

(2010) 03 P&H CK 0181

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10779 of 2009

Gurbax Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 16-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4, 6
National Highways Act, 1956 — Section 3A(1), 3D(1)

Citation : (2010) 5 RCR(Civil) 3

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

Judgement

M.M.Kumar, J.

1 The petitioners" have approached this Court by filing the instant petition under Article 226 of the Constitution seeking a mandamus directing the respondents to release the amount of compensation in respect of the acquired land belonging to the petitioners, which according to them was acquired vide notifications dated 24.12.2004 and 11.7.2005, issued under Sections 34(1) and 3D(1) of the National Highways Act, 1956 (for brevity,"the Act), respectively.

2 The grievance of the petitioners is that they were owner of land measuring 22 Kanals 11 Marias comprised in Khasra Nos. 55//1 (014), 53//2 (413), 55//3 (613), 53//4 (317), 53//5 (2 1) and 53//6 (413), situated at Village Chak Ala Baksh, Tehsil Mukerian, District Hoshiarpur, as per jamabandi for the year 200607 (PI). On 24.12.2004, a notification under Section 3A(1) of the Act was issued by the Government of India, which was published in the newspapers on 21.1.2005, showing its intention to acquire the land falling under the revenue estate of 37 villages in Dasua Sub Division, including the aforementioned land belonging to the petitioners. Thereafter, on 11.7.2005, a declaration under Section 3D(1) of the Act was issued acquiring the land. The petitioners have claimed that by virtue of the aforementioned notifications their total land measuring 22 Kanals 11 Marias was acquired by the Union of Indiarespondent No. 1. According to the petitioners the amount of compensation in respect of the

acquired land has been disbursed to the other land owners of different villages but they have been deprived of the same on the pretext that a road already exists on the land in question. On 4.6.2009, the petitioners also sent a demand justice notice to the respondents but the Sub Divisional Magistratecum Land Acquisition Collector, Mukerianrespondent No. 4 has failed to disburse the amount of compensation.

3 In response to the notice of motion, respondent Nos. 1 and 2 initially filed a short reply dated 15.12.2009 asserting that the petitioners have not approached this Court with clean hands and suppressed material facts. It has been stated that a road is already in existence since 1952 over the land belonging to the petitioners and the compensation was paid to them long ago at the time of acquisition. However, due to some mistake the mutation entry in the revenue record was not carried out. But the land had already vested in the Government. On 27.1.2010, a detailed written statement was filed on behalf of respondent Nos. 1 and 2 wherein it has been asserted that as per Register of Mutation of Mukerian, Hadbast No. 262 and 264, page No. 29, Tehsil Dasuya, District Hoshiarpur, in pursuance of notification bearing No. 95.90, dated 3.7.1952, notification No. 2059R, dated 10.4.1952, and Award No. 26, dated 13.8.1953, a sum of Rs. 36,828 and 11 Annas and Rs. 6065 and 8 Annas was paid for the acquired land (R6). However, respondent Nos. 1 and 2 showed their inability to respond in a proper manner for want of proper information and record.

4 In the rejoinder dated 15.2.2010 to the written statement filed by respondent Nos. 1 and 2, the petitioners denied the averments and categorically pleaded that the land in question was never acquired earlier by the Government. It has been submitted that as per the entries in the revenue record they are owner of the land in question since 1960/61 and the names of their predecessors in interest have been shown continuously in the column of ownership. It has also been pointed out that the record placed on record by respondent Nos. 1 and 2 in the shape of Annexure R6 pertains to Village Tikhawal whereas the land in question belonging to the petitioners falls in village Chak Ala Baksh, which falls in Tehsil Dasuya (now Tehsil Mukerian), District Hoshiarpur. Thus, it has been claimed by the petitioners that the respondents cannot deny them compensation in respect of the acquired land.

5 On 23.2.2010, when the matter came up for consideration before this Court, on the oral request made by the learned counsel for the petitioners, the State of Punjab through Secretary, PWD (B&R), Civil Secretariat, Chandigarh, was impleaded as respondent No. 5. The issue also arose whether the land described by the petitioners has ever been acquired earlier or not. The necessity of deciding the said issue has arisen because the Union of India as well as the Project Director, National Highway Authority of India respondent Nos. 1 and 2 in their short reply and written statement have asserted that the land in question stood acquired way back in the year 1952 whereas the petitioners denied the same in their rejoinder. Therefore, with a view to ascertain the correct position,

the added respondent No. 5 was directed to file the written statement clarifying the factual position.

