
(1986) 02 P&H CK 0004
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5642 of 1984

Ghansham Dass Goyal and Others

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 25-02-1986

Acts Referred:

General Clauses Act, 1897 — Section 21
Haryana Urban Development Authority Act, 1977 — Section 6
Land Acquisition Act, 1894 — Section 4, 4(1), 5

Citation : AIR 1986 P&H 207 : (1988) 2 RCR(Criminal) 112

Hon'ble Judges : Prem Chand Jain, C.J.;V. Sehgal, J;I.S. Riwana, J

Bench : Full Bench

Judgement

Prem Chand Jain, C.J.—This judgment of ours would dispose of this and the connected petitions--C. W. P. Nos. 5627, 5628,5643,5678, 5679, of 1984 and 951, 935, 336, 69 and of 1985, as common question of law and fact arises in all these petitions. In order to appreciate the controversy, certain salient features of this petition be noticed:

Petitioners 1 to 5 are owners in possession of the land comprised in Killa Nos. 4618, 4618, 4620, 4630, 4639, 4640, 4641, 4642, 4643, 4644, 4645, 4646, and petitioners 6 and 7 are owners in possession of land comprised in Killa Nos. 4662 and 4663 4664 situated at Tosham Road, Hissar, in equal shares. It is averred that the Town and Country Planning Department, Urban Estates of the Government of Haryana, issued a notification dated 15th December, 1969 under S. 4 of the Land Acquisition Act (hereinafter referred to as the Act), for the acquisition of about 203 acres of land, including the land of the petitioners, for the alleged public purpose namely for the planned development of the area of village Hissar, but no action was taken by the Government and after the expiry of three years, the said notification lapsed. Thereafter another notification dated 28th May, 1974, was issued by the Government of Haryana, Department of Urban Estates, under S. 4 of the Act, for the alleged public purpose, namely, for the development and utilisation of land, as residential area, in the Urban Estate

to be set up in the area of village Hissar. The said notification was for acquisition of the land was taken by the State Government, the said second notification was also allowed to lapse after the expiry of three years.

2. It is next averred that on 1st September, 1977, again a notification under S. 4 of the Act was issued for the land measuring 202.16 acres, including the land of the petitioners, for the development and utilisation of land as residential area, under the Haryana Urban Development Authority Act, 1977 (hereinafter referred to as the Development Act,). After the issuance of the notification, no steps were taken by the respondents for completing the acquisition for some time and it was on 1st August, 1980 that a notification under S. 6 of the Act, acquiring 201.21 acres of land for the development and utilisation of land, as a residential area, was issued. the petitioners felt aggrieved and challenged the legality of the notifications issued under Ss. 4 and 6 of the Act, by filing C. W. P. No.43 of 1981 Ghansham Dass Goyal v. State of Haryana. The said writ petition was allowed by a learned single Judge of this Court on 19th February, 1982, and the impugned notifications were quashed. The judgment in the petition is reported as Ghansham Dass Goyal v. state of Haryana 1982Pun LJ 146.

3. It is further averred that the respondents thereafter again issued a notification under S. 4 of the Act, dated 23rd May, 1983, proposing to acquire 201.43 acres of land, for the purpose of development and utilisation of the land as residential area. A true copy of this notification is attached with the petition as Annex. P-1. The petitioners filed objections under S. 5A of the Act, against the proposed acquisition within the period allowed on several grounds. The petitioners did not hear anything from the appropriate authority about the disposal of their objections nor was any notice received by them of the hearing of the said objections. To the surprise of the petitioner, respondent 1 issued a notification dated 20th November, 1984, copy Annex. P-3 to the petition, under S. 6 of the Act, whereby the land measuring 159.75 acres was finally acquired and that notification includes the land of the petitioners also. It is the legality of the two notifications issued under Ss. 4 and 6 of the Act, dated 23rd May, 1983 and 20th November, 1984, which has been challenged in this and the connected petitions.

