

(2012) 04 P&H CK 0151
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 9038 of 2011

Ajay Kumar and Another

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 02-04-2012

Acts Referred:

Land Acquisition Act, 1894 — Section 17, 4, 5A, 6, 9

Citation : (2012) 166 PLR 734

Hon'ble Judges : Hemant Gupta, J;A.N. Jindal, J

Bench : Division Bench

Advocate : B.S. Bedi, for the Appellant; Palika Monga, DAG, Haryana, for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—Challenge in the present writ petition is to the notification u/s 4 of the Land Acquisition Act, 1894 (for short "the Act") dated 22.03.2010 (Annexure P-4), wherein urgency provisions of Section 17 of the Act were invoked and the requirement to seek objections u/s 5A of the Act was dispensed with. The declaration u/s 6 of the Act was published on 28.07.2010, whereas notice u/s 9 of the Act was served upon the petitioners to appear before the Land Acquisition Officer on 20.05.2011. The challenge to the aforesaid acquisition proceedings is on the ground that there is no such urgency, which may warrant dispensing with inquiry u/s 5A of the Act, whereas the petitioners have been granted change of land use on 03.09.2010 on an application submitted on 24.09.2008. It is argued that the fact that one year and two months were taken by the respondents for payment of compensation, shows that there was no urgency which may warrant dispensing with the inquiry as contemplated u/s 5A of the Act. It is also argued that the purpose of acquisition is augmentation of water supply, but such project contravenes the master plan and the lay out plan finalized by the Town and Country Planning Department, therefore, the acquisition proceedings are colourable exercise of power. The petitioners have

also relied upon representation dated 29.04.2010 (Annexure P-5), wherein the petitioners have communicated that they wanted to instal an industry on the above said land, which is located within the controlled area and have obtained no objection certificate from other departments for the purpose of grant of change of land use.

2. In reply, it has been stated that the petitioners are owners of an area measuring 4046 Sq. meters falling in Rectangle Nos. 9//22/2, 23/1 in the revenue estate of village Kapoori. The petitioners applied for grant of change of land use on 04.08.2009 to the Director, Town & Country Planning, Haryana, for setting up of an industrial unit under the name and style of M/s Goyal Oil & General Mills. Thereafter, notification u/s 4 of the Act was published. It is pointed out that the land is proposed to be acquired by the Government for public purpose for construction of storage and for sedimentation tanks for water supply scheme for Charkhi Dadri Town, District Bhiwani. The acquisition of the land is in public interest for effective and adequate supply of drinking water to the residents of Dadri town, as drinking wafer is a prime necessity to live, as also included under the Right to Life being fundamental right enshrined in the Constitution. It is also pointed out that if this piece of land measuring 4046 Sq. meters is left out of the acquisition, then about 4350 people of the town will be deprived of the drinking water. The design of water storage tanks to be constructed are of 4 meters depth and the total volume for storage of raw water in this piece of land would be 16184 meter cube, which is equivalent to 16184000 liters. This volume of water is required for 24 days storage, which is to be supplied at the rate of 155 liters per capita per day. The lay out plan in respect of the water scheme, including storage tanks to be constructed, is attached with the written statement.

3. Subsequently, the petitioners amended the writ petition. It is argued that as per the master plan, the site for water works is provided at legend 510, which is within the Municipal limits, whereas village Kapoori, subject matter of acquisition of land, is situated outside the Municipal limits. The petitioners also rely upon Annexure P-14, wherein water samples from the land in dispute were tested by the Chemists of Public Health Department.

4. In the additional reply on behalf of the respondents, it has been asserted that the land of the petitioners has been included for the acquisition after careful consideration of the structure and design of the proposal and also keeping in view the already constructed water supply scheme, which is adjacent to the land in question. It is submitted that sedimentation storage tanks are to be constructed on the piece of land of the petitioners and if this land is left from acquisition, the residents of Dadri town will suffer.

5. While hearing the writ petition on 26.03.2012, the record of the acquisition was called to be produced. A perusal of the record shows that the representation of the petitioners (Annexure P-5) has been considered by the Land Acquisition Collector on 21.06.2010. A perusal of the record further shows that the Executive

Engineer, Public Health has communicated on 19.10.2010 requesting for announcement of the award after settlement of the price of the land. Thereafter, a Committee consisting of Deputy Commissioner, Revenue Officer and Executive Engineer, Public Health, in its meeting held on 04.11.2010 finalized the price of the land as Rs. 15,00,000/- per acre. It is, thereafter, the process for payment of the compensation amount was initiated, which has taken some time leading to the notices, as mentioned above.

6. We have heard learned counsel for the Parties but find no merit in the present petition. No doubt, there is delay in announcing of the Award of one year and two months from the notification u/s 4 of the Act was published, but perusal of the record shows that such delay was primarily on account of different departments being involved in the process of determination of the amount of compensation. Though the requirement of objections u/s 5A of the Act was dispensed with, but representation of the petitioners for release of the land was considered by the Land Acquisition Collector. Vide the aforesaid notification, large area of 169 Kanals is sought to be acquired, whereas the petitioners are owners of approximately 8 Kanals of land. In fact the petitioners are the only persons objecting to the acquisition of land. The lay out plan and the master plan are subject to variation in the event public interest, so warrants. Therefore, keeping in view the larger public interest of water supply, individual interest of land-owner measuring 8 Kanals is to be ignored.

7. It may be noticed that in the permission of change of land use was granted on 19.05.2010 i.e. after publication of notification u/s 4 of the Act. The petitioners were informed that this permission will not provide any immunity from any other Act, Rules and Regulations applicable to the land in question. Therefore, keeping in view the terms of the permission of change of land use granted to the petitioners, the petitioners cannot claim any right to dispute the acquisition under the Act, initiated for providing water supply to the residents of Dadri town.

8. Learned counsel for the petitioners has referred to the judgment of the Hon"ble Supreme Court in case Darshan Lal Nagpal (dead) by L.Rs. Vs. Government of NCT of Delhi and Others, , wherein rational of dispensing with the proceedings u/s 5A of the Act were discussed. The acquisition of the land, in fact, deprives the owner of his land. Therefore, this provision of the Act has to be strictly complied with. There is no dispute with the proposition laid down. But, the larger public interest in the present case warrants that the acquisition of the land for water supply should be permitted to continue. Consequently, we do not find any merit in the present petition. The same is hereby dismissed.