

(1995) 01 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4514 of 1994

Devinder Kumar

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 05-01-1995

Acts Referred:

Land Acquisition Act, 1894 — Section 31, 31(1), 31(2), 4

Citation : (1995) 110 PLR 438

Hon'ble Judges : N.K. Sodhi, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : C.B. Goel, Rajinder Goel and R.C. Chauhan, for the Appellant; Ritu Bahri, A.G., for the Respondent

Final Decision : Allowed

Judgement

N.K. Sodhi and G.S. Singhvi, JJ.—By a notification dated March 30, 1990 issued u/s 4 of the Land Acquisition Act, 1894 (for short the Act"), the State of Haryana made its intention known for acquiring a big chunk of land measuring about 290 acres for a public purpose, namely, for the development and utilisation of land for residential, commercial and institutional area at Rewari under the Haryana Urban Development Authority Act, 197/7 by the Haryana Urban Development Authority (HUDA) in the area of villages Jhanjanwas, Dumewas, Reweri, Dhaliwas and Piwara. Tehsil and District Rewari. It was mentioned therein that any person interested who had an objection to the acquisition of the land could within a period of 30 days of the publication of the notification file his objections in writing before the Land Acquisition Collector, Urban Estates, Gurgaon. The land was being acquired for the planned development of Sector 4 in Rewari. The land sought to be acquired included a small area measuring 1 kanal 6 marlas comprised in rectangle No. 231 killa No. 15/1 belonging to the petitioner. The petitioner who had constructed two rooms and a hall with boundary wall over his land filed objections u/s 5A of the Act before the Land Acquisition Collector. One of the primary objections raised was that his land had a construction thereon,

and, therefore, in terms of the Government Instructions on the subject it should have been exclude 1 from acquisition. After issuance of the aforesaid notification, a committee under the chairmanship of Administrator, HUDA, Gurgaon was constituted which was required to make a report after surveying the area sought to be acquired, particularly in regard to the houses and other buildings that stood constructed thereon. The committee inspected the site on 1.2.1991 and made its recommendations. It recommended that an area of about 45 acres which was outside Sector 4 and within the agricultural zone was zig-zag in shape and in view of the development plan it could not be utilized for any purpose by HUDA. The committee, therefore, recommended for the release of this land from acquisition, After disposing of the objections filed by various land owners and interested persons, the State Government finalised the acquisition and issued a notification u/s 6 of the Act on March 27, 1991 acquiring a total area of about 254 acres. The remaining land which was earlier included in the notification u/s 4 of the Act was released. While finalising the acquisition, the State Government has released the remaining land belonging to a large number of persons on the ground that there was construction over the same which could be adjusted in the development plan. The released land has been shown in yellow colour in the Shajra cum survey plan which was produced in Court at the time of hearing. The petitioner then moved the authorities for the release of his land as well on the ground that it also had construction thereon. The District Town Planner, Rewari as per his communication dated 31.7.1991 recommended to the Director, Urban Estates, Haryana that the land of the petitioner be released and he had relied on the recommendations of the committee which was headed by Administrator, HUDA, Gurgaon. In spite of this recommendation, land of the petitioner has not been released and he, therefore, filed the present petition under Article 226 of the Constitution challenging the notifications under S.4 and 6 of the Act acquiring the land in question. It may be mentioned that the Land Acquisition Collector . disposing of the objections filed by the petitioner at Serial No. 299 held that his land was vacant because the building constructed thereon was found locked at the time of survey and, therefore, the name of the owner could not be then verified. This is clear from the letter dated February 20, 1992 (Annexure P-3 with the writ petition) addressed by the Land Acquisition Officer, Gurgaon to the Director, Urban Estates, Chandigarh. It is common case of the parties before us that after the issuance of the notification u/s 6 of the Act, the Land Acquisition Collector gave his award on March 24, 1993.

2. While challenging the aforesaid notifications acquiring the land, the first argument of Mr.CB. Goel, Advocate appealing for the petitioner is that on making the award u/s 11 of the Act, the Collector has not paid the amount of compensation to the petitioner nor has the same been deposited by him in Court and therefore, the mandatory provisions of Section 31 of the Act having been violated, the acquisition proceedings stand violated. The contention is devoid of merit and we have no hesitation in rejecting the same. The firm stand of the respondents in their written statement is that the award was announced on

