(2015) 02 P&H CK 0133

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition Nos. 558, 23612, 25662 of 2013 (O and M), 5331, 8987, 11476, 10279 and 12659 of 2014 (O and M)

Chet Ram and Others — APPELLANT

Vs

State of Haryana and Others — RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:
Land Acquisition Act, 1894 — Section 4, 6, 7

Citation : (2015) 3 RCR(Civil) 372

Hon'ble Judges : S.J. Vazifdar, Acting C.J.;Augustine George Masih, J.

Bench : Division Bench

Advocate : Gopal Sharma, Ajay Jain, Chanderhas Yadav and Sanjay Mittal, for the Appellant; Palika Monga, Deputy Advocate General, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.J. Vazifdar, Actg. C.J.—The facts in the above petitions are similar in all material respects. The petitions are, therefore, disposed of by this common order and judgment. We will first refer to the facts in CWP No. 558 of 2013.

2. The petitioners claim to be entitled to an undivided share to the extent of about 5 kanals in an agricultural plot measuring 36 kanals 5 marlas. The petitioners have challenged the entire acquisition proceedings including the notifications under Sections 4 and 6 of the Land Acquisition Act, 1894. They have also challenged the sale deeds executed in favour of respondent No. 6 with respect to their undivided share and have sought an enquiry, investigation in respect of the alleged fraud played by the respondents and their officials. Lastly, they have sought a declaration that the amendments inserted in Section 5 of the Haryana Ceiling of Land Holding (Amendment) Act, 2011 is illegal.

3. A notification under Section 4 was issued on 06.01.2006 for the acquisition of 334 acres of land for the public purpose of the development and utilisation of land for residential/commercial sectors 6 and 7. The notification included a plot

of land admeasuring 28 kanals 9 marlas in which the petitioners claim to have an undivided interest.

4. On 9.5.2006, a collaboration agreement was entered into between respondents No. 5,6 and 7 and the petitioners. The collaboration agreement has not been brought on record. The petitioners contend that they do not know what they had signed. They, however, do not deny having signed the document.

5. The petitioners executed two sale deeds both dated 10.05.2006 whereby they sold their right, title and interest in the land to respondent No. 7-M/s. Lingraj Project Private Limited. They admitted having received an aggregate consideration of about Rs.1.12 crores and having appropriated the same. On 09.08.2006, a notification under Section 6 was issued for the acquisition with respect to 299.466 acres which included the 28 kanals 9 marlas in which the petitioners had an interest, for the same public purpose as mentioned in the Section 4 notification. The award was made on 7.12.2006.

6. This writ petition was filed in January, 2013 i.e. more than six years after the acquisition proceedings were completed and the petitioners had sold their land in favour of respondent No. 7 and appropriated the entire sale consideration.

7. This is not a case where nothing further was done after the acquisition proceedings were completed and the petitioners sold their rights in respect of their land to respondent No. 7. The events that transpired thereafter have led to the creation of innumerable rights in favour of hundreds of third parties involving an expenditure of crores of rupees by respondents No. 5,6 and 7, who are associated companies.

To start with, on 12.2.2010, a licence was issued under The Haryana Development and Regulation of Urban Areas Act, 1975 and the rules made thereunder in favour of respondents No. 5, 6 and 7 and 64 owners including the petitioners for setting up a residential plotted colony on 136.269 acres. As we mentioned earlier, the acquisition was in respect of 299.466 acres. The licence understandably had to be obtained in the names of the original land owners as their names may have remained to have been mutated in the revenue records. The title to the land in question, in any event, had already vested in respondent No. 7 in view of the said sale deeds dated 10.5.2006.

8. The facts in CWP No. 23612 of 2013 are similar except that the petitioners therein claim to have been the owners of 49 kanals - 3 marlas, which was also the subject matter of the same acquisition. The petitioners'' father had executed a similar sale deed dated 02.03.2006 conveying his right, title and interest in the said land in favour of respondent No. 7. The petitioners relied upon the fact that the licence included the name of one Bhagwan Dass who had died by the time the licence was issued. It is, however, important to note that the petitioners'' father was alive when the application for the licence was made. He died thereafter and before the licence was issued. It is not the petitioners'' case that they informed the authorities concerned about the same.

9. In CWP No. 25662 of 2013, the facts are similar except that the petitioners therein claim to be entitled to 91 kanals 3 marlas of land which is the subject matter of the same acquisition proceedings.

10. It was agreed that the result in the other five writ petitions would follow the result in the above three writ petitions.

11. The land was released from acquisition proceedings on 12.8.2009. An LOI was granted on 19.08.2009. As we mentioned earlier, the licences were granted for setting up a residential plotted colony on 136.269 acres of land which included the lands which are the subject matter of the above writ petitions.

