

(2003) 12 P&H CK 0067
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 16523 of 2003

Dalip Singh and others

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 18-12-2003

Acts Referred:

Citation : (2004) 2 LJR 425 : (2004) 2 RCR(Civil) 176

Hon'ble Judges : V.K.Bali, J and Jasbir Singh, J

Advocate : Mr. Ramesh Hooda, Advocate., Advocates for appearing Parties

Judgement

V.K. Bali. J. (Oral)

1. By the common order, we propose to dispose of three connected Civil Writ Petitions bearing Nos. 16523, 16536 and 16538 of 2003 as common questions of law and facts are involved in all these matters. Learned counsel representing the petitioners also suggests likewise. The bare minimum facts that need a necessary mention have, however, been extracted from CWP No. 16523 of 2003.

2. Brief facts of the case, as projected in the petitioner, reveal that invoking urgency provisions under Section 17(2) of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act'), the Government notified some land for acquisition, including the land, subject matter of dispute, under Sections 4 and 6 of the Act, way back in 1976. In due course of time, the Land Acquisition Collector also rendered award and the petitioners herein were paid the compensation as assessed by the Land Acquisition Collector. It is not pleaded but it can safely be observed that either the petitioners were satisfied with the compensation that was assessed by the Land Acquisition Collector or in any case if they had filed reference under Section 18 of the Act for determination of the market value of the land, subject matter of dispute. That aspect is also over since long as the fact remains that the matter with regard to assessment of compensation has attained finality.

3. The case of the petitioners is that the land was acquired for the purpose of

brick kiln installed by the Government for constructing the canal. The canal was constructed and after completion of the same, the brick kiln installed by the Government was removed and the land was not required by the Government. Case of the petitioners is, thus, that once the land has since been rendered surplus being not required for the purpose, it was acquired. Standing Order No. 28 issued by learned Financial Commissioner would vest a right in the petitioners for retransfer of the land. It is further the case of the petitioners that in almost similar circumstances, title of the land was revested in some other landowners but insofar as, petitioners are concerned, even though representations were made, no favourable orders were passed, thus, constraining them to file CWP No. 1979 of 2001 wherein, a direction was issued to the petitioners to file a fresh representation and the State Government was asked to reconsider the matter in light of Standing Order No. 28 and decide the same. Pursuant to the directions issued by this Court in aforesaid Civil Writ Petition on 28.2.2002, the petitioners made representation which was dismissed vide impugned order, Annexure P11, dated 18.11.2002 passed by the Deputy Commissioner, Jind.

4. Impugned order, Annexure P11, is a detailed one wherein, not only Standing Order issued by the Government but the case law has also been discussed. In ultimate analysis, it has been held as follows :

"In pursuant of the guidelines issued by the Revenue Department regarding disposal of surplus land and paragraphs 493 to 495 of Land Administration Manual, the Govt. in Irrigation Department has accorded sanction as stated in foregoing paras to the transfer/auction of the land which will now be auctioned as per revised policy of the Government.

In view of the facts and circumstances, the representation of the petitioners is without merit and the same is rejected."

5. The primary and, in fact, the only contention raised on behalf of the petitioners is that the petitioners has applied for retransfer of the land, subject matter of dispute, when Standing Order No. 28 was in existence. Later instructions annulling the Standing Order aforesaid cannot whither away the right of the petitioners, as their right has been established when application was made. It has further been urged by learned counsel for the petitioners that change brought about in law by issuing fresh instructions for auctioning such surplus land is not retrospective in nature and, therefore, the case of the petitioners ought to have been decided on the basis of Standing Order No. 28.

6. When this matter came up for hearing before us on 21.10.2003, we passed the following orders :

"The question that has been mooted in the present petition is as to whether the instructions in vogue at the time when application for return of the land had been filed or the changed instructions, which were in force when the order for release of the land was to be passed, would apply in this case. Counsel seeks time to study the law and then argue the matter.

List again on 7.11.2003."