6 In pursuance to the above direction, an affidavit of Shri Surjit Singh Dhiman, Under Secretary to Government of Punjab, Department of Public Works (B&R), Chandigarh, dated 7.3.2010, has been filed. In para 5 of the affidavit a comparative chart of the old khasra numbers as per Missal Haquiat for the year 196061 and the corresponding new khasra numbers has been prepared. It has been asserted that as per the record the Government of Punjab, Department of Public Works, Building and Roads Branch, had issued a notification No. 3747R, dated 23.5.1951 (R5/1), under Section 4 of the Land Acquisition Act, 1894 (for brevity, "the 1894 Act"), which was published in the Punjab Government Gazette dated 18.6.1951, for acquiring land measuring 62.77 acres in different villages in Tehsil Dasuya, District Hoshiarpur, including Village Chak Alia Baksh, for construction of a metalled road from Dasuya to Mukerian (Part of National Highway No. 1A). On 15.2.1952, a declaration bearing No. 724R was made under Section 6 of the 1894 Act acquiring 52.82 acres of land in different villages of Tehsil Dasuya, District Hoshiarpur, out of which area measuring 89 Kanals 1 Maria belongs to village Chak Alia Baksh. The said declaration was published in the Punjab Government Gazette dated 22.2.1952 (R 5/2). In this acquisition a major chunk of land belonging to the petitioners was also acquired. It has further been disclosed that on 25.3.1955, the then Land Acquisition Officer had announced the award and, inter alia, awarded a sum of Rs. 5933/15/9 in respect of acquired land of village Chak Alia Baksh.

7 Thereafter, on 15.10.1956 another notification bearing No. 9716R was issued under Section 4 of the 1894 Act for constructing National Highway No. 1A (Section Dasuya to Mukerian), which was followed by declaration bearing No. 9717R, dated 15.10.1956, acquiring 0.37 acres of land in Village Chak Alla Baksh (R5/3 & R5/4 respectively). On 10.2.1958, the then Land Acquisition Officer, Jalandhar, announced the award pertaining to this acquisition. The remaining land belonging to the petitioners was acquired under this acquisition.

8 It has further been stated that after acquisition of the land a road was constructed, which is being used by the public at large. However, the Department of Public Works, Building and Roads, inadvertently could not get the acquired land mutated in their name. The mistake has been rectified now and process has been initiated by submitting an Application No. E 3/2476, dated 5.3.2010, to the Deputy Commissioner, Hoshiarpur, for correcting the mutation entries in the revenue record. It has also been pointed out that the record concerning the aforementioned acquisition was consigned to the record room way back on 12.11.1955 and 15.10.1958. However, the original files were burnt in the fire, which broke out in the Judicial Record Room, Hoshiar pur, on 16.6.1998. A certificate to this effect has also been placed on record (R 5/7).

9 Still further it has been stated that while determining the compensation, it came to the notice of the Competent Authority designated under the Act i.e.

Land Acquisition Collector cum Sub Divisional Magistrate, Mukerian, that the land belonging to the petitioners, measuring 22 Kanals 11 Marias, had already been acquired by virtue of notifications dated 23.5.1951, 15.2.1952 and 15.10.1956 (R5/1 to R5/4), therefore, while announcing the award he has reduced the compensation amount of the said area from the determined amount, while passing order of determination of compensation dated 23.4.2008 (R5/10).

10 At the hearing, the petitioners filed a rejoinder to the affidavit dated 7.3.2010, reasserting that their land was never acquired in the year 1952. They again placed reliance on the entries made in the jamabandi for the year 2006-2007 in this regard which shows that they are owners of land measuring 22 Kanals 11 Marias. The petitioners have denied the averments made in the affidavit dated 7.3.2010 by pleading that the respondents have failed to place on record copy of the award dated 10.2.1958, showing that compensation had been awarded in respect of the land belonging to them.

