
(2010) 03 P&H CK 0302
In the Punjab And Haryana At Chandigarh

Baljit Kaur and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 08-03-2010

Acts Referred:

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

Citation : (2010) 158 PLR 773

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The petitioners have challenged the proceedings for acquisition of their land, which were initiated by issuance of notification dated 18.2.2009, u/s 4 of the Land Acquisition Act, 1894 (for brevity, "the Act") and declaration made on 25.8.2009, u/s 6 of the Act (P-1 & P-2 respectively) for the public purpose, namely, construction of Shaheed-E-Azam Sardar Bhagat Singh Museum at Village Khatkar Kalan, Tehsil Banga, District Shaheed Bhagat Singh Nagar (Nawanshahr).

2. Brief facts of the case are that the petitioners are joint owners of agricultural land, which is proposed to be acquired by the State Government for the aforementioned public purpose. On 18.2.2009, notification u/s 4 of the Act was issued for acquiring 65 Kanals 9 Marlas of land. The petitioners filed objections u/s 5-A of the Act (P-4). On 25.8.2009, declaration u/s 6 read with Section 17 of the Act was issued (P-2). The grievance of the petitioners is that without deciding their objections and without showing any urgency involved, the respondents have resorted to invoke the urgency provisions u/s 17(2) of the Act while issuing notification dated 25.8.2009. It has further been asserted that there is a Museum, which is already in existence, having considerable area and the same could be upgraded without acquiring another piece of land. The petitioners have also pleaded that with the present acquisition their remaining agricultural holding would be bifurcated because the manner in which the site has been selected

would leave a narrow strip of the land of the petitioners making it difficult for them to make its optimum use. They have already spent huge amount of money on the development of the land, inasmuch &% the entire land holding is connected through underground water-pipes.

3. In the written statement filed on behalf of the respondents it has been asserted that all the provisions of the Act have been religiously followed. The objections of the petitioners were received on 12.3.2009 and thereafter Smt. Baljit Kaur-petitioner No. 1, who is also General attorney of her two sons, was given personal hearing on 3.6.2009. Her statement was also recorded on the said date (R-2). The objections were rejected vide order dated 22.6.2009 (R-3). It has also been pointed out that adequate compensation has been awarded to the petitioners in respect of the acquired land, which in no way less than the market rates prevailing in the area.

4. The petitioners have also filed rejoinder to the written statement filed by the respondents. It has been pointed out that during the pendency of the writ petition, the Punjab Heritage and Tourism Promotion Board has executed, a lease deed in favour of one Shri Raj Kumar Gandhi, dated 20.11.2009 (P-6). The said lease deed has been executed to upgrade, operate and maintain the Fast Food Counter at Khatkarkalan, which has been constructed adjacent to the museum which is already in existence. The petitioners have also placed on record the photographs of the existing Museum site, where a "Dhaba" in the name and style of "Dana Pani" has been opened. The petitioners have tried to emphasis that the intention of the respondents is doubtful and not clear. The entire exercise to develop a bigger museum is being undertaken without proper survey.

5. A reply dated 16.2.2010 to the rejoinder has been filed wherein it has been pointed out that the aforementioned fast food counter has been constructed on an area of 14.41 Marlas (3250 square feet) out of the total land measuring 14 Kanals and 13 Marlas of the existing Shaheed Bhagat Singh Museum. The said fast food counter has been constructed for the convenience of the visitors to the Museum with the funds of Rs. 40 lacs approximately allocated by the Ministry of Tourism, Government of India, in 2004-05. The site has been leased out as per the parameters laid down by the Government of India i.e. after inviting tenders etc. The respondents denied the other averments of the rejoinder and it has been submitted that proper plans have been made for setting up of bigger museum in the memory of Shaheed -E- Azam Sardar Bhagat Singh.

6. On 18.2.2010, when the matter came up for our consideration, learned Counsel for the petitioners raised the issue that after acquisition of the land in question no passage would be available to the petitioners to have an access to their left out land. Learned State counsel sought and was granted time to seek instructions in that regard.

7. At the hearing today a short affidavit on behalf of respondent Nos. 1 and 2 has been filed in the Court today, which is taken on record. It has been pointed out

that the petitioners were owners of 211 Kanals of land in village Khatkar Kalan and by virtue of notifications dated 18.2.2009 and 25.8.2009 (P-1 & P-2), a total of 56 Kanals 11 Marlas of land belonging to the petitioners has been acquired. In para 4 of the affidavit, it has been stated that as a result of the acquisition, land measuring 24 Kanals approximately belonging to the petitioners did not have any passage. Therefore, after examining this issue, it has been decided by the respondents to provide 3 Karms (approximately 16 feet wide) passage to this land of the petitioners as per the following detail:

Sr. District Tehsil Locality Revenue Plot No. Area Boundaries Remarks No. to be included Kanal- under Marla protection 1 Shaheed Nawan Village Khasra No. West between Gair Mumkin Bhagat shahr Khatkar 34/7/3 min 0-07 East/south passages Singh Kalian 7/4 - 0-01 East/south - Nagar 13/2 - 0-01 West between - 14/1 - 0-07 South - 14/1 - 0-04 South - 14/2 - 0-09 Total Path 1-09 8. Learned Counsel for the petitioners has expressed satisfaction over 3 karms passage which is equivalent to approximately 16 feet in width. However, he has argued by referring to site plan (P-5) that the land which has been left out is totally fragmented and the total area comes to about 24 kanals. The submission appears to be that the land may be acquired in a consolidated manner so as to leave the area which is meant to be used by the petitioners. The other argument is that the government land which is now occupied by a restaurant given on lease known as "Dana Pani" could have been exchanged with the left out land measuring about 24 kanals.

9. Having heard the learned Counsel, we are of the considered view that firstly, the left out land cannot be regarded as fragmented, especially after making provisions for passage. There is contiguity to the land and agricultural operations can easily be taken by the petitioners. In any case, as and when consolidation operations are undertaken by "the respondent State, the request of the petitioners for consolidating this area of about 24 kanals with the land of the petitioners available on the other side of the road, could be considered. There is no opportunity at this stage for us to issue any direction which the petitioners may seek at the appropriate stage. The other argument that there should be exchange between the government land and the 24 kanals of area left out from acquisition has also not impressed us since the area which is occupied by Dana Pani Restaurant cannot be termed as land because the restaurant has already been built up. The nature of the land has also undergone change and no exchange with the land under the Dana Pani Restaurant would be possible. Moreover, no provision of law has been stated before us which may provide for adopting the aforesaid course. Accordingly, the argument is wholly misconceived and the same is rejected.

The petition stands dismissed.

Sd/- Jitendra Chauhan, J.