
(2008) 07 P&H CK 0001

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12510 of 2000, C.W.P. No. 12513 of 2000

Abhishek Gupta

APPELLANT

Vs

State of Haryana and another

RESPONDENT

Date of Decision : 15-07-2008

Acts Referred:

Citation : (2008) 3 LLR 571 : (2008) 4 RCR(Civil) 149

Hon'ble Judges : Vijender Jain;CJ., J and Mahesh Grover, J

Advocate : Shri J.K. Sibal, Senior Advocate assisted by Shri Sapan Dhir, Advocate.For the State and Haryana Urban Development Authority, Shri H.S. Hooda, Advocate General, Haryana assisted by Ms. Palika Monga, Assistant Advocate General, Haryana. Shri Ashok Aggarwal, Senior Advocate with Shri Ajay Nara, Advocate., Advocates for appearing Parties

Judgement

Vijender Jain, CJ.—Vide order dated 25.4.2008, the aforementioned two writ petitions were ordered to be detached from the bunch of cases as it was agreed by the learned Advocate General, Haryana that the facts of these cases were different from those of other cases of the bunch and were directed to be listed separately for disposal. Accordingly, arguments have been heard therein.

2. This judgment will dispose of these petitions as common questions of facts and law are involved therein.

3. The Government of Haryana issued a notification under Section 4 of the Land Acquisition Act, 1894 (for short, 'the Act') on 16.3.1999 expressing its intention to acquire 748.56 acres of land in village Saketri and 203.62 acres of land in Village Bhainsa Tiba, Tehsil and District Panchkula, for the development and utilization of residential, commercial, institutional, recreational purposes.

4. The objections were invited from the landowners under Section 5A of the Act as is mandatory. The petitioners, whose lands were also sought to be acquired, filed their objections dated 16.4.1999 (marked as Annexure P7 separately in each of the petitions).

5. Subsequently, a notification under Section 6 of the Act was issued on 16.3.2000 largely finalising the original intent as depicted in the notification dated 16.3.1999.

6. Petitioner Abhishek Gupta is owner of 4 kanals and 16 marlas of land, whereas petitioner Madhu Raj Foundation is owner of 28 kanals and 10 Marlas of land. Both these parcels of land are situated in village Bhainsa Tibba. Originally, the land measuring 33 kanals and 6 marlas was purchased by Shri Nohar Chand Gupta and others, out of which 28 kanals and 10 marlas of land was gifted to petitioner Madhu Raj Foundation vide gift deed dated 1.3.1999. The rest of the land came to be owned by petitioner Abhishek Gupta (minor), who is grandson of Shri Nohar Chand Gupta and is being represented through his mother and natural guardian, Mrs. Madhu Gupta. The aforesaid gift deed was duly accepted by the revenue authorities as well and mutation no. 1667 stands sanctioned vide order dated 15.3.1999 of the Assistant Collector 2nd Grade, Panchkula. However, these facts do not have any bearing on the facts of these cases as the controversy herein centres around the challenge to the acquisition.

The grievance of the petitioners can be encapsulated briefly as follows :

(1) The respondents did not consider the objections raised by the petitioners appropriately which is borne out from the fact that the Land Acquisition Collector himself had recommended the release of their land, but the State Government, without assigning any reason persisted with the acquisition thereof.

(2) The petitioners, prior to the proposed acquisition, had challenged the order of the Director, Town & Country Planning, Haryana, who had refused vide his order dated 15.5.1992, the permission to raise necessary construction on the land as a prerequisite under subsection (1) of Section 6 of the Punjab New Capital (Periphery) Control, Haryana Amendment, Act, 1971 (hereinafter referred to as 'the 1971 Act'). Shri Nohar Chand Gupta had challenged the aforesaid order vide Executive Appeal No. 78 of 1991/92, which was accepted by the Commissioner, Ambala Division vide order dated 23.12.1992 with the following observations :

"In view of the aforesaid analysis, the impugned order of the respondent cannot be sustained and is, therefore, set aside. The permission for the construction of Cattle shed, Green House, Mushroom house and an attendant room on the site in question is granted in view of section 6(4) of the Act. The respondent however will be at liberty to impose any conditions which may be necessary to ensure that the building will be used solely for the agricultural purposes. The appellant would accordingly submit the building plans to the respondent and would be bound to use the building for agriculture purposes only. The appeal is disposed of accordingly."

