
(1996) 07 P&H CK 0078
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2910 of 1990

Har Kishan Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 04-07-1996

Acts Referred:

Citation : (1997) 1 RCR(Civil) 185

Hon'ble Judges : N.K.Kapoor, J

Advocate : Mr. O.P. Sharma, Advocate., Advocates for appearing Parties

Judgement

N.K. Kapoor, J.—Petitioners seek issuance of a writ in the nature of certiorari quashing notification under section 4 of the Land Acquisition Act (for short 'the Act') dated 30.1.1989, Annexure P2, and notification under section 6 of the Act dated 25.1.1990, Annexure P4, with a further direction to the respondents Nos. 1 and 2 to release the land of the petitioners from acquisition or for issuance of any other writ, order or direction as Court may deem proper in the facts and circumstances of the case. By way of interim relief, it was prayed that the petitioners be not dispossessed from the land during the pendency of the writ petition.

2. It is the case of the petitioners that they are owners of land comprised in Killa Nos. 20 and 21 Rectangle No. 52 in the revenue estate of village Sukhrali. Upon a portion of this land, there is a pucca house in which the petitioners are living with their families. Besides it, there exist samadhis of forefathers of the petitioners and also a temple where Hindu deities are installed and the petitioners worship there. It was further stated in the petition that earlier to the present notification which are being impugned, respondents Nos. 1 and 2 acquired land measuring 322.40 acres of land in village Sukhrali vide notifications issued under sections 4 and 6 of the Land Acquisition Act, 1894, dated 27th August, 1987 and 22nd August, 1988 respectively. In the earlier acquisition, few Khasra Nos. of Rectangle No. 52 were acquired. Feeling aggrieved by the acquisition of the land, the petitioners challenged the same by

way of Civil Writ Petition No. 8692 of 1988 titled as Harikishan Singh and others v. State of Haryana claiming release of path leading to the house of the petitioners which writ petition was admitted and pending adjudication. It is during the pendency of the earlier acquisition that the present notification has been issued even acquiring the land which was earlier left vide notifications of the year 1987 and 1988. Objections filed by the petitioners under section 5A of the Act too have been dismissed for no valid reason thus compelling the petitioners to approach the Court for an appropriate relief.

3. Writ petition was admitted vide order dated March 9, 1990 and the dispossession of the petitioners was also stayed. Written statement has been filed by respondent No. 2 wherein various material averments made by the petitioners have been replied/controverted. By way of preliminary objection, it has been stated that the petitioners were granted an opportunity of hearing in respect of objections under section 5A of the Land Acquisition Act and so it has been wrongly stated that no such opportunity was afforded. As a matter of record, in fact, the petitioners remained absent on the date of hearing of objections and otherwise the objections were found to be devoid of substance and hence dismissed. Secondly, it has been stated that award has already been announced in respect of the impugned notification and so the writ petition is not maintainable. As regards the petitioners' allegation with regard to existence of a Mandir/Samadhi, it has been stated that the construction upon the land is of 'C' class and appears to have been raised quite recently.

4. Respondent No. 3 in its written statement too has raised preliminary objection with regard to the maintainability of the writ petition. On merit, it has been stated that as per copy of jamabandi for the year 1985-86, land comprised in Rectangle No. 52, Khasra Nos. 20 and 21 in all measuring 10 Kanals 16 Marlas is shown to be 'chahi' category of land. No construction whatsoever is reflected in the jamabandi for the year 1985-86 and it is only in Kharif 1986 that four boundary walls, houses and Samadhi have been shown. This itself reflects that the construction raised is quite near to the date of acquisition vide earlier notification of the year 1987. Other averments made in the petition have been replied/controverted.

5. The case was earlier heard on 23.8.1995 and the judgment was reserved. However, it came to light that the connected matter is subject matter of adjudication in LPA No. 427 of 1985 pertaining to the acquisition of the adjacent land vide notification dated 27.8.1987 under section 4 of the Act and so this writ petition was adjourned to await the decision of the aforesaid L.P.A. and thus the present writ petition remained on the board. With a view to get the matter finally decided, Sh. Nidesh Gupta, Advocate counsel for respondent No. 3 brought to the notice of the Court that the interim stay prayed by the petitioner in the pending LPA has been declined. He further stated that the LPA Bench, in fact, directed the parties to get the present writ petition expeditiously decided as the same has some bearing on the point which is to be determined in the LPA.