7. In support of his contention, learned counsel relies upon a Division Bench judgment of this Court in CWP No. 5578 of 1996 (Surinder Kumar v. State of Punjab and another), decided on 13.1.1997. Short judgment relied upon by learned counsel in Civil Writ Petition aforesaid reads thus :

"The regularisation of the petitioner has been declined solely on the ground that the instructions dated 18.1.1995 have been withdrawn by way of instructions dated 26.2.1996. In fact, petitioner's right for regularisation fructified on 18.1.1995 when the instructions were issued and the cases were required to be considered within a reasonable period. The withdrawal of instructions dated 18.1.1995 on 26.2.1996 were not with retrospective effect nor a right once conferred on the petitioner could have ordinarily been withdrawn. In view of this, the respondents are directed to consider the case of the petitioner for regularisation in terms of instructions dated 18.1.1995 within six months in accordance with law. With the said direction, the writ petition is disposed of."

8. It is significant to note that Hon"ble Division Bench dealing with the case aforesaid mentioned that right once conferred on the petitioner could not be taken away on change of instructions. We would have examined the matter more deeply and the judgment, as reproduced above, if, perhaps, in the present case there was a right vested in the petitioners for retransferring the land, in case found to be surplus. In our considered view, Standing Order No. 28 relied upon by learned counsel is only a concession and the same cannot partake the character of a right. It is too well settled and, therefore, we are not making any reference to the provisions of the Land Acquisition Act, that once land is acquired for a public purpose by issuing notification under Sections 4 and 6 of the said Act, and after payment or deposit of the compensation, possession is also taken, the land vests with the Government free from all encumbrances. Despite this clear position of law, if there may still be some instructions which may deal with revesting title of property in the erstwhile landowners, that was rendered surplus, even though having vested with the Government, free from all encumbrances, same has to be held as a concession alone and no more. In any case, as aforesaid, this Standing Order cannot partake the character of law conferring any right upon a citizen.

9. The view that we have taken would be fortified by a decision of Hon"ble Supreme Court in Chandragauda Ramgonda Patil and another v. State of Maharashtra and others, (1996) 6 SCC 405 and yet another judgment of Hon"ble Supreme Court in State of Kerala and others v. Bhaskaran Pillai and another, AIR 1997 SC 2703. Hon"ble Supreme Court in Chandragauda Ramgonda Patil's case (supra), in somewhat circumstances, has held as under :

"Shri Naik, the learned Senior Counsel appearing for the petitioners, contended that in the second writ petition, the petitioner sought restitution of the possession pursuant to the resolution of the State Government dated 10.10.1973

under which the Government directed that the surplus land was to be utilised first for any other public purpose and in the alternative it was to be given back to the erstwhile owners. Since he had sought enforcement of the said Government resolution, the writ petition could not be dismissed on the ground of constructive res judicata. He also seeks to rely upon certain orders said to have been passed by the High Court in conformity with enforcement of the Government resolution. We do not think that this Court would be justified in making direction for restitution of the land to the erstwhile owners when the land was taken away back and vested in the Municipality free from all encumbrances. We are not concerned with the validity of the notification in either of the writ petitions. It is axiomatic that the land acquired for a public purpose would be utilised for any other public purpose, though use of it was intended for the original public purpose. It is not intended that any land which remained unutilised, should be restituted to the erstwhile owner to whom adequate compensation was paid according to the market value as on the date of the notification. Under these circumstances, the High Court was well justified in refusing to grant relief in both the writ petitions."

In Bhaskaran Pillai's case (supra), Hon"ble Supreme Court held that "the sheetanchor of the Government to sustain the action is the executive order issued by the Government for permission for alienation of the land. The High Court has declared the execution action as invalid in the light of the Kerala Land Assignment Act, 1960. The High Court has pointed out that the assignment is in contravention of the Act. Thus, this appeal by special leave.....In the present case, what we find in that the executive order is not in consonance with the provision of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid."

10. In view of decision rendered by Hon"ble Supreme Court, as referred to above, it is, thus, clear that, if there were to be any instructions which may run counter to the provision of the Act, the same would be invalid. In other words, even if the Government was to refuse to retransfer the land even at a time when Standing Order No. 28 was in existence, the said order could have well been defended by the Government on the ground that the Standing Order was not in consonance with the provisions of the Act.

Finding no merit in this petition, the same is dismissed in limine.