(3) A suit was also filed by Nohar Chand Gupta and others including petitioner Abhishek Gupta, against State of Haryana and the District Town Planner, Panchkula, almost with the similar prayer as referred to above, which

was dismissed by Sub Judge IIInd Class, Ambala City. They then filed an appeal which was accepted by the Additional District Judge, Ambala vide his judgment dated 5.4.1994 and it was specifically held that the appellants before him were using the land in question for agricultural purposes and were entitled to raise any sort of construction for those purposes and in fact, no permission was required from the respondents. It was further held that the respondents had no right to object to the raising of construction for the agricultural purposes. The appeal filed against the aforesaid judgment was dismissed by this Court vide order dated 22.7.1994.

(4) The orders referred to above, i.e. of the Commissioner, Ambala Division and of the Civil Courts, have assumed finality as no further appeal was filed against them.

(5) The petitioners have, therefore, claimed that once they had raised construction pursuant to the valid orders, the same ought to have been taken into account by the respondents while considering their case for release of their land from acquisition and not merely acquiring it on the ground that there was an unauthorised construction thereon. This, according to them, reflected the nonapplication of mind while dealing with the objections raised by the petitioners.

(6) The petitioners have further averred that the respondents have released certain land from acquisition without assigning any reason, but have chosen to acquire their land even though there was a recommendation of the Land Acquisition Collector, which is discriminatory and hit by Article 14 of the Constitution of India. It is the specific case of the petitioners that gardens of some of other persons were left out, while only the petitioners have been singled out even though they had also raised an orchard on their land.

(7) The petitioners have made a specific reference to the site plan to make a point that their land abuts the road and can easily be amalgamated and blended with the purpose of acquisition, i.e., residential and therefore, since it would not offend the purpose of acquisition, the same deserves to be released.

To support their case, the petitioners placed reliance on the judgment of the Supreme Court reported as B.E.M.L. Employees House Building Cooperative Society Ltd. v. State of Karnataka & Others, 2004(4) RCR(Civil) 344 : 2005(1) All India Land Laws Reporter 488 : (AIR 2004 SC 5054), wherein it was observed as under :

"The facts placed on record do not indicate that the case of the fifth Respondent was similar, if not identical, to that of the other land owners, whose lands were dropped from acquisition proceedings. Neither the appellant, nor the State Government has been able to show us any rational distinction between the case of the fifth Respondent and the cases of the other land owners, whose lands were excluded from the acquisition. When this is so, it appears to us that the vice of hostile discrimination infects and vitiates the decision taken by the State Government to continue with the acquisition against the fifth Respondent's land."

7. The respondents have resisted the challenge as aforementioned by pleading that the petitioners do not have any right to claim that their land be released in view of the power of the State to acquire any land if the same is required by it. They have further stated that since the State is the sole authority to decide as to which land is to be released and which is to be acquired, the petitioner do not have any right to object the same. It has been stoutly denied that objections filed by the petitioners under Section 5A of the Act were not considered. Rather, it has been emphasized that the respondents have meticulously considered the objections of the petitioners and have dealt with them in accordance with law. With regard to the discrimination, the respondents have submitted that initially the land of Maharaja Harinder Singh `Khalaf" Maharaja Varjinder Singh was left out from acquisition, but the same has been acquired on 16.5.2007/27.3.2008 and, therefore, the petitioners cannot say that they have been discriminated against. It has further been stated by the respondents with some vehemence that the petitioners had raised unauthorised construction on the land in question and that is the reason which has prompted the government to ignore the recommendations of the Land Acquisition Collector. Moreover, this principle has uniformly been applied to all those landowners who had indulged in unauthorised construction.

To support their case, the respondents have placed reliance on the judgments reported as *M/s Anand Buttons Ltd. v. State of Haryana*, 2005(1) RCR(Civil) 224 : AIR 2005 SC 565 and *Dharam Pal and another v. State of Haryana and others*, 2007(3) RCR(Civil) 836 (P&H).

In *M/s Anand Buttons Ltd.* (supra), it was held as under :

"It is for the authority which has to carry out the planned development of the estate to take decision as to which land can be exempted from acquisition without jeopardizing the development scheme as a policy of the Government and it is not for the Court to sit in appeal over such a decision of the authority."

Para 13 of the aforesaid judgment was specifically referred to counter the plea of the petitioners. It reads as under :

"It is trite that not only land but also structure on land can be acquired under the Act. As to whether in a given set of circumstances certain land should be exempted from acquisition only for the reason that some construction had been carried out, is a matter of policy, and not of law. If after considering all the circumstances, the State Government has taken the view that exemption of the lands of the appellants would render askew the development scheme of the industrial estate, it is not possible for the High Court or this Court to interfere with the satisfaction of the concerned authorities. We see no ground on which the appellants could have maintained that their lands should be exempted from acquisition. Even if three of the parties had been wrongly exempted from acquisition, that gives no right to the appellants to seek similar relief."

