

(2015) 09 P&H CK 0117
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 573 of 2013 (O&M)

Budh Ram and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 15-09-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 4(1), 5-A, 6

Citation : (2015) 09 P&H CK 0117

Hon'ble Judges : Hemant Gupta, J; Raj Rahul Garg, J

Bench : Division Bench

Advocate : Arun Jain, Senior Advocate and Sunil Sharma, for the Appellant;
Palika Monga, DAG, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J—The challenge in the present petition is to the notifications dated 14.05.2010 and 11.04.2011 published under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short "the Act"), respectively.

2. Earlier a notification under Section 4 of the Act was published on 8.5.1995 intending to acquire land for the planned development and utilization of the land as transport, communication, residential and institutional area for Sector 61, Faridabad, including the land of the petitioners. The petitioners filed objections under Section 5-A of the Act that the petitioners had constructed their residential houses on the land in question. In view of the objections, the land of the petitioners measuring 5 kanal 5 marla was not made part of the declaration published under Section 6 of the Act.

3. The grievance of the petitioners is that now the State has published a notification under Section 4 of the Act on 14.5.2010 proposing to acquire the land measuring 2 kanal 2 marla of the petitioners comprising in Khasra No. 24/1 min (west) (1-14) and 23/2 min (east) (0-8) out of the earlier released land measuring 5 kanal 5 marla. The petitioners suggested realignment of the road so

that Samadhi of their father and house of petitioner Nos. 2 and 3 or any other petitioner is not affected by giving equivalent area in Sector 61, Faridabad so that the petitioners can construct their houses on such land. The petitioners contend that without giving any opportunity of hearing, the respondents have proceeded to publish a declaration under Section 6 of the Act on 11.04.2011.

4. The argument of the learned counsel for the petitioners is that once the State Government has decided to release the land of the petitioners over which the construction was raised, making the said area as part of the acquisition subsequently is illegal, arbitrary and unjust.

5. In the reply filed, the stand of the respondents is that the land is required for a public purpose i.e. for connectivity of the service road linkage between Sectors 61 and 62 Faridabad as the development work on North and South of the site particularly the road constructions, water supply, sewer had already been completed but due to this un-acquired pocket, the connectivity of the service road was hampered. The acquisition is for a bona-fide public purpose. The reference was also made to an Award No. 15 in the year 2012-13 announced on 11.12.2012 regarding acquisition of 0.26 acres of the land.

6. In a separate reply filed on behalf of respondent No. 3, it is averred that the possession has been taken by the Land Acquisition Collector when the Award was announced. The petitioners were said to be encroachers over the land bearing Khasra No. 24/1 min (1-14), 23/2 min (0-8) with the revenue estate of village Malerna.

7. On 10.12.2013, when the matter came up for hearing, counsel for the respondents sought time to have instructions as to whether the land of the petitioners can be exchanged with an equivalent size of the plot of land. The said order reads as under:--

"The residential houses of the petitioners were earlier sought to be acquired in the year 1996 but on their representation, the same were released. These houses have again been acquired and this time for the construction of sector road in Sector 61, Faridabad. Photograph (Annexure P/14) reveals that one of the houses falls exactly on the alignment of road. The acquired land of the petitioners is .26 acre. In such situation, the most appropriate recourse can be to exchange the petitioners' land with an equivalent size of plot/land that may be offered to them abutting the road.

Learned counsel for the respondents seek time to have instructions.

List on 3.3.2014."

8. On 16.7.2014, the learned State counsel conveyed that the respondents have agreed to allot two adjoining plots of 10 marla each i.e. measuring 418 square metres, to the petitioners, but the Court found that there is no clarity that the plots would be given in exchange of the acquired land. The Court observed as under:--

"With reference to order dated 10.12.2013, the respondent-authorities have agreed to allot two adjoining plots to the petitioners of 10 marlas each i.e. total area measuring 418 square metres. Letter dated 01.04.2014 giving such instructions, however, is silent whether or not these two plots will be given in exchange of the acquired land. We make it clear that while the petitioners would not be entitled to any compensation for their acquired land, the authorities shall allot both the plots free of cost, namely, in exchange of the acquired land. Let learned counsel have instructions in this regard.

List on 01.08.2014."

9. On 14.08.2014, learned counsel for the petitioners conveyed that the proposal is not acceptable to the petitioners. On 13.05.2015, again the State Government communicated that it was prepared to exchange the plots in terms of the order dated 16.07.2014. The said order reads as under:---

"Learned State counsel has produced the communication dated 05.03.2015 addressed by the Additional Director, Urban Estates, Department Haryana, Panchkula to the Advocate General, Haryana, whereby it was intimated that in pursuance of order dated 16.07.2014, the State is prepared to exchange the plots in terms thereof. The communication is taken on record.

Learned counsel for the petitioners prays for time to seek instructions."

10. Today, learned counsel for the petitioners has declined to accept the offer made by the State. In view thereof, we have heard learned counsel for the parties.