4. The petition came up for motion hearing on 21st December, 1984, when notice of motion was issued to the respondents. In spite of various adjournments granted no written statement was filed within the time allowed in this petition though written statements were filed in the other connected petitions. After hearing arguments the petition was admitted to hearing by a division Bench of 22nd March, 1985. The respondents filed an application--Civil Misc. No. 2499 of 1985, dated 9th September 1985, praying that they may be permitted to file written statement in this petition. The prayer made in the said Misc. application was allowed written statement. In the written statement, the factual position regarding the issuance of earlier notification dated 15th December, 1969, issued under S. 4 of the Act, it is averred that the same was allowed to lapse as it was decided by the Government at a later stage that the land which was the subject-

matter of the notification would be acquired after the Scheme for Urban Estate No. 2 had been executed. The respondents have further averred that the second notification issued under S. 4 of the Act, dated 28th May, 1974 was also allowed to lapse, as the Scheme for Urban Estate No 2, which was earlier likely to be completed, till then. Only 600 plots out of 31337plots could be sold under that Scheme. The factum of the quashing of the notifications, dated 1st September, 1977 and 12th August, 1980,published under Ss. 4 and 6 Act is not denied. It is admitted that the impugned notifications under Ss. 4 and 6 have been issued. It is emphatically averred that all the formalities were fully complied with. The objections filed by the petitioners under S. 5A of the Act were duly considered and the petitioners were afforded opportunity of hearing. The publication in the locality was properly made and the impugned notifications do not suffer from any infirmity.

5. The main arguments were advanced by Shri Jagan Nath Kaushal, Senior Advocate learned counsel for the petitioners. His arguments were adopted by the learned counsel appearing for the other petitioners. Wherever in a petition any independent argument has been advanced, the same shall be dealt with separately.

6. The only contention put forth before us by Shri Jagan Nath Kaushal, Senior Advocate, learned counsel for the petitioners, was that there was no bona fide need for acquiring the land in question and the impugned notifications had been issued for a collateral purpose of pegging down the price. A great emphasis was laid by Shri Kaushal, learned counsel on the judgment of brother I.S. Tiwana, J. in Ghansham Dass Goyal's case (1982 Pun LJ 146 supra)in the earlier petition, wherein the impugned notifications issued on 1st September 1977 and 12th august, 1980 under Ss. 4 and 6 of the Act, respectively, had been quashed. According to the learned counsel, once the notifications issued with regard to the land in dispute had been quashed, no notification subsequently could validly be issued. What was emphasised by Shri Kaushal, learned Senior Advocate, during his arguments was that the Government has been issuing notifications since the year 1969, that the conduct of the state Government shows that there was no bona fide need for acquiring the land in dispute, that in case there had been a genuine need, then the notifications would not have been allowed to lapse twice, that the whole intention of issuing successive notifications was to peg down the prices of the land in dispute and that the purpose of acquisition was not bone fide and the action of the Government amounts to abuse of power.

7. On the other hand, it was submitted by Shri H. L. Sibal, learned Advocate General, Haryana, that the theory of pegging down the price which has resulted in the quashing of the notifications in some judicial decisions is not at all applicable to the facts of the case in hand, that in this case the market price would be determined on the basis of the price that would be prevalent on the date of issue of the notification under S. 4 of the Act, i.e. 23rd May, 1983, that the earlier two notifications were rightly allowed to lapse as Scheme for Urban

EstateNo.2 had not been completed, that the plea that successive notifications cannot be issued with regard to particular land is untenable, that the quashing of the notification issued under Ss. 4 and 6 the act on 1st September, 1977 and 12th August, 1980, again has no bearing or relevance on the facts of the case in hand nor the findings recorded in that judgment in any way affect the legality and validity of the impugned notifications, that the legality and validity of the impugned notification has to be independently judged and in case it is found out that the need of the Government is bona fide, then all other factors on which reliance has been placed by the petitioners have no meaning nor on the basis of those factors, the impugned notifications, if otherwise valid and legal, can be struck down.

8. I would first deal with the most emphatic and eloquent argument of Shri J. N. Kaushal that once notifications issued on 1st September, 1977 and 12th August, 1980, under Ss. 4 and 6 of the act, respectively with regard to the land in dispute had been quashed, no subsequent notifications could be issued in respect of that land again. Before adverting to this argument, reference may be made to the judgment of the learned single Judge for understanding the correct factual position. In the earlier petition before the learned single Judge, two grounds were pleaded by the petitioners, viz:--

i) There has been no compliance of the provisions of sub-section (1) of S. 4 of the Act, inasmuch as the substance of the notification has not been published in accordance with the procedure prescribed, in the locality concerned, simultaneously with its publication in the gazette; and

ii) There was no bona fide need for acquiring the land in question and the notifications had been issued for a collateral purpose of pegging down the prices to the date of the notification under S. 4 of the Act and this amounted to abuse of power.