Accordingly, the case was again taken up for final disposal.

6. Learned counsel for the petitioner after briefly referring to the various factual aspects which have been duly highlighted in the writ petition argued that there exists a house, a temple and Samadhi of the petitioners' forefathers which could not be acquired under the law and the present acquisition is in respect of the land upon which construction exists at the spot and a path leading to the house. Otherwise too, the petitioners have been discriminated as the land of similarly situated person like respondent No. 3 has been excluded from the acquisition and so the writ petition deserves to be allowed to the extent of the claim laid by the petitioners.

7. Learned counsel for the State, on the other hand, argued that the present writ petition is devoid of any substance and deserves to be dismissed with costs. According to the counsel, the Court while admitting earlier petition No. 8692 of 1988 specifically noticed the plea raised by the petitioner. The order of the Bench at motion stage reads as, ``seeks a path and in the alternative offers, the land for acquisition. Notice of motion for January 12, 1989. The respondents may not obstruct the passage of the petitioner till further orders. November 3, 1988''. The writ petition No. 8692 of 1988 when came up for final hearing the same was ordered to be dismissed on the short ground that even the passage and the land adjacent to now has been acquired vide notification under section 4 of the Land Acquisition Act issued on 25.1.1990. Thus, it is in the light of the specific plea raised by the petitioner that even path and the remaining land has now been acquired by the present acquisition proceedings. Otherwise too, the plea of existence of samadhi, temple and houses has been simply raised as to stall the acquisition proceedings.

8. Learned counsel for respondent No. 3 while adopting the arguments advanced by the State further argued that the present writ petition is nothing but an attempt to stall the acquisition proceedings. Dilating upon the precise contention raised by the petitioner in the earlier writ petition, the counsel argued that a path was claimed and in the alternative petitioner offered even the land for acquisition. To meet the objection raised by the petitioner, the government thought it appropriate to acquire this small piece of land too in the subsequent acquisition so as toward off any possible objection on this ground. Otherwise too, the plea that there exists a house, samadhi and temple is indeed a case of fabrication of evidence. According to the counsel, as per jamabandi for the year 1985-86, the land comprised in Rectangle No. 52 Killa No. 20 and 21 is shown to be `chahi" i.e. is being irrigated. It is only in the copy of khasra girdawari of Kharif 1986 that there exists an entry with regard to a samadhi and a house. It is significant to note that earlier notification is of the year 1987. Otherwise too, it is well settled that entries in the jamabandi carry presumption of truth and has to be preferred visavis entries in the khasra girdawari. In any case, as the petitioner in the first instance offered his land for acquisition, cannot now make grievance of the same. It was thus prayed that the petition be dismissed.

9. I have heard learned counsel for the parties, perused the relevant documents referred to by the respective counsel and have also gone through the averments made by the petitioner in the earlier writ petition No. 8692 of 1988 as well as the contentions raised by the counsel for the petitioners at the time of motion hearing on November 3, 1988. Admittedly, a big chunk of land was acquired by the State of Haryana vide notification issued under section 4 of the Act on August 27, 1987. While challenging the aforesaid notification, it was contended by the petitioner that either a path be permitted or in the alternative even the remaining land which had been left be also acquired. So the matter has to be examined in the light of this specific averment of the petitioner. Vide notification dated 25.1.1990, land now subject matter of adjudication too has been acquired. With this, necessity of a path to the land of the petitioner consequently has become nonexistent. The other plea of the petitioners that there exists a house, temple and samadhi too does not appeal to reason; firstly, as per entries in the copy of jamabandi for the year 1985-86 whole of the land comprised in Rectangle No. 52, Killa Nos. 20 and 21 is shown to be 'Chahi' in nature. At best, such a construction appears to have been raised just before or near the date of earlier acquisition of the year 1987. So it is reasonable to infer that the construction even if raised is quite recent. According to the answering respondents, the quality of construction is of 'C' category. Taking a cumulative view of the matter, at best the petitioner is entitled to be compensated on account of any existing structure but that cannot be taken to be a valid ground to quash notification issued in terms of the Act. Similarly, I do not find much merit in the contention of the counsel for the petitioners that they have been discriminated. Thus, I find no merit in the present writ petition and dismiss the same. No order as to costs