8. We have heard the learned counsel for the parties and have carefully perused

the record.

9. The foremost issue that has to be dealt with is as to whether the provisions of Section 5A of the Act have been complied with or not, as they go to the very root of the matter keeping in view the peculiar facts of these cases. For that purpose, we deemed it appropriate to summon the original record from the respondents.

10. Section 5A of the Act is a valuable right available to a landowner whose land is sought to be subjected to acquisition by exercise of power by the State by invoking the principle of eminent domain.

11. The Supreme Court in *Sharda Devi v. State of Bihar*, 2003(1) RCR(Civil) 552 : (2003)3 SCC 128 observed as under :

"The power to acquire by the State the land owned by its subjects hails from the right of eminent domain vesting in the State which is essentially an attribute of sovereign power of the State. So long as the public purpose subsists, the exercise of the power by the State to acquire the land of its subjects without regard to the wishes or willingness of the owner or person interested in the land cannot be questioned. The State does not acquire its own land for it is futile to exercise the power of eminent domain for acquiring rights in the land, which already vests in the State. It would be absurdity to comprehend the provisions of the Land Acquisition Act being applicable to such land wherein the ownership or the entirety of rights already vests in the State. In other words, the land owned by the State on which there are no private rights or encumbrances is beyond the purview of the provisions of the Land Acquisition Act."

12. There is absolutely no doubt that the State can exercise its right of eminent domain to acquire the land, if it is so necessary for the purpose of development, but, at the same time, this right is circumscribed by certain safeguards which have been laid down in the Act itself, one of them being Section 5A which gives the landowner a right to object.

13. Therefore, while considering the objections under Section 5A, the State has to grant necessary sanctity which it deserves and it cannot, under any circumstance, merely pay lipservice to the same for the reason that the right of eminent domain would then acquire the colour of arbitrariness which cannot be permitted under the law.

14. The Supreme Court in *Hindustan Petroleum Corp. Ltd. v. Darius Shapur Chenai and others*, 2005(4) RCR(Civil) 289 : 2005(7) SCC 627 has held as under :

"It is trite that hearing given to a person must be an effective one and not a mere formality. Formation of opinion as regards the public purpose as also suitability thereof must be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones. The State in its decisionmaking process must not commit any misdirection in law. It is also not in dispute that Section 5A of the Act confers a valuable important right and having

regard to the provisions contained in Article 300A of the Constitution, it has been held to be akin to a fundamental right."

15. Further, their Lordships of the Apex Court in *The State of Punjab and another v. Gurdial Singh and others*, AIR 1980 SC 319 observed as follows :

".....Hearing him before depriving him is both reasonable and preemptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons".

16. In the light of the aforesaid, we proceed to examine the record produced by the respondents.

17. The Land Acquisition Collector, who is the competent authority to hear the objections, has observed in the case of the petitioners as under :

"As per report and facts explained in col.8, it is pertinent to mention here that Courts of Commissioner, Ambala and ADJ, Ambala have passed orders in favour of the objectors. Keeping these facts in view, this may be considered for release."

The above reproduced observations were made by the Land Acquisition Collector on the basis of the report of the Joint Inspection Committee, which, when translated in English, reads as follows :

"The objectors have mentioned that the orchard of fruit bearing and other trees are grown over their land. They have also mentioned that an orchard cannot be acquired as per the policy of the government. Besides, the objectors have also mentioned that they had purchased this land at very high price and that the circular of the government is in respect of residential property and their circular also pertains to residential property. Apart from it, the objectors have enclosed photocopies of order passed by the Commissioner, Ambala in Appeal No. 780/199192, order passed by the Additional District Judge, Ambala in Appeal No. 34 of 92 and the order passed by Hon"ble the High Court in R.S.A. No. 1865 of 1994, according to which they have been permitted to develop farm house. The construction as mentioned in column no. 5 has been raised over the said land. There is an orchard within the boundary wall at the spot, in which trees of mango, litchi, amla, guava, jamun, apple, babbugosha, ber, cheeku, sohjna, papaya, mulberry, valayati nimbu (lemon), plum, kathal, orange, pomegranate and some other nonfruit bearing trees as well as flower plants have been grown. The objectors have requested not to acquire the same."