9. On the first point, learned single Judge held that there was no compliance of the provisions of sub-sec.(1) of s. 4 of the Act and which by itself renders the entire acquisition proceedings void. On the second point the argument advanced and the finding recorded are as follows:--

"In support of the contention mentioned at no.(ii) the learned counsel for the petitioners points out that earlier to the publication of the of the impugned notification, Annex. P. 3 the respondent authorities had issued two similar notifications concerning the suit land including the land of the petitioners on December 23, 1969 (Annex. P. 1) and May 28, 1974 (Annex. P. 2) but allowed these notification to lapse as notification under S. 6 of the Act following of three years. The learned counsel maintains that all this was done with a view to pegging down the prices of the acquired land to the dates of those notifications, there being no actual need for acquisition and the present impugned notification is also one of the types of those earlier notifications. They further point out that the time the respondent authorities have taken--almost three years--for

publishing the impugned notification under S. 6 of the Act, also indicated that there was no actual need for this acquisition. under S. 6 of the Act, also indicates that there was no actual need for this acquisition. According to the learned counsel the subsequent delay of more than three months in the issuance of the notices under S. 9 of the Act after the publication of the impugned notification under S. 6, also supports the above noted conclusions of theirs. In a nutshell their submission is that the whole action of the respondent authorities in delaying the payment of compensation for the acquisition is an arbitrary exercise of power cannot be countenanced by the law Courts in the administration of justice. According to them, the respondent authorities are under an obligation to complete the acquisition proceedings within a reasonable time and without any justifiable compensation for their land. They point out that the principle of awarding compensation is based on the right of the owner to be indemnified by the community for whose benefit he is being deprived of the property against his will. Compensation would essentially mean a just equivalent of what the owner has been deprived of. They alleged that if the payment of compensation is to be delayed for years without any justifiable reason, the action of the respondent authorities has to be set aside. In support of this stand of theirs, they squarely rely on an earlier judgment of mine in Satish Kapur and Another Vs. State of Haryana and Another, . In that judgment I have considered this aspect of the matter in detail and for all the reasons recorded therein I find that the action of the respondent authorities in delaying the payment of compensation for more than four years subsequent to the publication of the impugned notification under S. 4 of the Act has been rendered arbitrary and thus deserves to be quashed. This is more so in the light of the earlier two notification Annexures P.1 and P.2 published under S. 4 of the Act, which notifications too had the effect of freezing the market price of the suit land. It resulted in two ways: firstly, the market price of the land was to be determined on the date of the notification under S. 4(1) of the Act and secondly, any outlay acquired commenced, made or affected without the sanction of the Collector after the publication of the notification under S. 4(1) of the Act was to be ignored in determining the compensation in view of S. 24 (seventhly) of the Act. Thus, it is patent that the petitioners was deprived of his right to deal with or improve this land in any manner since the year 1969 when the first notification under S. 4 of the Act was published. This being the effect of these two earlier notifications necessarily means that what is going to be paid to the petitioner--when it is going to be paid is not yet certain--would virtually be the price of the land in the year 1969."

10. Shri Jagan Nath Kaushal, learned counsel drew our pointed attention to the aforesaid observations and contended that if in the earlier petition two notification, which were allowed to lapse, could have had the effect of freezing the market price of the acquired land, then on the same reasoning the impugned notifications are liable to be struck down as the petitioners would virtually be paid the price of the land as it prevailed in the year 1969.

11. After giving my thoughtful consideration to the entire matter, I find no merit

in the contention of the learned counsel. As is evident from the plea put forth on behalf of the State, the notification issued under S. 4 of the Act on 15th December, 1969 and 23rd December, 1969 respectively were allowed to lapse by the Government for the reason that the Scheme for Urban Estate No.2 had not been executed. This uncontroverted fact, to my mind, was a valid reason for allowing the notifications to lapse had been issued in shadowing anticipation of some vague unspecified need which might arise in future. The notifications were issued for a valid public purpose, namely, the development and utilisation of land, as residential area. The petitioners have not challenged the validity of the notification on the ground that the purpose for which the land was sought to be acquired was not a public purpose. Those notifications, as earlier observed, were allowed to lapse due to non-completion of the Scheme for Urban Estate No.2 and this reason was beyond the control of the State. If the carrying out of a public purpose for which did not stand accomplished, then there was no other alternative for the state but to have allowed its notifications to lapse.

