 14 feet wide road is sufficient and which area could be achieved by providing 2 feet wide area from its premises to the State of Haryana for providing a road. Reference was made to Annexure R7 filed along with written statement by the respondents therein.

We find that the stand of the State of Haryana as observed earlier, is apparently vacillating and ambiguous. Even as per the site plan which has been attached as Annexure R7, it becomes clear that for 14 feet wide road which the respondents are saying would be achieved by adding 2 feet wide area to be contributed by M/S Cosco India Limited is not achieved. A perusal of Annexure R7 shows that the road is 10-1/2 to 12 feet in dimension and if the area of 2 to 2.5 feet as offered by M/S Cosco India Limited is added to this, at some points, the road is likely to become 12.5 to 14 feet. It is strange that the entire case which was being built up before this Court was that whole stretch would become 14 feet after addition of 2 feet, but obviously the road is not aligned in a straight manner

and at points, it narrows down to 12.5 feet.

Although the Court is handicapped in commenting upon the actual width which may be sufficient for the traffic, we would not, in any case, have judged such an issue, but a bare perusal of the photographs which have been attached as Annexure R1/4 (Colly) with C.M.No.18509 of 2009, shows that the width is not adequate. These photographs reveal that on one side, there is construction of wall of the over bridge and on the other side there are walls of the industrial units leaving barely any space for either the commuters or pedestrians, so much so, the Court is of the opinion that even if a heavy laden truck passes through the same, with some consignment protruding from its body, it is unlikely to pass through the area smoothly. We are, therefore, not enamoured and persuaded by the contentions which have been raised in C.W.P.No.19371 of 2008.

In any eventuality, since the counsel for the respondent-State of Haryana has made a statement that they will provide 18 feet wide road as was earlier projected before this Court and also in view of the fact that the petitioner in C.W.P.No.19371 of 2008, has not mounted any legal challenge for justifying 14 feet wide road, which also is not borne out from the facts on record, we are of the considered opinion that C.W.P.No.19371 of 2008 deserves to be dismissed. The acquisition proceedings validly initiated by the State cannot be set to naught if no material is shown to the Court from where it can conclude that such proceedings are either mala fide or that such proceedings are hit by procedural lapses.

C.W.P.No.19233 of 2009 has been preferred by M/S Cosco

(India) Kamgar Union, i.e., the workers of petitioner in C.W.P.No.19371 of 2008. They have pleaded that dislocation of some plant and machinery of their employer is likely to prejudice their employment.

That apart, there is no other challenge or grievance made in the aforesaid writ petition. We are not inclined to accept the contentions raised by Shri Harsh Aggarwal that the acquisition of a bit of an area belonging to M/S Cosco India Limited is likely to jeopardize the interest of the workers. In any eventuality, the rights of the workers, if violated, they have the remedy under the Industrial Disputes Act, 1947 and, therefore, this Court is of the view that apart from the fact that they have no locus standi to challenge the acquisition of the land, the petition is also without any merit.

Regarding the proceedings which were initiated under the Contempt of Courts Act, 1971 in C.O.C.P.No.246 of 2009, this Court finds that in view of the fair stand which has finally been taken by Shri Narender Hooda, learned Senior Additional Advocate General, Haryana, we choose to exercise restraint and discharge the rule against the respondents therein.

In the result, C.M.No.18509 of 2009 in C.W.P.No.7540 of 2007; C.W.P.No.19371 of 2008; C.W.P No.19233 of 2009 and C.O.C.P. No.246 of 2009 are dismissed.

(Mahesh Grover)
Judge

December 23, 2009
“SCM”

(Rakesh Kumar Garg)
Judge