

(2008) 12 P&H CK 0055
In the Punjab And Haryana At Chandigarh

Hari Chand and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 22-12-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 4

Citation : (2009) 3 PLR 644 : (2009) 4 RCR(Civil) 467

Hon'ble Judges : M.M. Kumar, J;K. Kannan, J

Bench : Division Bench

Judgement

M.M. Kumar, J.—This order shall dispose of a batch of 10 petitions raising common question of law. The facts in all the cases are similar. For putting the controversy in its proper perspective, we refer the facts from C.W.P. No. 17463 of 2007. The petitioners Hari Chand, Roshan Lal and Jagdish Kumar are petitioners No. 1, 2 and 3 and are the owners of the land. A notification u/s 4 of the Land Acquisition Act, 1894 (for brevity "the Act") was issued on 13.03.2003 (P-1) recording the satisfaction that the land was required for a public purpose of development of residential and commercial Sectors 49 and 50, Gurgaon as shown in the development plan under the Haryana Urban Development Authority Act, 1977 (for brevity "the 1977 Act"). All the three petitioners filed their objections as per the stand taken by the respondent in para 2 of their written statement. They personally appeared before the Land Acquisition Collector and were given opportunity of personal hearing, as envisaged by Section 5-A of the Act. After hearing objections, the Collector sent its report to the government for taking further decision. A joint Inspection Committee also sent its report to the government. It was thereafter that the government decided to issue a declaration u/s 6 of the Act on 2.3.2004 (P-3). Even an award was announced on 20.12.2006 (P-17).

2. It is pertinent to mention that petitioner No. 4, which is one of the group of companies of Eras Group of Companies, had entered into a Collaboration Agreement with petitioners No. 1 to 3 on 7.3.2004 (P-4) which envisaged the

development of the land by constructing a Residential Group Housing Scheme after obtaining requisite license and approval of plans from the competent authorities. It has been claimed that on 9.2.2004, petitioners No. 1 to 3 also handed over the vacant physical possession of their land to petitioner No. 4 (P-5) and they also executed irrevocable General and Special Power of Attornies (P-6 and P-7 respectively) on 10.02.2004 in favour of petitioner No. 4. The colony was proposed to be developed by petitioner No. 4 in an area measuring 29.14 acres.

3. The case of the petitioners is that they filed an application for grant of licence to establish cyber-Park colony. They deposited the requisite license fee and even the deficient fee for grant of licence with the third respondent -The Director, Town and Country Planning. When the matter was not being decided and the proceedings for land acquisition have been initiated already, the petitioner and their consortium filed 10 separate petitions bearing C.W.P. Nos. 11517 to 11526 of 2004, which were disposed of vide order dated 16.07.2005 (P-8). The afore-mentioned order was passed on the statement made by the Advocate General, Haryana, showing their readiness to constitute a High Powered Committee which was to examine the grievance of the petitioners. In accordance with the statement of learned Advocate General, the petitioners were to file a detailed representation listing their grievances along with supporting documents which was to be considered by the High Powered Committee. The afore-mentioned offer made by the Advocate General was accepted by the petitioners. The counsel for the parties had agreed that the period for which dispossession of the petitioners has remained stayed, was not to be taken into consideration for pronouncement of the award u/s 11-A of the Act by construing it against the petitioners. The other land owners raised no objection with regard to the pronouncement of the award.

4. In pursuance of the afore-mentioned agreed order passed by this Court, the High Powered Committee granted an opportunity of hearing on the representation filed by them on 3.2.2006. It is appropriate to mention that in the representation parties have suggested the plan to establish Cyber-Park Colony. The petitioners were represented through their counsel. The High Powered Committee rejected their representation on the ground that their application for grant of licence for Group Housing had already been rejected and the appeal filed against those orders of the Director were dismissed by the Appellate Authority. Even the subsequent representation was also rejected by the Government. In pursuance of the afore-mentioned decision of the High Powered Committee, the Director also rejected the application of the petitioners vide order dated 12/14.5.2008. The Director in his order has noticed that the application for grant of licence has been made for the same land for which group housing licence was earlier refused which would amount to denying acquisition of land for the purpose of development by HUDA. The more significant issue raised by the Director is that the government has limited the area in each sector maximum to the extent of 5% of the sector area for I.T. Activities which has been done with a view to protect the living environment in residential sectors. It is pertinent to

notice that the petitioners and its consortium company had put forward the ground of exemption to establish Cyber Park Colony. The Director also noticed that the land has been acquired and rejected their application for grant of licence to establish Cyber Park Colony, especially in view of the fact that the Electronic and Technology Department, which is the nodal department to examine such projects, had also rejected the request of the applicants.