18. Thereafter, the matter was dealt with by the State Government. The High Powered Committee set up for the purpose, in the Revised Minutes of the Joint Inspection Report carried out by it on 13.3.2000, observed in the case of Objection No. 3 and 4 of Ms. Madhu Gupta (33 kanals and 6 marlas) as under :

"The committee inspected the site and decided that whole of the land including unauthorised structure should be acquired for planned development"

19. On the basis of the above report, the land of the petitioners was included in

the declaration issued by the State Government under Section 6 of the Act.

20. However, a scrutiny of the record of the respondents reveals that the State or for the same reason, the High Powered Committee, was not reasonable in its approach and did not advance any justifiable reason to acquire the land of the petitioners. It has merely been stated that there was unauthorised construction on the land of the petitioners, which is not borne out from any report on the record. The Land Acquisition Collector reported the existence of the structures as mentioned in the order of the Commissioner, as well as that of the Civil Courts, noticed hereinabove. The respondents have failed to show anything from the record that there was violation of any provision of law or the orders of the Court in raising the construction by the petitioners and, therefore, while taking a decision not to release the land on the basis that there was unauthorised construction existing thereon, is without any basis.

21. In any eventuality, the construction, whether authorised or unauthorised, could not have dented the case of the petitioners in any manner, but the fact remains that no reason has been given as to why the State chose to differ from the recommendations of the Land Acquisition Collector. If the only reason is that there was unauthorised construction on the land of the petitioners, the same is belied from the fact that they had raised the construction after due permission from the revenue authorities, as also after the decision of the Civil Courts. Moreover, the respondents have failed to demonstrate as to how the construction was unauthorised and as to why they chose to acquire the land of the petitioners.

22. We are, therefore, of the considered opinion that the respondents have failed to show before this Court that there was any justifiable exercise of power while disposing of the objections of the petitioners under Section 5A of the Act. Thus, a great prejudice has been caused to the petitioners.

23. In view of the above, there is little hesitation to conclude that the petitioners having been seriously prejudiced by nonapplication of mind of the respondents, the impugned notification dated 16.3.2000 issued under Section 6 of the Act deserves to be quashed.

24. The second limb of the arguments of the learned counsel for the petitioners is that the petitioners have been discriminated against and the action of the respondents in subjecting their land to acquisition while not acquiring the land of other similarly situated persons, especially that of Maharaja Harinder Singh 'Khalaf' Maharaja Varjinder Singh, the action is clearly discriminatory and his hit by Article 14 of the Constitution of India.

25. The facts of the case are not in dispute. The land of Maharaja Harinder Singh 'Khalaf' Maharaja Varjinder Singh with whom the petitioners seeks parity was certainly notified as one of the pieces of land to be acquired by the State while issuing notification under Section 4 of the Act on 16.3.1999, but surprisingly, in his case, the proceedings were allowed to lapse while in the case of the petitioners, their detailed objections were dealt with in a slip shod manner and

their land was subjected to acquisition.

26. The respondents have tried to steal the thunder from the contention of the learned counsel for the petitioners by saying that the ground of discrimination is not available to the petitioners as the land of Maharaja Harinder Singh `Khalaf" Maharaja Varjinder Singh has been acquired in the year 2007.

27. We have examined this aspect of the matter and feel that the action of the State is adding insult to the injury. Firstly, the respondents chose to treat the case of the petitioners differently from that of Maharaja Harinder Singh `Khalaf" Maharaja Varjinder Singh by acquiring their land and permitting the acquisition to lapse in his case, but by acquiring the land of Maharaja Harinder Singh `Khalaf" Maharaja Varjinder Singh in the year 2007, they have not enhanced their case in any manner. There is no dispute that the State, in the exercise of its eminent domain, can subject any land to acquisition if it conforms to the basic development plan which has been propounded, but had the land of the petitioners been exempted at that point of time and subjected to acquisition now at the same time when the land of Maharaja Harinder Singh `Khalaf" Maharaja Varjinder Singh is being acquired, then the petitioners too would have benefited from the ultimate calculation of the compensation as the relevant price to be considered would have been the date when notification under Section 4 of the Act would have come into existence. The petitioners whose lands were sought to be acquired in the year 1999, have, therefore, been set at disadvantage visavis similarly situated persons whose land was not touched for apparent reason when the original intent was published.

We, therefore, feel that the notification under Section 4 of the Act qua the land of the petitioners also deserves to be quashed.

On the basis of the above discussion, the writ petitions are accepted and the impugned notifications qua the lands of the petitioners are quashed.

No orders as to costs.