
(2010) 03 P&H CK 0372
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 11688 of 2009

Ashok Kumar and Another	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 03-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4, 6

Citation : (2010) 2 ILR (P&H) 995

Hon'ble Judges : M.M. Kumar, J;Jitendra Chauhan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M. M. Kumar, J.—This petition filed under Article 226 of the Constitution challenges show cause notice dated 10th November, 2008 (P-7), issued by the Director Urban Estate Department, Haryana-respondent No. 5 and subsequent order dated 24th June, 2009 (P-8) withdrawing the release order dated 6th May, 1999 (P-5), which was passed in favour of vendor of the petitioners, releasing land measuring 391.11 Square Yards comprised in Khasra No. 1053, Sector 1, Narnaul.

2. The petitioners had purchased the land comprised in Khewat No. 879, Khatoni No. 1276, Khasra No. 1053, situated in village Narnaul, on 31st May, 2005. The vendor of the petitioners was Smt. Kailash Devi who executed sale deed through her GPA Shri Ram Kumar Chaudhary. At the time when the land was purchased it was neither under any acquisition nor there was any encumbrances of the State. It is pertinent to notice that at one stage on 30th October, 1992 this piece of land was part of the acquisition proceedings initiated u/s 4 of the Land Acquisition Act, 1894 (for brevity, "the Act"). Declaration u/s 6 of the Act including this land also was issued on 28th October, 1993. The predecessor-in-interest of the petitioners had challenged the acquisition by filing C. W.P. No. 12523 of 1995, which was dismissed on 13th August, 1998. However, the predecessor-in-interest

of the petitioners succeeded in persuading the authorities of the State Government to release the area measuring 391.11 square yards, comprised in Khasra No. 1053. A copy of the release order dated 6th May, 1999 is on record (P-5). The petitioners have purchased the land after six years of the release order. Even the mutation in favour of the petitioners was sanctioned as is evident from the persual of Annexure P-1.

3. The petitioners have asserted that Smt. Kailash Devi @ Kauslalya Devi had already constructed two rooms having a corridor (Varanda), kitchen and a boundary wall on the land in dispute. This fact is evident from para 2(v) of the affidavit dated 25th March, 2008 filed by Shri D. S. Dhesi, Commissioner and Secretary, Government of Haryana, Department of Town and Country Planning. After purchasing the land, the petitioners have further constructed two rooms, a drawing room, lobby and two bath rooms.

4. The Director, Urban Estate, Haryana-Respondent No. 5 issued a show cause notice to the vendor of the petitioners Shri Ram Kumar Chaudhary on 10th November, 2008 (P-7), alleging that the release order dated 6th May, 1999 (P-5) passed in his favour was obtained by concealing a material fact of having not filed any writ petition in the High Court whereas he had filed C.W.P. No. 12523 of 1995, which was dismissed on 13th August, 1998. He was asked to reply as to why the release order dated 6th May, 1999 be not cancelled. After the reply to the show cause notice, the impugned order dated 24th June, 2009 (P-8), has been passed withdrawing the release order dated 6th May, 1999. The basic ground for withdrawal of the release order dated 6th May, 1999 (P-5) is the concealment of a fact that CWP No. 12523 of 1995 filed by the vendor of the petitioners was dismissed on 13th August, 1998. The aforesaid fact was suppressed while filing the affidavit when the release of the land was sought.

5. Mr. Ajay Jain, learned counsel for the petitioners has argued that nine years after the release of the land, a show cause notice has been issued to the vendor of the petitioners. He has submitted that when the land was released there were constructed areas which comprised of two rooms with a corridor, kitchen and a boundary wall on the land in dispute. The aforesaid construction was in existence much prior to issuance of notification u/s 4 of the Act. A further averment has been made in para 2 that after purchase of the land by the petitioners further construction has been raised by adding two rooms, a drawing room, lobby and two bathrooms. Therefore, he has argued that once the ownership of the land has changed and the nature of the property has undergone further alteration then it was highly improper on the part of respondent No. 5 to issue a show cause notice and then to withdraw the release order dated 6th May, 1999 (P-5). According to Mr. Jain, all this is being done is order to defend the cause of the State before Hon'ble the Supreme Court an affidavit has been filed in Civil Appeal No. 5433 of 2000 by respondent No. 5(P-6). In paragraph 2(v) the details with regard to the release order has been given which shows that the release of the land was based on the report of District Town Planner, Narnaul and Land

Acquisition Officer, Gurgaon. On the land B-Class construction was found to be in existence before issuance of notification u/s 4 of the Act. Some portion of the land had already been released at the time of issuance of declaration u/s 6 of the Act. It is in order to defend the allegation of discrimination before Hon"ble the Supreme Court that the aforesaid course has been adopted by respondent No. 5 and the impugned order cancelling the release order has been passed.

6. Mr. S. S. Pattar, learned State counsel has advanced only one argument that predecessor-in-interest of the petitioners has obtained the release order by suppressing material fact of filing of C WP No. 12523 of 1995, which was dismissed on 13th August, 1988. According to the learned counsel, the condition of the release order was that the application should not have filed any petition before this Court. He has submitted that the petitioners are bound by all the acts of their predecessors-in-interest.

7. This case reveals unfortunate trend. The petitioners are bona fide purchaser and they had purchased land free from all encumbrances by a registered sale deed dated 31st May, 2005. The land in question measuring about 391 Sq. Yards, which at one time was part of the acquisition proceedings, was released on the ground that it has "B" Class construction. The earlier owner Smt. Kailash Devi @ Kaushalya Devi had constructed two rooms with a corridor (Veranda), kitchen and a boundary wall on the land in dispute. This fact is discernible from para 2(v) of the affidavit dated 25th March, 2008 filed by Shri D.S. Dhesi, Commissioner and Secretary, Department of Town and Country Planning, Government of Haryana. Thereafter the petitioners have raised construction, which is clear from the facts already stated. The constructed area was released by the respondents in pursuance of the State policy vide order dated 6th May, 1999 (P-5). The release order has been questioned on 10th November, 2008 (P-7) when third party's rights have come into existence as the petitioners have purchased the property themselves and have raised further construction. The nature of the property has undergone change and it has exchanged hands. Moreover, there is huge delay in issuing notice to the predecessor-in-interest of the petitioners. The release order was passed on 6th May, 1999 (P-5) and cancellation has been ordered on 24th June, 2009 (P-8). We are not inclined to accept that factum of filing CWP No. 12523 of 1995, which was dismissed on 13th August, 1998 could not be discovered by the respondents for such a long period, especially when respondents themselves were party to the proceedings. Therefore, we are of the view that in the peculiar facts and circumstances the non-disclosure of filing of the writ petition by the predecessor-in interest of the petitioners would be such a factor as to result in cancellation of release order. We are also of the view that the most significant factor for release of the land was "B" Class construction as per the policy of the State.

8. As a sequel to the above discussion, the writ petition succeeds. The impugned order dated 24th June, 2009 (P-8) is hereby quashed. The petitioners are held entitled to cost which we quantify at Rs. 20,000 Respondent No. 1 is directed to

prepare a draft of Rs. 20,000 in the name of the petitioners and send the same to them within two months from the date of receipt of a copy of this order.