

(2015) 05 P&H CK 0394
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 26491 of 2014

Amrit Rice Industry

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 26-05-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 16, 17(1), 4, 48, 48(1)

Citation : (2015) 4 RCR(Civil) 334

Hon'ble Judges : Ajay Kumar Mittal, J; Rekha Mittal, J

Bench : Division Bench

Advocate : Rakesh Nagpal, for the Appellant; Sudeep Mahajan, A.A.G, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J—The petitioner seeks quashing of notifications dated 28.11.1995 & 12.6.1996 issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (in short, "the Act") and award dated 26.8.1998, Annexures P. 1 to P. 3 respectively. Direction has also been sought to the respondents to release the land of the petitioner as the same is lying unutilized, in view of judgment of this Court dated 17.9.1996 in RSA No. 2330 of 1995 (Gurcharan Singh and others v. Haryana State and others), Annexure P. 6. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner - a partnership firm was owner of land measuring 1 kanal comprised in Khewat No. 356, Khatoni No. 584, Khasra No. 374/1, Village Jamalpur Sheikhan, Tehsil Tohana, District Hisar alongwith other land. The respondent State issued notification under Section 4 of the Act dated 28.11.1995, Annexure P. 1 whereby land measuring 26 kanals 19 marlas was acquired for the purpose of construction of Spun Pipe factory at Jamalpur Sheikhan, Tehsil Tohana, District Fatehabad. The petitioner firm did not file objections under section 5A of the Act. Notification under Section 6 of the Act was issued on 12.6.1996, Annexure P. 2. Award was passed on 26.8.1998, Annexure P. 3. Compensation was awarded at the rate of

"1 lac per acre. The possession was taken by the respondent State and handed over to respondent No. 4 for construction of Spun Pipe factory at Village Jamalpur Sheikhan. The said factory continued for some period but on 7.7.2002, the department of Haryana State Minor Irrigation and Tubewell Corporation Limited, respondent No. 4 was wound up and consequently the factory was also closed. Since then the land of the petitioner is lying unutilized. Reliance was placed on Gurcharan Singh's case (supra) by the petitioner to submit that the land which is lying unutilized be returned to the original owner. The petitioner requested the respondent authorities many time. It even served a legal notice dated 25.7.2013, Annexure P. 7 upon the respondents but no action was taken. Hence the instant writ petition.

2. We have heard learned counsel for the parties.

3. Learned counsel for the petitioner relying upon judgment of this Court in Gurcharan Singh's case (supra) submitted that land of the petitioner which was acquired vide notifications dated 28.11.1995 and 12.6.1996 has not been utilized and in view thereof, the same is required to be released.

4. Learned counsel for the respondents supported the impugned notifications and the award.

5. A Division Bench of this Court in CWP No. 1408 of 2013 (Rajinder Singh and others v. The State of Punjab etc.) decided on 24.1.2013, while dealing with identical issue relating to release of land with respect to provisions of Sections 16 and 48 of the Act, after relying upon judgment of the Apex Court in Govt. of A.P. and Another Vs. Syed Akbar, AIR 2005 SC 492 : (2004) 5 CTC 506 : (2004) 10 JT 569 : (2004) 9 SCALE 553 : (2005) 1 SCC 558 : (2004) AIRSCW 7125 : (2004) 8 Supreme 621 , recorded as under:-

"6. Under the provisions of Section 16 & 48 of the Act, once the award is passed and possession is taken, the land deems to vest in the Government and it cannot be released. The law on the said issue also stands settled by this Court as well as by the Hon'ble Apex Court. Reference can be made to a Division Bench judgment of this Court in Gurkirpal Singh Vs. Financial Commissioner (Revenue) and Secretary, Government of Punjab, Department of Revenue and Others, (2008) 151 PLR 740 : Gurkirpal Singh Vs. Financial Commissioner (Revenue) and Secretary, Government of Punjab, Department of Revenue and Others, (2008) 151 PLR 740 wherein similar issue arose. In the said case, the challenge was to the denotification on account of the land-owners seeking execution of the compensation amount. The Division Bench held that once the land had vested in the Government and the proprietary rights had been transferred to the State, the State could not denitrify the acquisition on the ground that the land was not suitable for the purpose for which it was acquired. Accordingly, the notification, denitrifying the land was set aside and the petitioners were held entitled to make recovery of the amount of compensation. Relevant observations read as under:

"(13) We are further of the view that the policy of law as reflected in Section

48(1) of the Act cannot be deviated because if the State Government is permitted to de-notify the land after it has vested in the State free from all encumbrances and after taking of its possession then any person whose land has been acquired would be permitted to move the Court for release of his land. It would be negation of the proprietary rights because Section 16 and 17(1), of the Act contemplates that the land is to vest in the Government free from all encumbrances. It is thereafter that the expatriate person would not remain the owner and the proprietary rights are transferred to the State. Such an argument was raised before Hon"ble the Supreme Court in the case of Mandir Shree Sitaramji alias Shree Sitaram Bhandar Vs. Land Acquisition Collector and Others, AIR 2005 SC 3581 : (2005) 4 CTC 688 : (2005) 7 JT 624 : (2005) 6 SCC 745 : (2005) 2 SCR 969 Supp . In para 16 of the judgment, the argument has been rejected by observing as under:-

"16. Even otherwise, we have seen the scheme sought to be relied upon. We find from the scheme that it only applies in respect of persons/agencies who own and possess the land. In this case possession of the land had already been taken. The scheme also categorically states that the scheme would not take away the rights of the Delhi Development Authority to acquire for development of Delhi. Thus the scheme was not applicable to lands of the Appellants. Even under Section 48 of the Land Acquisition Act once possession is taken the Government cannot withdraw from the acquisition. We thus see no substance in this contention also."

