
(2008) 05 P&H CK 0159

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11822 of 2006

Ashwani Kumar Yadav and others

APPELLANT

Vs

Sate of Haryana and others

RESPONDENT

Date of Decision : 30-05-2008

Acts Referred:

Citation : (2009) 3 LLR 181 : (2008) 4 RCR(Civil) 30

Hon'ble Judges : M.M.Kumar, J and T.P.S.Mann, J

Advocate : Mr. J.S. Yadav, Advocate. Ms. Pallika Monga, Assistant Advocate General, Haryana., Advocates for appearing Parties

Judgement

T.P.S. Mann, J.—The petitioners are seeking quashing of notification dated 2.6.2004 issued under Section 4 of the Land Acquisition Act, 1894 and declaration dated 31.5.2005 made under Section 6 of the said Act, whereby the land of the petitioners measuring 873.33 sq. yds. bearing khasra No. 25/24 (1, 2, 3, 4, 5 and 15) situated in Palam Vihar was acquired by the respondents.

2. Vide notification issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act'), the Act, 1963. Accordingly, on 23.4.1998, the petitioners made application to the Director, Town and Country Planning, Haryana, along with which they attached the location plan, site plan of the nearby area and also the site plan of the house. They also furnished the requisite fee of Rs. 5,500/ by way of draft. In spite of the best effort made by the petitioners to remind the Director, Town and Country Planning to accord permission to them to change the use of land as they had already constructed 'A' Class house in two portions, which was surrounded by residential houses constructed by M/s Ansal Properties and Infrastructure Limited, the petitioners did not receive any reply and their case remained lying with the department. Even on 25.5.2005, a letter was addressed by the petitioners to the District Town Planner, Gurgaon but no reply was received in response to the same. According to the petitioners, they had already developed the piece of land measuring 873.33 sq. yards by undertaking 'A' Class construction and raising a beautiful

house in two portions with a lawn in between but in the meantime, the Haryana Government issued the notification under Section 4 of the Act so as to acquire the land mentioned above, including that of the petitioners. The petitioners thereafter, sent an application dated 26.6.2004 to the Land Acquisition Collector by way of objections under Section 5A of the Act and sought the release of land owned by them. In spite of the same, declaration under Section 6 was made on 31.5.2005 in respect of the land of the petitioners also. The petitioners thereafter made representation to the Chief Minister of Haryana with a prayer that their house having 'A' Class construction be adjusted or be released from acquisition but no action was taken on the same. Claiming that they had already developed land by undertaking 'A' Class construction and that their land was surrounded by other houses which were not matter of acquisition, the petitioners prayed for quashing the notification under Section 4 and declaration under Section 6 of the Act.

3. Respondents Nos. 1, 2 and 5 in their joint written statement, took up the stand that there was construction of the petitioners consisting of one Kothi measuring 45" x 50", tin shed measuring 10" x 15", besides a boundary wall in question at the time of issuance of notification under Section 4 of the Act. Rest of the land of the petitioners was lying totally vacant at the relevant time. The aforementioned construction of the petitioners has already been released by the Government. Rest of the land owned by the petitioners, being totally vacant, has already been acquired as per the provisions of the Act. Even the award was announced on 29.1.2007, but on account of the interim order passed by this Court in the writ petition, the possession of the land belonging to the petitioners which stood acquired, could not be taken. It was also submitted that acquired land was required for public purpose, namely, the development and utilisation of land for residential, commercial and institutional purposes as Sectors 2 and 3 of Gurgaon. The objections submitted by the petitioners under Section 5A of the Act were considered by the Land Acquisition Collector, who gave full opportunity of personal hearing to Ashwani Kumar Yadav petitioner when he appeared before the said authority. He voluntarily made a statement before the Land Acquisition Collector and signed the same. The objections were thereafter heard and decided as per the provisions of the Act. The Land Acquisition Collector, thereafter, sent its report to the government. Joint Site Inspection Committee also sent its report. After going through the entire record and the reports of the Land Acquisition Collector and joint Site Inspection Committee, the government decided to issue declaration under Section 6 of the Act. It was also submitted that no discrimination has been made against the petitioners and no pick and choose policy adopted by the respondents. The process of acquisition was fair, constitutional, unambiguous and based on uniformity in approach and natural justice. Accordingly, it was prayed that the writ petition be dismissed.

4. The petitioners filed replication to the aforementioned written statement and, later on, also filed an amended replication. Even at the time of final hearing of the writ petition, the petitioners filed C.M. No. 389 of 2007 with a prayer for

placing on record more documents as Annexures P.30 to P.50 so as to show that they were residing in the house constructed by them in the land under acquisition.