12. As I read the judgment of my learned brother I.S. Tiwana, J., I find that the notifications of the years 1977 and 1980 were liable to be quashed on the basis of the finding on point No.1 that there was no compliance of the provisions of sub-section (1) of s. 4 of the Act.

But it appears that arguments were advanced and decision was invited on point No.(ii) I find that abandonment of the two notifications. delay in issuing notification under S. 6 of the Act, i. e. a few days before the expiry of three years and so valid explanation was forthcoming from the State for the long inaction in finalizing the acquisition proceedings In my view the observations of my learned brother I. S. Tiwana, J cannot be construed to mean that if earlier notification are allowed to lapse and are Quashed to that land at no time a fresh notification can be issued.

13. Further, the theory that successive notifications cannot be issued with regard to a particular land and that this fact alone would go a long way in proving the colourable exercise of power by the State cannot be accepted. The power of the State to issue successive notifications under S. 4 in a locality is well recognised. In the State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others, , it has been observed thus:--

"It is urged however that where the land is required for a small project and the area is not large the government may be able to make up its mind once for all what land it needs, but where as in the present case, land is required for a large project requiring a large area of land government may not be able to make up its nothing to prevent the Government from issuing another notification under S. 4 followed by a notification under S. 6. As we have said before, the government's power to acquire land in a particular locality is not exhausted by issuing one notification under S. 6. The interpretation which has commended itself to us therefore does not deprive the government of the power to acquire more land from the same locality if later on it thinks that more land than what has been

declared under S. 6 is needed. It can proceed to do so by a fresh notification under S. 4(1) and a fresh declaration under S. 6. Such a procedure would in our opinion be fair to all concerned; be fair to government where the prices have fallen and it will be fair to those whose land is being acquired where the prices have risen. Therefore as we read these three sections we are of opinion that they are integrally and intimately connected and the intention of the legislature was that one notification under S. 4(1) should be followed by survey under S. 4(2) and objections under S. 5A and thereafter one declaration under S. 6. There is nothing in Ss. 4, 5A and 6 which supports the construction urged on behalf of the appellant and in any case it seems to us that the construction which commends itself to use and which has been accepted by the High Court is a fair construction keeping in view the background to which we have referred. Even if two constructions were possible, which we think is not so, we would be inclined to the construction which has commended itself to us because that construction does not restrict the power of the government to acquire land at any time it deems fit to do and at the same time words fairly towards persons whose land is to be acquired compulsorily."

14. There is no gainsaying as it has been authoritatively held in *State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others*, that it is always open to the Government to rescind a notification under S. 4 or under S. 6 by virtue of the provisions of S. 21 of the General Clauses Act. Now if the Government can rescind a notification and can also issue another notification and its power to acquire land in particular locality is not exhausted by issuing one notification under s. 4(1) followed by a notification under S. 6, I fail to understand as to how on the ground that earlier notifications have been allowed to lapse for valid reason or are quashed by a Court, the impugned notifications can be declared legally invalid. In my view there can be no escape from the conclusion that each time the validity and legality of particular notification has to be seen and judged independently. If the contention of Shri J. N. Kaushal, learned senior Advocate, is accepted, then very anomalous situation may arise that for all times to come a particular area cannot be acquired though it may be genuinely needed for a public purpose and the entire development of the area and the Schemes of the Government would come to a standstill. What has to be seen is the real motivation behind the acquisition and if it is found out that the acquisition is not for any specific public purpose and its expeditious execution, but is a mere ruse to peg down the prices by an issuance of notification under s. 4 of the Act and thus holding the citizens to ransom for years at whim and caprice of the State to finalize the acquisition proceedings when it chooses, then this would be an important factor for establishing the colourable exercise of power. But in the instant case, the acquisition is for a specific public purpose, the validity of which has not been challenged, namely, the development and utilization of land, as residential area and the Government has proceeded to acquire the land by issuing a fresh notification under S. 4 (1) of the Act and a fresh declaration under S. 6. The procedure now followed by the Government does not appear to be

unfair as the land owners whose land is being acquired would be paid the price of the land as it existed on the date of the issue of the notification under S. 4 of the Act, i. e. 23rd May, 1983. In the circumstances of the case, it would not be fair to plead that the price that is virtually paid to the landowners would be of the year 1969, when the first notification under S. 4 of the Act was issued. In this view of the matter, I find that the impugned notifications do not suffer from any legal infirmity.

