
(2008) 02 P&H CK 0245
In the Punjab And Haryana At Chandigarh

Babu Ram and Another

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 14-02-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 21
Land Acquisition Act, 1894 — Section 11, 17, 4, 5A, 6

Citation : (2008) 3 PLR 96 : (2008) 2 RCR(Civil) 752

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This order shall dispose of C.W.P. No. 8332 and 15027 of 2006 because in both the petitions challenge is to the notification dated 23.11.2005 (P-2), issued u/s 4 read with Clause (c) of Sub-section (2) of Section 17 of the Land Acquisition Act, 1894 (for brevity, "the Act") and declaration made u/s 6 of the Act, dated 2.1.2006 (P-3), for acquiring the land of the petitioners for construction of Sewage Treatment Plants, Jind-Patiala Road across Railway Crossing Narwana Town, behind New Grain Market, Marwana Town. The petitioners have prayed for issuance of direction to the respondents not to dispossess them from the land in question.

2. Facts are being referred from C.W.P. No. 8332 of 2006. The petitioners are owner of land measuring 34 Kanal 2 Marlas at Narwana, District Jind, which is situated at Jind-Patiala road across, railway crossing Narwana Town, adjoining New Grain Market, Narwana. In the yew 1995-96, land measuring 42 acres 2 Kanals 8.75 Marlas, belonging to the petitioners was acquired, in pursuance to the notifications issued under Sections 4 and 6 of the Act. The petitioners challenged the said acquisition by filing C.W.P. No. 1222 of 1997 (Babu Ram v. State of Haryana) in this Court. The writ petition stands admitted vide order dated 28.1.1997 and orders of status quo is in operation. On 23.11.2005,

another notification u/s 4 of the Act was issued for acquiring different track of land measuring 27 acre 3 Kanals and 16 Marlas land, for the aforementioned public purpose. While issuing notification dated 23.11.2005, urgency provisions as per Clause (c) of Sub-section (2) of Section 17 of the Act have been invoked. The provisions of Section 5A of the Act was dispensed with. In other words the provision concerning filing of objections against the proposed acquisition was not to apply in regard to the acquisition (P-2). Thereafter, the respondent State issued declaration u/s 6 of the Act on 2.1.2006, acquiring 27 acres 3 Kanals and 16 marlas of land including the land belonging to the petitioners of both the petitions. A civil suit was filed by Mitaso Educational Society Narwana, in the Court of Additional Civil Judge (Senior Division), Narwana, for restraining the respondents from constructing the Sewage Treatment Plant in front of the school, which is being run by the said Society. On 15.2.2006 an interim order was passed by the learned Civil Judge restraining the respondents from constructing the Sewage Treatment Plant, inasmuch as, the same was a health hazard for inhabitants of the locality. Similarly, another civil suit, titled as Jagroop v. State of Haryana, was filed, wherein also similar ad interim order was passed on 12.4.2006. On 5.5.2006, notices u/s 9 of the Act were issued to the petitioners directing them to appear before the Land Acquisition Collector, Jind-respondent No. 2 As per the stipulation made in notice, award was to be pronounced on 23.5.2006. On 24.5.2006, C.W.P. No. 8332 of 2006 was filed in this Court, whereas C.W.P. No. 15027 of 2006 was filed on 18.9.2006. The principal ground canvassed by the petitioners in the writ petition is that the present acquisition for the purpose of construction of Sewage Treatment Plant is not at all in public interest. It has been contended that the Sewage Treatment Plant has been proposed to be constructed adjoining the Grain Market, Narwana, which is neither practical nor possible keeping in view the surrounding localities and the township. Rather the Sewage Treatment Plant should be set up at the outskirts of the township. In para 11 of the writ petition, it has been asserted that the land belonging to the petitioners has been sought to be acquired because of mala fide, extraneous considerations and political pressure, inasmuch as, the petitioners belong to the Indian National Lok Dal and having close allegiance with the former Chief Minister. Earlier also, in the year 1995, the land of the petitioners, which is situated opposite side of the present land, was sought to be acquired during the Congress regime, when notifications u/s 4 and 6 of the Act were issued for acquiring 42 acres 2 kanals of land belonging to the petitioners. The aforementioned notifications are subject matter of challenge in C.W.P. No. 1222 of 1997. It has further been asserted that by invoking the urgency provisions as per Clause (c) of Sub-section (2) of Section 17 of the Act, the respondents have taken away the valuable right of the petitioners for filing objections u/s 5A of the Act, which action on the part of the respondents is totally illegal and unsustainable keeping in view the facts and circumstances of the present case.