12. It is of vital importance to note that pursuant to the above and upon obtaining the said licence, several steps were taken by the respondents No. 5, 6 and 7 towards the construction of the residential plotted colony. Even more important is the fact that hundreds of third party rights have been created. Some of these facts are as follows:

Brochures were taken out and advertisements were issued informing the public about the proposed development. The development was started. It obviously was on a very large scale and could not have gone unnoticed.

About Rs.69 crores have been spent towards licence fee, scrutiny fees, conversion charges, external development charges, infrastructural development charges, etc. as far back as February, 2010. Rs.126 crores have been disbursed by the financial institutions. A charge has been created over the licenced land to secure the repayment of the credit facilities extended by the financial institutions. 990 residential plots have been carved out. 248 plots are under the NPNL (no profit no loss) basis. 198 plots are reserved for the EWS (Economically Weaker Section) category which have been handed over to the housing board. Ms. Monga, learned Deputy Advocate General, Haryana has confirmed the same. The Government of Haryana has paid the consideration for the same. Third party rights have been created to a large extent. A majority of the plots have been allotted to third parties. The third party rights have been created by executing registered conveyances in their favour. 585 plots have been agreed to be sold in addition to the plots under the NPNL and EWS categories. The third parties have paid substantial consideration. Conveyance deeds have been executed in respect of 159 plots in favour of the purchasers. Some of the purchasers of the plots have raised construction thereon.

13. It is pertinent to note that the co-owners of the petitioners in CWP No. 558 of 2013 have not challenged the sale deeds or the acquisition proceedings, although they hold the majority share in the property. Prima facie at least this establishes Mr. Chopra''s submission on behalf of the respondents that this was a belated action only to extract money from respondents No. 5,6 and 7 after the project had been implemented to a very large extent. It is also pertinent to note that petitioner No. 2 in CWP No. 558 of 2013 had not even executed the sale deed. It was his father who had executed the sale deed. The other legal heirs of the

father of petitioner No. 2 have not challenged the sale deeds or the acquisition proceedings.

14. This is not a matter of mere delay and laches on the petitioners'' part. This is a case of the petitioners having deliberately stood by. It appears to us that they have merely tried to take advantage of the development and filed these petitions as an after-thought. The grant of any relief would have enormous adverse consequences of the most serious nature upon hundreds of innocent third parties for reasons too obvious to mention. Even assuming that the delay on the petitioners'' part was innocent, they cannot take advantage of their own wrong especially when their inaction has resulted in several third parties having irretrievably altered their position to their detriment.

15. The contention that the sale deeds were got executed mala fide under the threat of acquisition does not appear to be correct. It is impossible in these writ petitions to consider the petitioners'' allegation of fraud, collusion and undue influence in the execution of the sale deeds and in the entire acquisition proceedings. As we mentioned earlier, the acquisition proceedings involved 366 acres. In two cases namely in CWP No. 10279 of 2014 and CWP No. 11476 of 2014, the land had been sold even before the issuance of the Section 4 notification. This also prima facie militates against the petitioners'' case that the acquisition proceedings were initiated in order to compel the petitioners and their predecessors-in-title into entering into sale deeds in favour of the developers.

16. The judgment of the Division Bench of this Hon''ble Court in Sant Singh and Others Vs. State of Haryana and Others, is of no assistance to the petitioners. Firstly, the judgment has been stayed by an order of the Supreme Court dated 15.04.2014 in Special Leave to Appeal (C) No. 25843/2014. The Supreme Court passed the following order:

"Issue notice, returnable on 04.07.2014. In the meantime, there shall be stay of operation and implementation of the impugned Judgment." Secondly, in that case, the process of granting the licences continued till the year 2011 and the petition was filed the same year. Further, in that case no construction work had been carried out even till the date of the judgment and the land was lying vacant in its original form. In the case before us, the licence was granted on 12.02.2010 and the petitions were filed in the year 2013 and that too after the development had progressed to an advanced stage and third party rights to a large extent had been created. The case is, therefore, clearly distinguishable from the one before us.

17. It was then contended on behalf of the petitioners that under the collaboration agreement the land owners are entitled to a share of about 12% of the profit. However, after the collaboration agreement dated 9.5.2006, the sale deeds dated 10.5.2006 were entered into. It is doubtful if in view thereof the petitioners are entitled to the benefits under the collaboration agreement. They had entered into the same as owners. Thereafter, they ceased to be the owners

by virtue of having sold their plots. In any event, even assuming that there is something to be said in favour of the petitioners in this regard, they must be relegated to a suit for recovery of amounts due under the same.

There does not appear to be any collusion between the authorities and respondents No. 5,6 and 7. In fact, respondents No. 5,6 and 7 were driven to filing a writ petition for compelling the authorities to consider their application for the grant of the licence.

18. The writ petitions are, therefore, dismissed. The amounts, if any, deposited by the petitioners shall be refunded to them with accretion thereto, if any, on an application made by them.