15. Mr. Jaswant Jain, learned counsel, appearing in C. W. P. Nos. 5627 and 5628 of 1984 sought to raise an additional argument that a discriminatory treatment has been meted out to the petitioners, inasmuch as the land beneath the houses of the petitioners is being acquired, while the land of some other persons on which houses are standing, has been left out. In support of his contention reference was made to the averments made in para 14 of the writ petition, which read as under:

"That to the surprise of the petitioners, the respondents authority issued yet another notification dated 20-11-1984 under S. 6 of the Act whereby the measuring 159.75 acres was finally acquired and the said land included the lands/ house of the petitioners. It is pertinent to mention here that the houses of Bhagwat Sarup and that of wife of Mani Ram Mittal bearing the same Khasra No. i. e. 4693 Min. where the house of the petitioners are situated and where the house of the petitioners are situated and where these houses belonging to the petitioners which are in between the houses of Bhagwat Sarup and Mani Ram Mittal have been left from acquisition. Similarly, Tara Chand and Balbir's houses of the petitioners have been left from acquisition. Similarly land bearing Khasra Nos. 4698, 4702, 4703 and 4704 belonging to the Chief Minister, Haryana, Chaudhary Bhajan Lal and his relations and other co-sharers have been left from acquisition while issuing notifications under S. 6 of the Act. The aforesaid Khasra Nos. were excluded while issuing notification under S. 6 of the Act and thus the petitioners have been discriminated as against those whose houses/lands have been left from acquisition while issuing notification under S. 6 of the Act. Moreover, the notification under S.6 of the Act has been issued without considering the objections filed by the petitioners under S. 5A of the Act and without affording them any opportunity of hearing. A copy of the notification issued under S. 6 of the Act, dt. 20th of November, P/7 of this writ petitions."

16. The reply to the aforesaid para is in the following terms:--

"That in reply to para No.14 of the writ petition it is submitted that the land and the houses which could be adjusted in the layout plan were adjusted and released from acquisition proceedings. The averment of the petitioners that houses belonging to them are in between the houses of Bhagwat Sarup and Mani Ram Mittal is misconceived, hence denied being incorrect As already submitted, there is no residential house belonging to the petitioners on the spot. Rather there is only factory shed and boundary walls. It is further submitted that Khasra Nos. 4702, 4703, and 4704-min were excluded from the notification under S. 6

of the Act as these Khasra Nos. were situate close to the Municipal and H. U. D. A. disposal works and so it was thought advisable to drop acquisition proceedings qua this particular land, as nobody would like to be allotted residential plots near the disposal works, because of its foul and nasty smell. Due to this reason even 4703 and 4704-min have also not been included in the notification issued under s. 6 of the Act. As regards Khasra Nos. 4698 and 4704, it is submitted that parts of these Khasra Nos. are also being acquired by the respondent. As regards the residential house of Sh. Balbir Singh and Sh. Tare Chand these were located on Delhi Road and about one furlong away from the land of the petitioners. The residential houses of these two persons were left out of acquisition being a standard construction and these could be adjusted in the proposed layout plan. The averments of the petitioners that they have been issued without considering the objection under S. 5A of Act are highly misconceived, hence denied being incorrect."

17. A bare perusal of the reply shows that absolutely a vague averment has been made and that no valid foundation has been laid for holding that the petitioners have in any way been discriminated.

18. Similar argument was raised by Mr. Bajaj, learned counsel in C. W. P. Nos. 5643,5678, 5679 and 5680. His contention is also liable to be rejected for the reason which has weighed with us in rejecting the contention of Mr. Jaswant Jain.

19. No other point arises for consideration

20. For the reasons recorded above, the petitions fail and are dismissed, but in the circumstances of the case we make no order as to costs

21. Petitions dismissed.