5. In their written statement the respondents have pointed out that petitioner No. 4 had submitted an application on behalf of M/s R.J.S. Finance and Investment (P) Limited and the individual land owners to set up a Cyber-Park Colony on 4.9.2006 for an area measuring 14.759 acres. A similar application was filed on 17.10.2006 in respect of an area measuring 14.381 acres on behalf of petitioner No. 4 and individual land owners. After examining the application, it was found that their earlier application for grant of licence for Group Housing Colony for the same land was rejected on the following two grounds:

- a) only 20% of the sector area of the residential sector could be utilized for setting up of a Group Housing Colony and in Sector 49, 20% of the sector area was already utilized;
- b) the area in respect of which licence has been applied stood notified under Sections 4 and 6 of the Act.

6. The afore-mentioned order was passed by the Director on 14.09.2004. Even an appeal preferred by them u/s 19 of the Haryana Development and Regulation of Urban Areas Act, 1975 (for brevity "the 1975 Act") was dismissed by the Financial Commissioner and Principal Secretary to Government of Haryana by a detailed order on 12.09.2005 (R-1). All these facts concerning their first application have not been disclosed by the petitioners in their petition. Then they had approached this Court. It was thereafter that the High Powered Committee also examined their request and the minutes recorded on 14.02.2007 (R-3) shows that the land stood already acquired by HUDA and their application for Group Housing project in respect of the same land stood rejected earlier.

7. After the decision of the Director, again an appeal was filed u/s 19 of the 1975 Act before the Financial Commissioner and Secretary which has been dismissed upholding the reasoning adopted by the Director. The operative part of the order passed by the Director on 29.9.2008 (Mark. X) reads thus:

I have heard the arguments and gone through the record of the case. A perusal of the bare facts indicates that the application for grant of licence has been made for the same land for which group housing licence was refused. Hence, it is a clear cut case of denying acquisition of land by HUDA. Moreover the perusal of the facts also shows that the Govt. has limited the area in each sector maximum to the extent of 5% of the sector area for IT activities. This was done with a view to protect the living environment in residential sectors. The fresh request for grant of licence for I.T. park through two applications i.e. for 14.759 acres and 14.381 acres for the same land is an effort on the part of the applicant to save to

the same land from acquisition. Moreover, the perusal of the facts reveals that the application for grant of licence has been made on 4.9.2006 and 17.10.2006 respectively whereas the Govt. has issued directions to limit the licensing for I.T. Park/Cyber Park in residential sectors upto 5% of the Sector area only w.e.f. 7.8.2006. The total area of Sector 49 is 586 acres whereas 29.30 acres of the Sector 49 is within the 5% limit. The Department has already approved/granted licence for 17.598 acres of land in Sector 49 to the applicants who have made applications prior to the present applicant. The area available for consideration is only 11.70 acres against applied area of 14.79 acres and 14.381 acres. The applicants do not have ownership of this land also. The other contentions raised by petitioners are devoid of any merit and beyond the jurisdiction of this Court being irrelevant as not related to the grounds of rejection order dated 14.5.2008.

The previous licence application of the applicant regarding grant of licence for group Housing for the same applied land has been rejected by Director, Town and Country Planning, Haryana and the appeal filed by the appellants has also been rejected by the then appellate authority. Hence, this present appeal is not maintainable on this ground also. Therefore, the orders passed by Director, Town and Country Planning, Haryana are as per the provisions of Haryana Development and Regulation of Urban Areas Act, 1975 and Rules made thereunder besides also the policies of the Department.

Keeping in view the detailed reasons given above, the appeal deserves to be dismissed being devoid of merit. I order accordingly. Order had been reserved in this case after conclusion of arguments. The same is being pronounced today. May be conveyed to the parties.