3. On 3.8.2006, the petitioners filed an application under Order VI Rule 17 read

with Section 151 CPC, bearing C.M. No. 12805 of 2006, seeking amendment of the head note and prayer clause, Paras 8, 11 and 18 as well as amendment of question of law No. (v) of the writ petition. In the amended para 11 of the petition, the petitioners have asserted that adjoining the land sought to be acquired under present acquisition for Sewage Treatment Plant, on one side New Grain Market is situated, whereas on the other side there is a residential colony and opposite to this, there is a public school, in the name of Chaudhary Devi Lal. It has further been mentioned that the land where school has been constructed was sought to be acquired in the year 1995 also, just to harass the petitioners. The aforementioned amendments were sought.

4. Initially a written statement on behalf of respondent Nos. 1 and 2 was filed on 8.11.2006, raising a preliminary objection that the petitioners have already filed Civil Suit No. 5 of 2006, titled as Mitaso Education Society v. State of Haryana, in the Court of Additional Civil Judge (Senior Division), Narwana, inasmuch as, Shri Babu Ram-petitioner No. 1 and Krishan Kumar Petitioner No. 2 are members of the aforementioned Society and actually they are owners of the property of Mitaso Education Society. However, subsequently an amended written statement on behalf of respondent Nos. 1 and 2 was filed on 5.3.2007 pointing out that the aforementioned civil suit was withdrawn by the petitioners on 12.2.2007. It has been asserted that since the Civil Court was already taking cognizance of the matter, the petitioners are estopped from filing the present writ petition. The factual position with regard to issuance of notification etc. has been admitted. It has also been pointed out that three sewage treatment plants were planned at various locations at Narwana and three patches of land have been acquired. The sewage treatment plant, subject matter of instant petition, has been designed to cater the population of 18,000 people, who are facing threat of contamination of under ground water, due to non-availability of the sewage treatment plant and sewerage system. It has been claimed that the site in question has been selected after thorough survey of the area and the acquired piece of land is most suitable for construction of sewage treatment plant Commissioning of sewage treatment plant is for the benefit of entire population and the petitioners would get adequate compensation for the acquisition of their land. The allegation of mala fide and arbitrariness have been denied.

5. On 30.8.2007, when the aforementioned petitions came up for consideration the petitioners requested for the appointment of a Local Commissioner and the Division Bench of this Court passed the following orders:

Learned Counsel for the petitioners submits that in view of rival submissions as to whether the vacant area, where the sewerage treatment plant is to be constructed, is inhabited or is vacant and as to whether the functioning/operation of the plant is going to create any pollution/nuisance in the residential area and the market, this Court may appoint Court Commissioners to inspect and submit a report on depositing Rs. 1,00,000/- (Rs.50,000/-) each.

Accordingly, Ms. Gurveen H. Singh, Advocate and Mr. Anurag Arora, Advocate,

are appointed Court Commissioners to inspect the place and submit a factual report on the above issues. The petitioners shall pay the aforesaid amount to the Court Commissioner within two days, and the Commissioners shall intimate the date and time of their visit to the site to respective parties, and shall submit the report on or before the next date of hearing.

The Deputy Commissioner concerned and the local administration, including the police, shall render all necessary assistance and cooperation to the Court Commissioner.

List on 6.9.2007.

In pursuance to the aforementioned order, the Local Commissioners after visiting the site submitted their report, dated 3.9.2007, which reads as under-

As per the Hon"ble High Court's order dated 30.8.2007 (A-1), I, Ms. Gurveen H. Singh and Mr. Anurag Arora visited the site for the proposed STP at Narwana, Haryana. We reached the site at 10.45 a.m and prepared a "Presence Memo" of the parties concerned (A-2). Thereafter, we saw the land upon which the STP is to be installed which was marked out by red flags. The land measures 7 Acres 4 Kanal and 9 Maria and is agricultural land upon which there is only one construction for tube well (A-3). This land will be used for the installation of the STP, residential houses for the workmen and an office.

There is a 16-1/2 ft. space or unmetalled road, dividing the land with the wall of the New Anaj Mandi. This Mandi consists of basically just the plinth, an office building and a shed. The residential area is beyond the Mandi and is about 1/2 km away from the site of the STP.

The Ch. Devi Lal Memorial Public School is also about 1/2 Km away, across the Narwana minor on the Narwana-Uklana Highway.

The Govt. Primary School is in the residential area above mentioned. The site plan is annexed as (A-4).

It is pertinent to bring to this Hon"ble Court's notice that the MC officials of the residential colony were also present at the spot, and were very keen that this STP be installed due to major sewerage problem and attendant disease in their locality.

