
(2008) 01 P&H CK 0190
In the Punjab And Haryana At Chandigarh

Dinesh Kumar and Others	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 22-01-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 16, 4, 5A, 6, 9

Citation : (2008) 01 P&H CK 0190

Hon'ble Judges : T.P.S. Mann, J;M.M. Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This order shall dispose of Civil Writ Petition Nos. 16391 of 2005 and 101 of 2006 which have been filed under Article 226 of the Constitution. The prayer made by the petitioners in both the petitions is for quashing notification and declaration issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (for brevity "the Act") on 11.10.2002 and 7.10.2003 (Annexures P.5 and P.8). A further prayer has also been made that the notices (Annexures P.10 to P. 12) issued u/s 9 of the Act for pronouncement of the award be set aside. The petitioners have claimed that they have constructed residential houses after the purchase of land upto RCC roof. In para 8 of the petition of CWP No. 16391 of 2005 details in respect of every petitioner have been given. It has been alleged that the land of other persons have been exempted from acquisition whereas the same benefit has not been extended to the petitioners.

2. In reply to the notice of motion, respondents have filed the written statement stating that the notifications under Sections 4 and 6 of the Act were issued on 11.10.2002 and 7.10.2003 respectively. The notification u/s 4 of the Act was also published in two daily newspapers having circulation in the area on 20.10.2002 and 17.10.2002 i.e. in "Karnal Times" (Hindi) and "Indian Express" (English). Proclamation of the notification was also made in the locality on 16.10.2002 and entry in that regard was also made in the rapat roznamcha vide rapat No. 159.

Likewise, the whole procedure was followed u/s 6 of the Act and publication was made in the gazette on 7.10.2003 and two local newspapers namely "The Times of India" (English) dated 11.10.2003 and "Punjab Kesri" (Hindi) dated 13.10.2003. The proclamation of the notification was also entered in the rapat roznamcha vide rapat No. 172 and proclamation was made in the locality on 18.10.2003. It has further been pointed out that the award was announced on 5.10.2005 and the possession of the land was handed over to the beneficiary department i.e. HUDA on the day of the award u/s 16 of the Act. However, no possession was given with regard to the area in respect of which there was a stay order operating. It has also been asserted that petitioner Nos. 1, 2, 3 and 5 filed their objections u/s 5A of the Act and it was submitted that there was no construction in khasra Nos. 11716/5360. No other petitioner filed objections within the period of limitation. The objections were heard on 15.9.2003 by the Land Acquisition Collector. It was on the receipt of report on the objections that respondents had taken the decision to issue a declaration u/s 6 of the Act. The respondents had taken a categorical stand that there existed residential construction of "B" class category of petitioner Nos. 1, 2, 3, 5 and 7 but there was no construction of any of the other petitioners at the time of issuance of notification u/s 4 of the Act. It has further been pointed out that petitioner No. 7 was not the owner of the land at the time of issuance of notification u/s 4 of the Act.

3. In order to resolve the issue about the nature of construction and the possibility of its exclusion from acquisition, the learned Addl. Advocate General Haryana on 1.10.2007 stated that the Land Acquisition Collector would himself visit and inspect the site and then file his own affidavit. Accordingly affidavit dated 24.11.2007 has been filed by Shri Devinder Kaushik, Land Acquisition Collector, Urban Estate Haryana, Panchkula. It has been stated that the residential construction of "B" Class existed in khasra No. 5310 of the petitioners namely Dinesh, Vidya Rani, Naresh Kumar (Petitioner Nos. 1, 2 and 3) Santosh and Ram Kumar (petitioner Nos. 5 and 7). It has further been submitted that the construction is scattered and not in blocks and that the house of kala (petitioner No. 6) is more than 355 feet away from the released land which has been constructed after 11.10.2002 which is later to the issuance of notification u/s 4 of the Act. The house is situated in isolation. The house of kala is situated more than 45 feet away from the house of Dinesh and the house of Ram Kumar is at a distance of about 180 feet from the house of Dinesh. The house of Santosh is situated about 50 feet away from the house of Dinesh. The vacant land which falls in between these houses stands already acquired vide award dated 5.10.2005. Another statement made on oath by the Land Acquisition Collector is that the petitioners are pleading for the release of their area on the basis that certain area was released in acquisition proceedings initiated under Sections 4 and 6 of the Act dated 13.1.1981 and 12.12.1983. The award in respect of the afore-mentioned proceedings was announced on 28.3.1985. Those released houses are also situated at a distance of 400 feet from the construction

belonging to award dated 5.10.2005. In para 6 of the affidavit it has been categorically stated as under:

That there existed no construction at the time of issuance of notification u/s 4 dated 11.10.2002 over the land except petitioner Nos. 1, 2, 3, 5 and 7 in CWP No. 16391/2005 and one shop/office comprising in khasra No. 5310 min of Sh. Rajiv petitioner No. 1 CWP No. 101/2006 and this shop is situated at the distance of about 125 feet from the construction already released and photographs have been submitted by the petitioners by the petitioners thereof in CWP Nos. 16391/2005 and 101 /2006.

4. Having heard learned Counsel for the parties and perusal of the pleadings, we are of the considered view that the structures belonging to petitioner Nos. 1, 2, 3, 5 and 7 are in such a scattered position that it is not possible to consider their case for exemption. Even otherwise the release of land from acquisition cannot be claimed as of right especially when the claim has been made on the basis of release made in the years 1983, 1984 and 1985. In that regard reliance may be placed on the judgements of Hon"ble Supreme Court in the cases of State of T.N. and Others Vs. L. Krishnan and Others, , Murari and Others Vs. Union of India (UOI) and Others, and Mandir Shree Sitaramji alias Shree Sitaram Bhandar Vs. Land Acquisition Collector and Others, . Moreover, the petition suffers from delay and laches because the notification u/s 4 of the Act was issued on 11.10.2002 and declaration u/s 6 of the Act was issued on 7.10.2003. C.W.P. No. 16391 of 2005 has been filed on 5.10.2005 and CWP No. 101 of 2006 was filed on 4.1.2006. There is no plausible explanation of the petitioners for approaching this Court after such a long delay. Moreover, exemption from acquisition cannot be claimed as a matter of right merely because the land of some other persons was exempted. The writ petitions are wholly without merit and accordingly the same are dismissed.

5. A copy of this order be placed on the file of CWP No. 101 of 2006.