8. We have heard leaned counsel for the parties at a considerable length and are of the view that no interference of this Court would be warranted.

9. In the present case notifications under Sections 4 and 6 have been issued on 3.3.2003 and 2.3.2004 respectively. It is well established that after notification u/s 4, no transfer of land is permissible. For the afore-mentioned proposition, reliance may be placed on various judgments of the Hon'ble Supreme Court in cases of Gian Chand Vs. Gopala and Others, , Mahavir and Another Vs. Rural Institute, Amravati and Another, and U.P. Jal Nigam, Lucknow through its Chairman and another Vs. M/s. Kalra Properties (P) Ltd. Lucknow and others, . It would be appropriate to extract the following observations of the Supreme Court in part 2 of the judgment in Gian Chand's case (supra), which reads thus:

Admittedly, since the notification u/s 4(1) of the Land Acquisition Act was already published, the question arises whether the appellant could get a sale deed executed and in its absence whether he is entitled to obtain refund of earnest money paid under the agreement. On publication of notification u/s 4(1) of the Act, though it is not conclusive till declaration u/s 6 was published, the owner of the land is interdicted to deal with the land as a free agent and to create encumbrances thereon or to deal with the land in any manner detrimental for

public purpose. Therefore, though notification u/s 4(1) is not conclusive, the owner of the land is prevented from encumbering the land in that such encumbrance does not bind the Government. It ultimately, declaration u/s 6 is published and acquisition is proceeded with, it would be conclusive evidence of public purpose and the Government is entitled to have the land acquired and take possession free from all encumbrances. Any sale transaction or encumbrances created by the owner after the publication of notification u/s 4(1) would therefore be void and does not bind the State.

(emphasis added).

10. In Gian Chand's case, the question which fell for consideration was whether a proposed vendor was entitled to obtain refund of his earnest money from the proposed vendor in pursuance to the terms of the Contract in the event of acquisition of the land by government? The question has been answered with the observations that the owner was not entitled to create any encumbrances on the land which would ever include entering into a collaboration agreement. However, the question has been answered more pronouncing in the U.P. Jal Nigam 's case (Lucknow) and in that regard, the following observation of their Lordships would be relevant:

It is settled law that after the notification u/s 4(1) is published in the Gazette any encumbrance created by the owner does not bind the Government and the purchaser does not acquire any title to the property. In this case, notification u/s 4(1) was published on 24.3.1973, possession of the land admittedly was taken on 5.7.1973 and pumping station house was constructed. No doubt, declaration u/s 6 was published later on 8.7.1973. Admittedly power u/s 17(4) was exercised dispensing with the inquiry u/s 5-A and on service of the notice u/s 9 possession was taken, since urgency was acute, viz., pumping station house was to be constructed to drain out flood water. Consequently, the land stood vested in the State u/s 17(2) free from all encumbrances. It is further settled law that once possession is taken, by operation of Section 17(2), the land vests in the State free from all encumbrances unless a notification u/s 48(1) is published in the Gazette withdrawing from the acquisition. Section 11-A, as amended by Act 68 of 1984, therefore, does not apply and the acquisition does not lapse. The notification u/s 4(1) and the declaration u/s 6, therefore, remain valid. There is no other provision under the Act to have the acquired land divested, unless, as stated earlier, notification u/s 48(1) was published and the possession is surrendered pursuant thereto. That apart, since M/s Kalra Properties, respondent had purchased the land after the notification u/s 4(1) was published, its sale is void against the State and it acquired no right, title or interest in the land. Consequently, it is settled law that it cannot challenge the validity of the notification or the regularity in taking possession of the land before publication of the declaration u/s 6 was published." (emphasis added)

11. In view of the afore-mentioned enunciation of law, the Collaboration Agreement entered into by petitioner No. 4 with the land owners-petitioners No.