Further more, apart from tenements.

In conclusion taking into account the location of the STP with reference to the distance from the Grain Market, residential area, school buildings in case the STP is installed there seems no possibility of suffering from any air pollution to the public at large.

6. On 28.7.2007, the present counsel for the petitioners, Mr. B.S. Bedi, filed another application bearing C.M. No. 14007 of 2007, under Order VI Rule 17 read with Section 151 CPC, seeking amendment of the writ petition on the

ground that the respondents have not disclosed existing state of affairs on the site in the amended written statement. In the said application, prayer has been made for insertion of paras 12-A, 17-A to 17-D in the writ petition. In an attempt to bring true picture of the area before this Court, along with the application the petitioners also placed on record site plan based on the jamabandi for the year 2003-04 (P-6), aksajra (P-7), jamabandi for the year 2003-04 (P-8) and letter dated 8.5.2006 written by the Executive Engineer, Public Health Division, Narwana, to the District Revenue Officer-cum-Acquisition Collector, Jind, regarding acquisition of land for constructions of STP (P-9).

7. On 9.10.2007, respondent Nos. 1 and 2 again filed an amended written statement reiterating similar averments, which were mentioned in the earlier written statement dated 5.3.2007. However, the contents of the aforementioned newly inserted paras of the amended writ petition were denied. It seems that under some mis-consideration, respondent Nos. 1 and 2 again filed a written statement on 7.1.2008, which is exactly similarly worded to that of written statement which was filed on 9.10.2007.

On 27.10.2007, the petitioners filed a replication to the written statement dated 9.10.2007, reiterating the averments of the amended writ petition.

8. Mr. B.S. Bedi, learned Counsel for the petitioner has submitted that the invocation of urgency provision is wholly unjustified because after the issuance of notification under Section 4 of the Act on 23.11.2005 (P-2) and declaration u/s 6 of the Act on 02.01.2006 (P-3) a period of 5 months have been consumed for finalization of the project, as is evident from the report dated 8.05.2006 sent by the Executive Engineer, Public Health Division, Narwana to the District Revenue Officer-Cum-Acquisition Collector, Jind. Learned Counsel has maintained that only a period of 30 days for hearing of objections was required to be given to the petitioners and in these circumstances the statutory requirement of Act for filing of objections u/s 5A of the Act should not have been snatched from the petitioners. He has maintained that the petitioners would have raised the objection that the site is reserved for the residential and commercial area which, is thickly populated and it was not feasible for installation of Sewage Treatment Plant (STP).

9. Learned Counsel has highlighted the scheme of the Land Acquisition Act envisaged by Sections 4, 5A, 6, 11 and 17 of the Act. He has placed reliance on a judgment of the Supreme Court in the case of Union of India (UOI) and Others Vs. Mukesh Hans etc., and argued that the dispensation with enquiry u/s 5A cannot be automatic even if urgency provision has been invoked. He pointed out that a conscious decision is required to be taken by Government dispensing with holding of such an enquiry as provided by Section 5A of the Act. The other submission made by the learned Counsel is that on the other side of the main Narwana Minor Lane land belonging to the State Government is available, which would be suitable for installation of STP as it is away from the residential and commercial area and, therefore, there is no reason for the respondents to insist

that STP has to be established on the land in question alone. He has also submitted that installation of STP is likely to affect the health of the general public adversely. In that regard he has placed reliance upon certain provisions of Manual of sewerage system and Sewage Treatment Plant.

10. Mr. M.L. Sagar, learned State counsel has, however, submitted that installation of Sewage Treatment Plant has been necessitated because there is contamination of underground water. According to the learned State Counsel, there is no delay on the part of the respondent - State because notification u/s 4 read with Section 17 was issued on 23.11.2005 and declaration u/s 6 was issued on 2.1.2006. It has been pointed out that the award has already been announced. He has maintained that three Sewage Treatment Plants were planned at various locations at Narwana and three patches of land have been acquired. Referring to the instant Sewage Treatment Plant, learned Counsel has pointed out that it is to cater to the population of 18,000 people as all of them are facing threat of contamination of underground water. In the absence of Treatment Plant, the accumulation of sewerage water has polluted the underground water. Referring to para 6 of the reply, learned Counsel has emphasized that the site in question has been selected after thorough survey of the area and the instant piece of land was found to be most suitable. The local residents had been representing for laying down sewerage line because the residents are facing acute difficulty in tackling the accumulation of sewerage waste in the absence of sewerage system. The individual interest of the petitioners must give to the larger public interest as the installation of Sewage Treatment Plant is likely to benefit the entire population. Learned State counsel has also relied to the report of the local commission, which was appointed on their request. The report has concluded that there is no possibility of suffering from any air pollution or noise pollution to the public at large as the location of the STP is at a reasonable distance from the Grain Market, residential area and school buildings etc. Mr. Sagar has also emphasized that the decision taken by the Government for invoking urgency clause does not suffer from any legal infirmity because it is the obligation of the State to provide environments, which are pollution free and such a right to life has been read as a part of Article 21 of the Constitution. He has produced the record to show that conscious decision for invoking urgency was taken and requirement of holding any enquiry u/s 5A has been dispensed with.