5. As is clear from the written statement submitted by respondents No. 1, 2 and 5, the 'A' Class construction raised by the petitioners on the land under acquisition has already been released by the government. This construction includes Kothi measuring 45" x 50", tin shed measuring 10" x 15", besides a boundary wall in question, which existed at the time of issuance of notification under Section 4 of the Act. Rest of the land belonging to the petitioners was totally vacant at the relevant time and therefore, stands acquired by the respondents as per the provisions of the Act.

6. The main grievance of the petitioners is that the land surrounding the property of the petitioners has not been acquired by the government, whereas that of the petitioners stand acquired and, thus, the action of the respondents has resulted in discrimination between the petitioners on the one hand and the owners of the adjoining properties on the other. Consequently, the notifications under Sections 4 and 6 of the Act are liable to be quashed.

7. It was submitted on behalf of the respondents that there have been no discrimination against the petitioners as no pick and choose policy was adopted by the respondents. Mere fact that the land of some adjoining land owners had been exempted from acquisition by the impugned notifications would not entitle the petitioners to get the same benefit. Moreover, the land of the petitioners on which construction had already been raised before the issuance of notification under Section 4 of the Act has since been exempted from acquisition. During hearing of objections under Section 5A of the Act, Ashwani Kumar Yadav petitioner had appeared before the Land Acquisition Collector on behalf of the petitioners. He was given full opportunity of personal hearing. He was heard at length by Land Acquisition Collector. He voluntarily gave his statement, which was recorded and signed by him before the Land Acquisition Collector. Therefore, no case was made out for quashing of the aforementioned impugned notifications.

8. It may be a fact that the land of others stands exempted from acquisition but that will not be sufficient to conclude that the attitude of the authorities against the petitioners was discriminatory in nature. Even a wrong exemption granted by the authorities will not entitle the others to clamour for a similar benefit. In *Yadu Nandan Garg v. State of Rajasthan & Ors.*, 1997(1) All India Land Acquisition & Compensation Cases 451, the Hon"ble Supreme Court held that Article 14 could not be pressed into service on ground of invidious discrimination. The relevant observation is as follows :

"It is true, for reasons best known to the authorities, that Anand Nursery had the benefit of the exemption. The wrong exemption under wrong action taken by the authorities will not clothe others to get the same benefit nor can Article 14 be pressed into service on the ground of invidious discrimination."

9. Moreover, as has been stated by the respondents, the 'A' Class construction raised by the petitioners on the land under acquisition has already been released by the government. The rest of the land belonging to the petitioners, which was lying totally vacant at the time of issuance of notification under Section 4, stands acquired.

10. It has also been submitted on behalf of the petitioners that they had already applied for the grant of permission from the government so as to develop their plots on residential lines. They had submitted an application on 23.4.1998 accompanied by requisite fee of Rs. 5,500/. In spite of the same, the Director, Town and Country Planning did not take any action on the said application. They had even sent a reminder on 25.5.2005, but no reply was received thereto.. The petitioners had sought the change of land use but formal permission was not accorded nor the same was declined. They had proceeded ahead in constructing 'A' Class house in two portions on their land, which was subject matter of impugned notifications.

11. Mere submission of the application accompanied requisite fee by the petitioners to allow them change of land use was not sufficient to conclude that they were free to raise construction over their land. In spite of the fact that no formal permission had been granted to them, the petitioners went ahead to raise 'A' Class construction on some portion of their land. On the basis of the construction having been raised by them, which was before the issuance of notification under Section 4 of the Act, the respondents have released the said construction from the acquisition. Only that portion of the land of the petitioners remains under acquisition, which was lying vacant at the time of issuance of notification under Section 4 of the Act.

12. In view of the above, no fault can be found with the issuance of impugned notifications issued under Sections 4 and 6 of the Act. Resultantly, we do not find any merit in the present petition, in so far as it relates to the portion of the land of the petitioners, which was lying vacant at the time of issuance of notification under Section 4 of the Act. The remaining land of the petitioners on which the petitioners had raised 'A' Class construction before issuance of notification under Section 4 of the Act already stands exempted from acquisition.

13. The writ petition is, therefore, dismissed, qua the acquired land of the petitioners, and, disposed of as having become infructuous, in respect of the remaining land, which already stands exempted from acquisition on account of 'A' Class construction being existence over the same at the time of issuance of notification in under Section 4 of the Act.