11. Learned counsel for the petitioners has vehemently argued that while accepting the objections under Section 5-A of the Act, the declaration under Section 6 of the Act was published on 13.03.1998 and the land measuring 5 kanal 5 marla was not included in the declaration published. The conscious decision of the State was not to acquire the constructed portion. Thus, the decision to acquire part of the land owned by the petitioners now is clearly inequitable. The respondents are bound by the promise made while accepting the earlier objections. It is also contended that in terms of the Policy dated 26.07.2007, the constructed portion cannot be made subject matter of acquisition. It is contended that the Court has directed the respondents to allot plots of equivalent size of the land of the petitioners, therefore, the decision to allot plots of a smaller size than the acquired ones, is clearly unsustainable. It is further contended that as the Court has directed the respondents to allot equivalent size plots of the land, therefore, the respondents cannot allot smaller size plots as part of the rehabilitation process.

12. On the other hand, Ms. Palika Monga, learned DAG, Haryana, has pointed out that the purpose of acquisition is for road. Relying upon the judgments of the Hon"ble Supreme Court in Sube Singh and Others Vs. State of Haryana and Others, AIR 2001 SC 3285 : (2001) 6 JT 578 : (2001) 7 SCALE 494(1) : (2001)

5 SCALE 352 : (2001) 7 SCC 545 : (2002) 1 UJ 224 : (2001) AIRSCW 3322 : (2001) 6 Supreme 278 and Jagdish Chand v. State of Haryana, (2005) 10 SCC 162, it is contended that when the acquisition of the land is for the public purpose, even the structures can be acquired.

13. It is also argued that the construction raised is that of a village house and that the petitioners cannot be given urban plot of the size equivalent to the land under acquisition as the urban plots are allotted after providing the basic amenities such as roads, parks and other common facilities. The area for common facilities has to be taken into consideration while allotting the land to the petitioners.

14. The acquisition is for the purpose of road. In Sube Singh's case (supra), the Court has held that the constructed portion can be acquired for a road. The Court held to the following effect:--

"10.....it is relevant to note here that the acquisition of the lands is for the purpose of planned development of the area which includes both residential and commercial purposes. That being the purpose of acquisition, it is difficult to accept the case of the State Government that certain types of structures which according to its own classification are of 'A' Class can be allowed to remain while other structures situated in close vicinity and being used for same purpose (residential or commercial) should be demolished. At the cost of repetition, it may be stated here that no material was placed before us to show the basis of classification of the existing structures on the lands proposed to be acquired. This assumes importance in view of the specific contention raised on behalf of the appellants that they have pucca structures with RC roofing, mosaic flooring etc. No attempt was also made from the side of the State Government to place any architectural plan of different types of structures proposed to be constructed on the land notified for acquisition in support of its contention that the structures which exist on the lands of the appellant could not be amalgamated into the plan."

15. Following said judgment, in Jagdish Chand's case (supra), the Court said to the following effect:--

"8. In view of what is stated above, we do not find any good reason as to why directions as given in the case of Sube Singh and Others Vs. State of Haryana and Others, AIR 2001 SC 3285 : (2001) 6 JT 578 : (2001) 7 SCALE 494(1) : (2001) 5 SCALE 352 : (2001) 7 SCC 545 : (2002) 1 UJ 224 : (2001) AIRSCW 3322 : (2001) 6 Supreme 278 should not be given in these cases as well, subject to certain restrictions to take care of the planned development of the area. Accordingly, the impugned judgments are set aside and the appeals are allowed in the following terms:

1. The Secretary, Urban Estates Department, State of Haryana is directed to consider the objections of the appellants only so far it relates to exclusion of the land to the extent occupied by the structure and appropriate open area around

the structure for the beneficial enjoyment of the appellants. However, this direction shall not come in the way of the authorities in removing the structures, if required for the purposes of road, hospital and other civic amenities.

2. The Secretary, Urban Estates Department shall decide not only the existence of the structures prior to Section 4(1) notification or subsequent to, he shall also decide the extent of structure which existed prior to Section 4(1) notification.

3. It is also open to the authorities to make adjustment or readjustment of plots for the purpose of planned development and in case it becomes necessary to give a little additional area from the plots to the appellants, the appellants shall be bound to take that additional area and also be bound to pay cost of such area as is chargeable to other allottees. The appellants shall also be bound to pay the developmental charges as is charged from other allottees. It is open to the parties to place documents or material in support of their contentions.

9. We expect that as far as possible, the respondents shall try to retain the structures, unless it becomes difficult for them to have a planned development without removing them in view of what is stated above."

16. In view thereof, since the acquisition of land of the petitioners is for the purpose of construction of road, we find that the petitioners cannot dispute the acquisition. The interim orders passed by this Court from time to time were to find an equitable solution so that the rehabilitation of the petitioners could be done and at the same time, the purpose of acquisition is also achieved. The offer of the State for allotment of the alternative plots has not been accepted by the petitioners. Since the acquisition is for construction of the road, therefore, in terms of the judgments aforesaid, we find that the petitioners cannot resist the acquisition. The fact remains that in the year 1998 when the acquisition was undertaken, the land of the petitioners over which the construction was raised was released from acquisition. It shows that wherever possible, the State has taken a decision to release the land, but when there is requirement of road, there is no option but to acquire the same. The public interest would outweigh private interest. No plea of promissory estoppel can be raised against the State as there was no representation that the land of the petitioners will not be acquired again, in all circumstances.

17. Consequently, the present petition is dismissed.