11. Having heard the learned Counsel for the parties at some length, we are of the considered view that there is no merit in the instant petition. It is evident that notification u/s 4 read with Section 17(2)(C) was issued on 23.11.2005 (P-2). The notification specifically declared that the land is needed urgently for construction of Sewage Treatment Plants at Jind-Patiala road across, railway crossing Narwana Town. The satisfaction of the Government with regard to urgency has been recorded on the file as well as in the notification. It has also been decided by the Government to dispense with enquiry u/s 5A of the Act. Therefore, all the provisions of Section 4 read with Section 17 have been religiously followed. Thereafter, notification u/s 6 was also issued on 2.1.2006

(P-3) and award has been announced on 23.5.2006. It was at the instance of the petitioners that a Local Commission was appointed comprising of two Advocates of this Court. Adverting to the grievance made by the petitioners, the Local Commissioners have reported that there is a 16-1/2 ft. space or unmetalled, road, dividing the land with the wall of the New Anaj Mandi (Grain Market). The Mandi consists of basically just the plinth, an office building and a shed. The residential area is about 1/2 km away from the site of the STP and is beyond the Mandi and so is the Ch. Devi Lal Memorial Public School, which is across the Narwana Minor on the Narwana-Uklana Highway. It has further been reported that the officials of the Municipal Committee of the residential colony were also present at the spot and on account of major Sewerage problem and attendant disease in their locality, they have shown keen interest for the installation of the STP. It was at the instance of the petitioners that both the advocates were appointed as per directions issued on 30.8.2007. Although some objections have been raised by the petitioners to the report but we find no substance in those objections. Moreover, the state is under obligation to provide pollution free environment to the citizens, which has been regarded as a fundamental right under Article 21 of the Constitution by various judgments of Hon'ble the Supreme Court including Virender Gaur and Others Vs. State of Haryana and Others, and AIR 1991 420 (SC) .

12. The argument of Mr. Bedi, learned Counsel for the petitioners that the site is not suitable for the installation of STP or they must install STP at another suitable place indicated by the petitioners, has failed to impress us because it is not the petitioners, who are to take a decision as to how the public interest is to be served. The State Government, after detailed examination of the site in dispute, has concluded that the instant site is most suitable for installation of the STP. We also fail to find any substance in the argument raised by the learned Counsel that Manual sewerage system should have been followed in letter and spirit. Firstly, it is not understood as to how the technical task of finding the necessity of installation of STP and suitable site for that purpose would fall within the jurisdiction of this Court. The record shows that the department of PWD (Public Health) has examined all the details and has come out with the proposal of installation of STP at the site in question. We do not find any violation of either a statutory provision or any law enunciated by the Courts. Therefore that arguments is wholly misconceived and the same is, hereby, rejected.

13. The argument that 30 days period could have been granted to the petitioners for filing objections because the project has been delayed as per scheme finalized on 8.5.2006 (P-9), is also without merit because the project has not been delayed for any other reason but for the orders passed by the Court. Firstly, the civil court passed a status quo order on 15.02.2006 which continue to operate till the withdrawal of the civil suit which was instituted by the petitioners. Even thereafter, the stay by this Court granted on 7.8.2006 is in operation. Thus there is no merit in this submission.

The other argument emanating from the judgment of Hon''ble the Supreme Court in the Mukesh Hans''s case (supra) also does not come to the rescue of the petitioners because in that case, the public purpose of acquisition and invoking urgency was to make provisions for holding a historical fair, which was known as "Phool Walon Ki Sair" and, therefore, urgency in such a situation was considered absent. In any case, the State Government has not only taken a conscious decision of invoking urgency u/s 17(1) but has also decided about dispensing with enquiry contemplated by Section 5A of the Act, as is required by Section 17(4). Therefore, there is no merit in the aforementioned contention also.

As a sequel to the above discussion, we find no merit in these petitions and the same are dismissed.