
(2007) 04 P&H CK 0096
In the Punjab And Haryana At Chandigarh

Dr. Vijay Khosla and Another	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 20-04-2007

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6

Citation : (2007) 147 PLR 592 : (2007) 3 RCR(Civil) 217

Hon'ble Judges : K.S. Garewal, J;Ajai Lamba, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.S. Garewal, J.—Petitioners are Dr. Vijay Kumar son of Mahesh Chand and Varinder Kumar son of Hans Raj. Their fathers were brothers and were owners of 136 kanals 13 marlas situated in Babbanpur, Tehsil Rattia District Fatehabad. In 1953, the Bhakra Main Line was to be constructed. The construction required a huge quantity of bricks. The Government decided to establish its own brick-kilns in villages adjoining the canal. In 1954 land belonging to the petitioners' fathers was acquired through notification issued u/s 6 of the Land Acquisition Act on March 26, 1954. The Collector made his award on March 4, 1955.

2. According to the petitioners lands of neighbouring villages was also acquired for setting up of the brick-kilns but after the fulfillment of the project the lands were returned to the owners on January 15, 1990. In one of the cases State of Haryana and Ors. v. Gurbachan Singh and Ors. Civil Appeal No. 5143 of 1997 decided by the Supreme Court of India on November 12, 2003 (copy of the judgment is annexed as Annexure P-4) the matter had gone up in appeal wherein it was held as under:

That brings us to the challenge against the decision of the High Court. It has been submitted that Standing Order 28 and paragraph 493 do not create any right in favour of any person to get back possession of the land. There can be no dispute with that proposition. However, at the same time, it is clear that the

Government, having taken a policy decision, must implement that policy decision fairly and uniformly. It is not open to the Government to discriminate between persons similarly situated. In this case it has been shown that the Government has acted on the policy decision and released land in favour of other persons. Nothing has been brought on record to show why the policy should not be applied in favour of the respondents. It is admitted that the land is no longer required by the Government. Thus, even though there may be no right in the respondents to claim back possession, we still do not think it fit to interfere as it has been clearly shown that the Government is acting discriminately. The appeal therefore, stands dismissed. There will be no order as to costs.

3. The petitioners herein had filed an application for restoration of the land on May 11, 1998 and the Executive Engineer recommended the release on May 20, 1999. As the land had been encroached by Telu Ram, Xen Tohana filed a civil suit under the Public Premises Act go get the land vacated. Superintending Engineer also recorded that the land was surplus but the court case was pending. This has been mentioned in detail in the communication addressed to the Chief Engineer on June 1, 1999 (Annexure P-9).

4. The respondents contested the petition on the basis of a detailed written-statement filed by Executive Engineer (Tohana Water Service Division) it was stated that the land had been acquired for setting up a brick-kiln for the Bhakra Main Line. The compensation was paid to the land owners. The land stood transferred to the Government on March 6, 1960. It was further stated that the land was being leased on yearly basis and now it had been encroached by Bugar Singh in respect of which a case was pending in the Court of Commissioner, Hisar. Furthermore, it was stated that Standing Order 28 had been amended on February 7, 1991. After the amendment the Government was required to ascertain from the Forest Department if they were willing to utilize the land for afforestation, before the process of release of the land could be started.

5. It was further contended that the Standing Order was again amended on September 11, 1996 and September 30, 2000. The position that now existed was that acquired lands could be disposed of in the following order of priority:

- (i) Utilization for other public purpose including afforestation and
- (ii) by sale through public auction.

The Government intended to dispose of the land in question in accordance with the above policy after getting it vacated from the encroacher.

6. It is true that earlier there was a provision for restoration of the land to the real owners but that provision stood amended in September, 2000 vide order Annexure R-2 as detailed above.

7. This Court had an occasion to consider Standing Order 28 issued by Financial Commissioner, Haryana regarding release of acquired land in Dalip Singh and Ors. v. State of Haryana and Ors. 2004(2) R.C.R. 176 P&H (D.B.), Dalip Singh's

case was also one in which land had been acquired for a brick-kiln and the petitioners had sought its release after the project was over. The Division Bench held as under-

In our considered view, Standing Order 28 relied upon by the 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 instruction which may deal with revesting title of property in the erstwhile land - free from all encumbrances, same has to be held as 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.

Reliance was also placed on Chandragauda Ramgonda Patil and Another Vs. State of Maharashtra and Others, and State of Kerala and others Vs. M. Bhaskaran Pillai and another, . In the former case return of unutilized land to the owners was declined. In the latter case unutilized land was directed to be put to public auction.

8. Consequently, we reach the conclusion that the acquired land even if not being used for the original purpose of brick-kiln, could in any case not be returned to the land owners on the basis of Standing Order 28. The Division Bench in Dalip Singh's case had gone to the extent of saying that the Government could refuse to retransfer land and the order could be defended by the Government on the ground that the Standing Order was not in accordance with the provisions of the Land Acquisition Act.

9. We find no merit in this petition. Petition is hereby dismissed. No costs.