
(2010) 02 P&H CK 0107
In the Punjab And Haryana At Chandigarh

Gian Chand and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 09-02-2010

Acts Referred:

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

Citation : (2010) 158 PLR 56

Hon'ble Judges : M.M. Kumar, J;Jitendra Chauhan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.M. Kumar, J.—The instant order shall dispose of C.W.P. No. 2244 of 1991, C.W.P. 9650 of 1992 and C.W.P. No. 9651 of 1992.

2. The dispute in all the three cases is with regard to the acquisition of the land of the petitioners which is sought to be acquired by issuing notification dated 25.01.1990 u/s 4 of the Land Acquisition Act, 1894 (for brevity, the "Act") and declaration dated 22.01.1991 issued u/s 6 of the Act (Annexure P10). The land belonging to the 31 petitioners measuring 2.86 acres is sought to be acquired although it was released from acquisition when the whole land belonging to them was acquired. It is appropriate to mention that the petitioner belong to four joint Hindu undivided family which consists of 20 major members and 11 minor members. Their total holding of 65 acres situated in Taraf Rajputan and Taraf Afgan, Panipat was acquired for utilization and development of Sectors 11 and 12, Part-I and Part-II and Sector 25, Panipat. In that regard, two notifications dated 30.08.1977 and 15.12.1982 were issued, a copy of the notification dated 15.12.1982 has been placed on record (Annexure PI). Feeling aggrieved, the petitioners have represented for release of their land on 08.03.1985 (Annexure P2) to the respondent-State. By taking into consideration that the family of the petitioners consists of over 30 members, the State had released 22 kanals 17 marlas of land for construction of their houses. The letter dated 12.03.1986, releasing land, sent to District Town Planner, Karnal, has been placed on record

(Annexure P3) and detail of the land has also been placed on record (Annexure P4). According to paragraph No. 2 of the release order, the Government decided to release the land so as to enable the land owners to use this area for construction of their house because the whole land of these applicants had already been acquired.

3. Despite the fact that the land measuring 22 kanals 17 marlas was released which was again sought to be utilized. The petitioners, apprehending the danger of acquisition and utilization of their land, filed C.W.P. No. 7015 of 1987 which was allowed on 11.07.1988. A Division Bench of this Court held that the land was released and it could not be acquired once an order dated 12.03.1986 (Annexure P3) was passed. The Division Bench also clarified that the land in fact stood released from acquisition. Even the SLP filed in Hon'ble the Supreme Court against aforesaid judgment, was also dismissed on 14.12.1989 (Annexure P6).

4. The petitioners claimed that they have spent more than Rs. 3 lacs in filling-up of the site and Rs. 2 lacs were spent for construction of boundary wall. They have further claimed that a sum of Rs. 2.76, 924.40/- has been paid as development charges and Rs. 1841.40/- as built up area charges to the Municipal Committee, Panipat. The building plan has also been sanctioned by the Municipal Committee on 25.01.1990 (Annexure P7). It is in these circumstances that the petitioners have approached this Court challenging proceeding initiated on 25.01.1990 and 22.01.1991 which are notifications issued under Sections 4 & 6 of the Act. The petitioners have also filed objection u/s 5A of the Act (Annexure P9). In para 4 of the written statement, it is admitted that land measuring 22 kanals 17 marlas was left out of 65 acres of total land belonging to the petitioner. The release of the land was affirmed by the Division Bench of this Court by issuing a declaration dated 11.07.1988 when CWP No. 7015 of 1987 was allowed. In Paragraph No. 6, the respondent have asserted that on this spot, there is one boundary wall and a room in existence which have been constructed by the petitioners after dismissal of the Special Leave Petition. The claim of the petitioner is that huge amount on construction have been spent which has been denied. It has been asserted that the land is vacant and could be acquired for a public purpose.

5. When the petition came up for motion hearing on 18.02.1991, dispossession of the petitioners was stayed and the petitioners were restrained from raising any construction. The petition was eventually admitted on 03.05.1991 and the stay order was allowed to continue.

6. Mr. R.K. Malik, learned Senior counsel, has argued that once total land of the petitioner was acquired and the land in question measuring 22 kanals 17 marlas was released by exercising power u/s 4 of the Act, then it could not be once again subjected to acquisition. In that regard, he has placed reliance on a judgment of this Court rendered in the case of Roshan Lal and Others Vs. State of Haryana and Others, . An additional argument has been raised in C.W.P. No. 9650 of 1992 by submitting that the release order dated 18.03.1993 (Annexure

P9) and 03.03.1997 (Annexure P10) clearly shows discrimination because the land of the other members adjoining to the acquired land has not been released.