(14) Therefore, consistent with the public policy and the policy of law as implicit in Sections 16, 17(1) and 48(1) of the Act, once the possession has been taken there is no possibility of the respondent State to de-notify the acquisition.

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(18) We are further of the view that the respondent State is not barred from utilizing the land for any other purpose than the one for which the land was required. It is well settled principle laid down in a catena of judgments. In the case of Union of India and Others Vs. Jaswant Rai Kochhar and Others, (1996) 3 AD 396 : AIR 1996 SC 1352 : (1996) 1 CTC 539 : (1996) 3 JT 671 : (1996) 3 SCALE 119 : (1996) 3 SCC 491 : (1996) 3 SCR 206 : (1996) 2 UJ 21 , it has been held that land acquired for public purpose may be used for another purpose. Therefore, when notification had mentioned that land was sought to be acquired for housing scheme but it is sought to be used for District Centre then the public purpose does not cease and notification on that ground could not be quashed. Similar view has been taken in the cases of Ravi Khullar and Another Vs. Union of India (UOI) and Others, AIR 2007 SC 2334 : (2007) 3 CTC 574 : (2007) 6 JT 25 : (2007) 5 SCALE 236 : (2007) 5 SCC 231 : (2007) 4 SCR 598 : (2007) AIRSCW 4040 ; State of Maharashtra Vs. Mahadeo Deoman Rai alias Kalal and Others, (1990) 3 JT 48 : (1990) 3 SCC 579 : (1990) 2 SCR 533 : (1990) 1 UJ 703 , and Bhagat Singh Vs. State of U.P. and Others, AIR 1999 SC 436 : (1998) 8 JT 472 : (1999) 122 PLR 140 : (1998) 6 SCALE 475 : (1999) 2 SCC

384 : (1998) SCC(L&S) 581 : (1998) 3 SCR 404 Supp : (1999) AIRSCW 101 : (1998) 9 Supreme 361 . Therefore, the respondent State cannot put forward the excuse that since the site of the acquired and was not suitable for construction of a Judicial Court Complex it cannot be used for another purpose.

(19) In view of the above, the instant petition succeeds. The impugned notification dated 23.2.2007 (P-1) is hereby set aside. The petitioner shall be entitled to make recovery of the amount of compensation from the respondents in accordance with law."

6. The Hon"ble Apex Court in Govt. of A.P. and Another Vs. Syed Akbar, AIR 2005 SC 492 : (2004) 5 CTC 506 : (2004) 10 JT 569 : (2004) 9 SCALE 553 : (2005) 1 SCC 558 : (2004) AIRSCW 7125 : (2004) 8 Supreme 621 , while allowing the appeal in a case where the Division Bench of the Andhra Pradesh High Court had upheld the order of the Learned Single Judge, directing the authorities to hand-over the un-used portion of the land to the petitioners by collecting the amount of compensation already paid with interest @ 12% and after noticing the standing orders, held as under:

"10. It is neither debated nor disputed as regards the valid acquisition of the land in question under the provisions of the Land Acquisition Act and the possession of the land had been taken. By virtue of Section 16 of the Land Acquisition Act, the acquired land has vested absolutely in the Government free from all encumbrances. Under Section 48 of the Land Acquisition Act, Government could withdraw from the acquisition of any land of which possession has not been taken. In the instant case, even under Section 48, the Government could not withdraw from acquisition or to recovery the said land to the respondent as the possession of the land had already been taken. The position of law is well settled.

14. From the position of law made clear in the aforementioned decisions, it follows that (1) under Section 16 of the Land Acquisition Act, the land acquired vests in the Government absolutely free from all encumbrances; (2) the land acquired for a public purpose could be utilized for any other public purpose; and (3) the acquired land which is vested in the Government free from all encumbrances cannot be re-assigned or re-conveyed to the original owner merely on the basis of an executive order."

7. Adverting to the judgment in Gurcharan Singh's case (supra) relied upon by learned counsel for the petitioner, the issue therein was whether in a suit for possession where the Government had acquired the agricultural land for installing a brick kiln for the manufacture of bricks to be used for the construction of Bhakra Canal was entitled to release of such land in view of paragraphs 493 to 495 in the Administration Manual read with paragraph 87 of Financial Commissioner Standing Order 28 after the land was no longer required for such purpose. The release of land under Section 48 of the Act was not the issue in that case. In view of the authoritative pronouncements of the Apex Court and this Court, no advantage can be derived by the petitioner from Single Bench

decision of this Court in Gurcharan Singh's case (supra) being based on individual fact situation involved therein. Consequently, finding no merit in the petition, the same is hereby dismissed.