11 We have heard learned counsel for the parties at length and also gone through the record with their able assistance. From the pleadings of the parties it is clear in unambiguous terms that the land belonging to the petitioners stood acquired long ago, vide notifications dated 23.5.1951, 15.2.1952 and 15.10.1956 (R5/1 to R5/4). Merely because the name of the petitioners still exists in the revenue record in the column of ownership and the khasra numbers along with their names appearing in the notifications dated 24.12.2004 and 11.7.2005, do not confer any legal right upon them to claim compensation again. In para 11 of the affidavit dated 7.3.2010, respondent No. 5 has given a consolidated chart showing the details of the acquisition of the land belonging to the petitioners i.e. present khasra numbers, old khasra numbers, khasra numbers mentioned in the notifications dated 15.2.1952 and 26.10.1956, which falsify the claim made by the petitioners in the instant petition that their land was never acquired earlier. The aforementioned chart is reproduced as under:

No. Khasra at present Area and kind of land Old No. according to Field book, Missal Haqiat for the year 1960-61 No. Khasra mentioned in Notification No. 724R dated 15.02.1952 No. Khasra mentioned in Notification No. 9717R dated 26.10.1956
6 Remarks 53/1 014 6/1 min. 6 Already Acquired 53/2 413 Gair Mumkin Road. 243 min, 244 min, 323 min, 323 min, 875/361/1 874/361/1 243244322323875/361, 874/361 Already Acquired 53/3 613 Gair Mumkin Road. 15/1, 16/1, 909/719, 53/1, 55/1, 56/1, 1016/68/1 1019/71, 172 15/1, 16, 909/719, 53, 55, 56, 1019/71, 172 1016/68 Already Acquired 53/4 317 Gair Mumkin Road. 366 min, 1034/365 min, 366 min, 368 min 394, 395 min 1034/365, 366, 368, 494, 495 Already Acquired 494 495 has erroneously been notified instead of 394, 395 53/5 21 Gair Mumkin Road. 1028/92, 93, 96/1, 910/114116, 517 (according to filed book 117) 96, 910/114116, 1128/92, 03, 117 Already Acquired 1128 erroneously been notified instead of 1028 53/6 413 Gair Mumkin Road. 932/542, 540, 547 min, 548/1 min, 549/1 min, 561 min, 562/1 min. 547, 932/542, 549, 548, 561, 562, 540 Already Acquired

12 Moreover, a report of the Deputy Commissioner, Hoshiarpur, dated 2.3.2010, has also been placed on record along with the affidavit dated 7.3.2010 (R 5/7). A perusal of the said report shows that as per Entry No. 21 of the year 1953 54, of Missal Band Register of District Hoshiarpur for the period 195354 to 1960, maintained in the office of Land Acquisition Officer, P.W.D. (B&R), Jalandhar, a sum of Rs. 5933/15/9 has been mentioned as awarded amount of compensation. A sum of Rs. 689/8/9 was disbursed for acquiring the land of village Chak Alla Baksh out of the awarded amount of compensation of Rs. 5933/15/9. The undisbursed" amount of Rs. 5244/7/ was placed in "Revenue Deposit" for making further payment to the land owners who did not present themselves to receive payments at the time of announcement of award.

13 We are of the considered view that the petitioners have made a false claim in the instant petition. The conduct of the petitioners is contumacious and the averments made by them are false. Those who invoke the writ jurisdiction of this Court by making incorrect and false statement, they do so at their own risk and peril. It is well settled that the extra ordinary equitable jurisdiction of this Court cannot be exercised in favour of a person who approaches the Court with soiled hands by making false statements. In this regard we draw support from a Full Bench judgment of this Court in the case of Chiranji Lal v. Financial Commissioner, Haryana, 1978 PLR 582.

14 The insistence of the petitioners on their averments made in the petition, then in replication as also in the rejoinder to the affidavit filed by respondent No. 5, would have led us to order prosecution for setting up a false claim in respect of the land which stands already acquired. However, to rustic background, we have considered it appropriate to take a lenient view and impose a fine of Rs. 20,000/ on them. Accordingly, the writ petition is dismissed with a fine of Rs, 20,000/, which may be paid to the respondent State in the form of a draft within a period of two months from the date of receipt of a certified copy of this order. If the amount is not paid then the respondent State would be at liberty to move appropriate application apprising the Court with regard to noncompliance of the order.