7. As per directions of this Court issued on 16.12.2009, Sh. T.C. Gupta, Director Urban Estate Department, Haryana, has filed an affidavit and stated that the adjoining land belonging to Sarvshri Jagdish Singh, Ranbir Singh, Sarbir Singh and Mukesh Kumar falling in khasra No. 4700 Min, 4701 Min, 4702 Min, 4703 Min, 4705 Min and 4726 Min in Sector 16-17, Hissar was released because construction had been raised by them before issuance of notification u/s 4 of the Act. The construction was approved/compounded by the Municipal Committee, Hissar on 23.11.1990. With regard to other khasra numbers belonging to Sarvshri K.C. Khurana and Sudama Aggarwal, the affidavit reveals that five shops of "A" Class construction had been built on the land bearing khasra No. 4698/2 Min and accordingly the land of Sarvshri K.C. Khurana and Sudama Aggarwal were released on 03.03.1997. With regard to land belonging to the petitioner in CWP No. 9650 of 1992, it has been stated that the land was lying vacant and, therefore, it could not be released.

8. Mr. Malik, counsel for the petitioners, has also elaborated his argument of discrimination by referring to the averments made in CWP No. 5626 and 5627 of 1984 where the respondent-State has taken a categorical stand that the land belonging to the petitioner is being released as it is situated close to the Municipal Committee and HUDA disposal works because no body would like residential plots to be allotted near the disposal works as it would give foul smell.

9. Mr. Kamal Sehgal, learned Addl.A.G., Haryana, has argued that there is no bar on the acquisition of land afresh if the land is acquired for a public purpose. In support of his submission, learned Counsel has placed reliance on a Division Bench judgment of this Court rendered in M/s Balwant Singh Sher Singh Rice Mills v. State of Haryana (2007) 148 P.L.R. 359 where the judgment of this Court rendered in Roshan Lal's case (supra) has been distinguished. It has also been submitted that allegation of discrimination has been completely dispelled as the released land had construction before issuance of notification u/s 4 of the Act.

10. After hearing learned Counsel for the parties and perusal of record with their able assistance, we are of the considered view that these three petitions deserve to be allowed. It is not disputed that total land of 60 acres belonging to the petitioners was acquired and a conscious decision was taken on 12.03.1986 for release of the land so as to enable the petitioners to construct their houses on these land. The aforesaid factual position is evident from a perusal of Para 2 of the letter which reads as under:

2. On this application, Govt. has decided to release the land which is left towards nala side after leaving the road so that landowners can use this for making houses on this land, as the whole land of these applicants has already been acquired. The situation of this land has temporarily shown with red line in the attached site plan.

11. Thereafter, the effort of the respondent-State to continue with the acquisition was also thwarted when the petitioners succeeded in persuading a Division Bench of this Court in declaring that the land measuring 22 kanals 17 marlas stood released in their favour (Annexure P5). The aforesaid order of the Division Bench notices the factual position that the entire land of the petitioners measuring 60 acres was acquired and 22 kanals and 17 marlas land was left out in order to enable the big family to construct their houses. Once the aforesaid factual position is clear, then it would be highly unequitable for the respondent to once again resort to acquiring the land of the petitioners. They have also built boundary wall and might have spend some expenditure over development of this land. The possession of the land continues to be with the petitioners albeit under the orders of this Court. In Roshan Lal's case (supra), it has been observed that once the land has been released for raising construction of houses, then the principle of estoppel would be attracted as has been laid down by Hon''ble the Supreme Court in Ghaziabad Sheromani Sahkari Avas Samiti Ltd. and another etc. Vs. State of U.P. and others etc., . The petition was accordingly allowed.

12. The argument of Mr.Sehgal that the judgment of the Division Bench in M/s Bal-want Singh Sher Singh Rice Mills case''s, has diluted the judgment in Roshan Lal's case (supra), would not come to the rescue of the respondent. The judgment rendered in the case of Roshan Lal would be fully applicable and a perusal of Para Nos. 42, 43 and 44 would show that the Division Bench judgment rendered in M/s Balwant Singh Sher Singh Rice Mills case''s has nothing to do with the judgment rendered in Roshan Lal's case (supra). In M/s Balwant Singh Sher Singh Rice Mills case, unauthorized construction was raised by six of the petitioners on the acquired land which was to be developed as a planned industrial estate. No promise for release of the land for raising construction was shown to have been proved. Therefore, we have no hesitation to reject the arguments advanced by Mr. Sehgal.

13. For the reasons aforementioned, all the three petitions are allowed and notifications issued u/s 4 & 6 of the Act are hereby quashed.