March 24, 1993 and the amount of compensation payable to the petitioner is lying unpaid and that he is at liberty to withdraw the same in accordance with law. In view of this categorical stand, it is clear that the amount of compensation stands deposited in Court and that provisions of Section 31 as alleged by the petitioner have not been violated. Moreover, the language of sub-section(I) of Section 31 of the Act makes it clear that on the making of the award u/s 11 of the Act, the Collector has to tender payment of the compensation awarded by him to the persons interested and entitled thereto according to the award. He has also to pay to them that amount unless prevented in any or more of the contingencies which are mentioned in sub-section(2) of Section 31. What is required is that the Collector should be in a position to make payment of compensation to the land owners whose land has been acquired and not that he should be in possession of that amount in cash so as to pay to the land owners then and there in Court. Sub-section(I) of Section 31 of the Act contemplates that the Collector should on the making of the award have the capacity to pay the amount of compensation to the land owners. In the case before us, there is nothing on the record to show that the Collector had not the capacity to pay the amount to the petitioner or any other land owner. In fact the stand taken is that the amount of compensation payable to the petitioner is lying unpaid which obviously means that it is lying with the Court from where the petitioner can withdraw when he wants. It is obvious that the Collector must have deposited the amount of compensation in the court. Again, even if one were to assume that the Collector did not have the capacity to pay the compensation when the award was made, that by itself, in our opinion, will not render the acquisition proceedings invalid. A reading of Section 31 of the Act clearly shows that the consequence of non-compliance of provisions of sub-section(I) or sub-section(2) thereof is not that the acquisition proceedings become invalid. The only effect would be that the land owners whose land has been compulsorily acquired will become entitled to claim and recover the amount of compensation from the State Government. Wherever the Legislature intended that the consequence of non-compliance of any provision of the Act would result in making the acquisition proceedings invalid, it has specifically said so. For instance, after a declaration has been made u/s 6 of the Act to the effect that any land is required for a public purpose, Section 11-A of the Act requires that the Collector shall make his award within two years from the date of that declaration and the Legislature has specifically provided that if no award is made within that period, the entire proceedings for acquisition of sub-section (1) or sub-section(2) of Section 31 of the Act, was to result in making the acquisition proceedings invalid, the Legislature would have made a similar provision in this section as well. As there is no such provision in Section 31 similar to the one in Section 11-A, it must be held that non-compliance with the provisions of sub-section(I) or sub-section(2) of Section 31 does not by itself invalidate the acquisition proceedings.

3. It was then urged by Mr. Goel that the land of many other land owners some of whom have been named in para 14 of the petition was left out from

acquisition on the ground that the same had construction thereon. We find force in this contention of the learned counsel. In the written statement filed on behalf of the respondents, it is admitted that the land of a large number of land owners was released on that ground. Not only this, a bare perusal of the shajra-cum-survey plan makes it clear that the land of different land owners has been released in a very haphazard manner and the respondents do not seem to have adopted any uniform pattern on the basis of which the said land could be said to have been released. We directed the respondents to produce before us the records if any, which could show the reasons that weighed with the authorities in releasing different pieces of land shown in yellow colour in the plan. Learned Assistant Advocate General expressed her inability and stated that the only ground for releasing such pieces of land was that there were constructions thereon. From a mere look at the plan it is clear that the released land is scattered all over the acquired area which will make it difficult, if not impossible, for the respondents to have a planned development for the purpose of which the land in question has been acquired. Even where a big chunk of land has been released there are small pockets of land which stand acquired and one wonders how that would be developed in a planned manner when the land surrounding those pockets stands released in favour of the land owners. In any case, if the land of others can be released on the ground that it had construction thereon, we see no reason why the land of the petitioner cannot be released when that too has two rooms and a hall constructed thereon along with a boundary wall. The Land Acquisition Collector while disposing of the objections of the petitioner has shown his land vacant merely because the building was locked at the time when the area was surveyed. The action of the respondents in this regard cannot but be described as arbitrary, discriminatory and violative of article 14 of the Constitution. The respondents seem to have adopted the policy of pick and choose in releasing the land. Not only this, the committee headed by Administrator, HUDA, Gurgaon had recommended the release of some land including that of the petitioner as it fell within the agricultural zone which Town Planner, Rewari had also recommended to the Director, Urban Estates, Haryana, Chandigarh for the release of the land of the petitioner but no reason much less a cogent reason has been furnished for not releasing the same. From the survey plan, it is clear that the land belonging to the petitioner is in one small corner outside the developmental area and could easily be released without affecting the development plan. In the result, it must be held that the action of the respondents in not releasing the land of the petitioner is discriminatory and arbitrary.

4. In *Chandra Bansi Singh and Others Vs. State of Bihar and Others*, , a large tract of land belonging to several persons was sought to be acquired, for the purpose of construction of houses and allotment to the people belonging to low and middle income group by issuing notification u/s 4 of the Act. About six years thereafter, the land belonging to a particular family was released by the Government which was held to be an act of favouritism and the release was held

to be bad and non est. Learned Judges of the apex Court held that the entire notification issued u/s 4 of the Act would be deemed to be valid and the land released to the family would form part of the acquisition as it initially did.

5. For the reasons recorded above and keeping in view the facts and circumstances of the present case, we allow the writ petition and direct the respondents to either acquire the land of other land owners which has been released and which originally formed part of the notification issued u/s 4 of the Act or to release the land of the petitioner as well. This should be done within two months from the date of receipt of a copy of this order. The petitioner shall have his costs which are assessed at Rs. 1000/-.