

(2009) 03 P&H CK 0123
In the Punjab And Haryana At Chandigarh

Dr. Satvinder Dev and Another	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 16-03-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 17, 4, 5A, 6, 9

Citation : (2009) 154 PLR 209 : (2010) 8 RCR(Civil) 280

Hon'ble Judges : Jitendra Chauhan, J; Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This petition seeks quashing of notification dated 4.4.2008 u/s 4 and notification dated 9.5.2008 u/s 6 read with Section 17(2)(c) and (4) of the Land Acquisition Act, 1894 (for short "the Act").

2. Purpose of acquisition is setting up of a Water Feeder channel for the proposed Rajiv Gandhi Khedar Thermal Power Plant in Hisar District. The proceedings were initiated by the Executive Engineer vide letter dated 31.8.2007 and sanction was granted on 11.9.2007. Suggestion was made on 18.9.2007 by the Superintending Engineer for change of alignment which was accepted and finally impugned notifications were issued. The petitioners earlier filed CWP No. 3447 of 2008 challenging the acquisition. The State defended the acquisition by submitting that power station will generate 1200 MW electric energy which will serve public interest. Water supply through proposed feeder channel was essential for the project which was urgent and part of work had already been undertaken.

3. Vide order dated 3.7.2008, this Court dismissed the writ petition. It was observed:

...The alignment has been worked out by the technical experts and we are of the opinion that larger public interest must be kept in view over the private interest of the petitioners. The channel has to necessarily pass through the agricultural

lands falling in the way. Some loss of productivity or severance of fields if bound to occur. This can be adequately compensated through payment of compensation.

4. The petitioners filed a review application which was dismissed by this Court on 3.10.2008 rejecting challenge to the change in alignment.

5. After receiving notice u/s 9 of the Act, the petitioners filed the present petition, by and large reiterating the grounds which were earlier raised. Notice was issued on 17.11.2008. The petitioners had also filed SLP in the Hon''ble Supreme Court against order dated 3.7.2008 but the same was withdrawn on 25.11.2008 on the ground that this Court had issued notice in the present writ petition and liberty'' was granted to the petitioners to raise all the points in this petition.

6. We have heard learned Counsel for the parties.

7. Main contention raised on behalf of the petitioners is that there was no justification for invoking urgency clause. Sanction had been accorded on 11.9.2007 while the proceedings for acquisition were initiated by the notification dated 4.4.2008. There was no application of mind on the question whether requirement of filing objections u/s 5A was to be dispensed with, as per law laid down by the Hon''ble Supreme Court in Union of India (UOI) and Others Vs. Mukesh Hans etc., and reiterated in Essco Fabs Pvt. Ltd. and Another Vs. State of Haryana and Another, .

8. Second contention is that the change of alignment was malafide to save a colony to help some private persons which will adversely affect the flow of water and will increase the cost of the project, apart from prejudicing the rights of the petitioners. If an opportunity was given to the petitioners, they would have pointed out their objections for consideration of the competent authority.

9. Reference is made to Annexure P-9 which contains the reasons for the proposed change and it is submitted that reasons for the change mentioned in the said letter were not relevant apart from being not true as the real reason was to help the colonizer. The decision for acquisition of the land which was not covered by the original alignment is arbitrary.

10. An additional affidavit dated 26.2.2009 has been filed by the Executive Engineer, Water Services Division, Hissar, stating, inter-alia, as under:

5...It may be mentioned that in the Project Estimate the sanction was sought for a length of 65000 ft. of the proposed feeder channel. After the survey was conducted at the spot and keeping in view the contours of the land, the feeder channel was carved out which is in a length of 59100 ft. In para No. 8 of the written statement it has been categorically mentioned that the alignment has been approved by the competent authority after due survey of the area in question. It may be mentioned that it is the only single proposed and subsequently approved alignment by the Chief Engineer, BWS Unit, Panchkula, the competent authority. It is also stated in the reply filed on behalf of

Respondents No. 1 to 3 in para 8 that the alignment was approved by the competent authority on technical grounds.

6. That it may be stated that in laying the canal minors, sub minors feeder channel the slope ingredient for maximum velocity flow of water is to be kept in view as per decreasing contours of the land. It may be stated that in the case of the present feeder channel the slope ingredient has been maintained at 0.17 ft. per 1000 ft. In the proposed channel by diverting from RD 45010 of Bhadwar distributory the channel has been carved out upto RD 49] 80 and thereafter a bend has been given at RD 49975 from where the feeder channel proceeds a straight line upto RD 54160 and thereafter, a bend is given at RD 55000 and thereafter, it enters into the Thermal boundary. Thus, there is a difference of 10" from head level to tail level.

7. That it may be stated that in the Project Estimate the proposed length of the feeder channel was 65000 ft. for administrative approval whereas the feeder channel as per the ground survey is of 59100 ft and is as per contour level of the land. It may be stated that the contour level of the land beyond the Ludhiana-Hisar-Railway Line is on the higher side."

8...It may also be mentioned that the proposed feeder channel is to cross the National Highway No. 65 Hisar-Ambala-Chandigarh and a raised bridge to the extent of 9 ft height for free flow of water and for smooth running of traffic is to be constructed. Hence, a bend has been given along the alignment of the feeder channel. The averments that there were any malafide reasons or to favour any colonizer are totally false, concocted and without any basis. It may also be stated that slope in case of raised National Highway Bridges is to maintained as 1 ft: 50 ft. A sum of Rs. 1 crore has been deposited with the Department of PWD B&R. The feeder channel is being laid as per the ground realities after survey at the spot and only one alignment was proposed and approved by the competent authority.

11. The petitioners have also filed an affidavit dated 9.3.2009 reiterating their objection that the real reason was to help some colonizer and the reason put forward that it will shorten the length of the channel, was an afterthought.

12. Having regard to the object of acquisition mentioned in the impugned notification i.e. construction of feeder channel for proposed Rajiv Gandhi Feeder Thermal Project, we are unable to hold that there is no urgency and that the exercise of power is arbitrary. Though six months have been taken after sanction of the project, we cannot ignore the fact that some time is bound to be taken in decision making and ideal efficiency is rare to see. We may refer to the judgment of the Hon"ble Supreme Court in Deepak Pahwa and Others Vs. Lt. Governor of Delhi and Others, , wherein same view was taken.

13. It has been pointed out that application of mind is required for invoking the urgency clause and also for dispensing with the requirement of hearing objections as such decision affects the rights of the affected parties. No doubt

this is so. In the facts of the present case, there is no reason to presume absence of application of mind so as to interfere with, the invoking of urgency clause and dispensing with the requirement of hearing of objections.

14. As regards the change of alignment, the stand of the respondents is that in such matters there is bound to be tentative plan and final plan and difference of opinion till a decision is taken. No change in approved alignment has been made after final approval. It has also been stated that the reasons mentioned in Annexure P-9 are not the only reasons. In fact the respondents were shortening the channel due to technical requirement as explained in the affidavit referred to earlier.

15. This Court has earlier examined the matter and upheld the acquisition. Even after re-hearing, we do not find any ground to interfere with the invocation of urgency clause or with the change of alignment. 16 The petition is dismissed.