
(1997) 04 P&H CK 0159
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3048 of 1992

Gulshan Kumar and Another	Vs	APPELLANT
State of Haryana and Another		RESPONDENT

Date of Decision : 22-04-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4

Citation : (1997) 116 PLR 765 : (1997) 3 RCR(Civil) 505

Hon'ble Judges : V.K. Bali, J

Bench : Single Bench

Advocate : V.K. Jain and J.L. Malhotra, for the Appellant; H.S. Hooda, A.G. and S.M. Sharma, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

V.K. Bali, J.—Gulshan Kumar and another through present petition filed by them under Article 226 of the Constitution of India seek writ in the nature of certiorari so as to quash notification dated February 23, 1989 issued u/s 4 of the Land Acquisition Act as also the follow-up declaration u/s 6 of the Act dated February 22, 1990 (Annexures P-1 and P-2 respectively) vide which their land was acquired for a public purpose, namely, for the development and utilization of the land as residential and commercial for Sector 17, Panipat under the Haryana Urban Development Authority Act, 1977.

2. In support of the petition, it has, inter-alia been pleaded that the petitioners were owners of two plots which were purchased by them vide two registered sale deeds dated August 11, 1987. Each plot measures 3 biswas and are situated within the revenue estate of Patti Insar and comprised in Khasra No. 3762/2 min. Immediately after purchasing the plots, petitioners raised substantial construction of "A" class. A site plan, Annexure P-3, has been annexed with the petition to show that these two plots are within red line and the construction is shown in brown colour. The construction is said to have been completed after the

purchase of land and much prior to issuance of notification u/s 4 of the Act. The plots of the petitioners are stated to be part and parcel of 100 plots of Arya Colony, Panipat which has been fully developed as modern colony. Practically, 80% of the plots were having construction much prior to the issuance of notification u/s 4 of the Act. After notification u/s 4 was issued, petitioners filed their objections u/s 5-A of the Act and pleaded therein that their "A" class construction should be left from the array of acquisition. When the objection filed by the petitioners brought no tangible results the present writ was brought in this Court.

3. V.K. Jain, learned Senior Advocate, appearing on behalf of the petitioners contends that it has been a consistent policy of the State of Haryana so as not to acquire "A" class constructed area wherein construction came to be raised prior to issuance of the notification u/s 4 of the Act. Being true to its policy, the Government did not acquire the constructed area and in fact left out the constructed area of the petitioners also but a small open space in between the two houses of petitioners has been acquired which can not be put to any meaningful use. Mr. Jain also contends that a Committee was constituted so as to opine as to whether some area out of the constructed area was to be left or not but under the rules, the Land Acquisition Collector, who had to form such an opinion. This later contention of the learned counsel was rejected by me while dealing with the matter in Ram Kishan and Others Vs. State of Haryana and Another, .

4. The matter has been contested on behalf of the respondents but in paragraph-3 of the written statement it has been pleaded that the construction area alongwith proportionate area measuring three biswas has been left out of acquisition by the Government. The authenticity of site plan, Annexure P-3, has not been questioned. The specific averment of the petitioners that development of the colony has to be integrated and not segregated, has not been denied.

5. I have heard learned counsel for the parties and gone through the records of the case. A bare look at Annexure P-3, Authenticity of which, as referred to above has not been questioned would reveal that but for some vacant area on the northern side of the construction of the petitioners, the construction of houses of the petitioners, is sandwiched by construction on both sides. In other words, there is construction on the southern side of the house and vacant area of the petitioners. This constructed area, shown in blue colour towards northern side of the houses of petitioners has also not been acquired. As mentioned above, two houses of the petitioners too have also not been acquired. In between these two houses, there is some area which, according to Mr. Jain, measures three biswas only. The contention of Mr. Jain appears to be right that this small area of three biswas, perhaps, cannot be put to any meaningful use by the respondents. It may be mentioned at this stage that not only the constructed area of the petitioners has been left out but proportionate area measuring three biswas has also been left. If the remaining vacant area of the petitioners can not

be put to any use, it will be an exercise in futility to acquire this small area. It may be true that on the ground that acquired land can not be put to any meaningful use by the State, the acquisition proceedings may not be liable to be quashed, yet while settling equities between the parties, the Court can relieve a citizen of hardship that he is facing particularly when, while so settling the equities, the State does not suffer at all. In the present case, in addition to suffering of petitioner, the State also stands to gain. Acquisition of small vacant area would certainly entail payment of compensation to the petitioners and yet the land shall not be put to any meaningful use by the State. Mr. Sharma, learned counsel appearing for the State was not in a position to state as to how this vacant area can at all be used by the Government for the purpose for which it has been acquired. That being the admitted situation, it is a fit case where this Court, while exercising its jurisdiction under Article 226 of the Constitution of India, must intervene to redress the difficulties of a citizen.

6. For the reasons recorded above, this petition is allowed and the notification issued u/s 4 with regard to vacant area as described above and which is also well made out from site plan, Annexure P-3, is quashed. Parties are, however, left to bear their own costs.