1 to 3, were not sustainable and on that basis, petitioner No. 4 could not have applied for issuance of any licence. A perusal of the collaboration Agreement would show that the same has been entered into by petitioner No. 4 on 7.2.2004 when notification u/s 4 had already been issued on 3.3.2003. Firstly, petitioners No. 1 to 3 were not entitled to encumber the land by creating any fresh covenants and secondly, petitioner No. 4 would have no locus standi in the eyes of law to seek release of land and permission to establish a Cyber Park Colony or a Group Housing Colony. Moreover, Section 3 of the 1975 Act makes it patently clear that the applicant who is applying for licence has to be the owner. Respondent No. 4 has no locus standi to apply for issuance of licence as respondent No. 4 cannot be regarded as owner merely on the basis of collaboration Agreement.

12. The question, then, is now an application on behalf of petitioners No. 1 to 3 for the purpose of granting licence to establish a Cyber Park Colony or for a Group Housing Colony would be maintainable. There are score of requirements u/s 3 of the 1975 Act, which petitioners No. 1 to 3 would not be able to fulfill. Section 3 of the 1975 Act reads thus:

Section 3: Application for licence: (1) Any owner desiring to convert his land into a colony shall, unless exempted u/s 9, makes an application to the Director, for the grant of a licence to develop a colony in the prescribed form and pay for it such fee and conversion charges as may be prescribed. The application shall be accompanied by an income tax clearance certificate:

Provided that if the conversion charges have already been paid under the provisions of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (41 of 1963), no such charges shall be payable under this section.

(2) On receipt of the application under Sub-section (1), the Director shall, among other things, enquire into the following matters, namely:

- (a) title to the land;
- (b) extent and situation of the land;
- (c) capacity to develop a colony;
- (d) the layout of a colony;
- (e) plan regarding the development works to be executed in a colony and
- (f) Conformity of the development schemes of the colony land to those of the neighbouring areas.

(3) After the enquiry under Sub-section (2), the Director, by an order in writing, shall:

- (i) grant a licence in the prescribed form, after the applicant has furnished to the Director a bank guarantee equal to twenty five per centum of the estimated cost

of development works in case of area of land divided or proposed to be divided into plots or flats for residential, commercial or industrial purposes and a bank guarantee equal to thirty seven and a half per centum of the estimate cost of development works in case of cyber city or cyber park purposes as certified by the director and has undertaken:

(i) to enter into an agreement in the prescribed form for carrying out and completion of development works in accordance with the licence granted;

(ii) to pay proportionate development charges if the external development works defined in Clause (g) of Section 2 are to be carried out by the Government or any other local authority. The proportion in which and the time within which, such payment is to be made, shall be determined by the Director;

(iii) the responsibility for the maintainable and upkeep of all roads, open spaces, public parks and public health services for a period of five years from the date of issue of the completion certificate unless earlier relieved of this responsibility and thereupon to transfer all such roads, open spaces, public parks and public health services free of cost to the Government or the local authority, as the case may be;

(iv) to construct at his own cost, or get constructed by any other institution or individual at its cost, schools, hospitals, community centers and other community buildings on the lands set apart for this purpose, or to transfer to the Government at any time, if so desired by the Government, free of cost the land set apart for schools, hospitals, community centers and community buildings, in which case the Government shall be at liberty to transfer such land to any person or institution including a local authority on such terms and conditions as it may deem fit;

(v) to permit the Director or any other officer authorized by him to inspect the execution of the layout and the development works in the colony and to carry out all directions issued by him for ensuring due compliance of the execution of the layout and development works in accordance with the licence granted:

Provided that the Director, having regard to the amenities which exist or are proposed to be provided in the locality, is of the opinion that it is not necessary or possible to provide one or more such amenities, may exempt the licence from providing such amenities either wholly or in part;

(b) refuse to grant a licence, by means of sneaking order, after affording the applicant an opportunity of being heard.

13. The petitioners No. 1 to 3 would not be able to fulfill the first requirement of Section 3(i) because they cannot be regarded as full fledged owner after notification u/s 4 of the Act has been issued and a licence in their favour cannot be granted unless in law they are able to argue that they possess title to the land in question. In this context, the policy of the government to release a part of the land proposed to be acquired, has to be considered. Once, the land, is proposed

to be acquired u/s 4 of the Act for development of a sector in an urban area, the rates of the land in the surrounding area and in respect of the land which is not acquired ordinarily goes up, because the area in the vicinity of such land is likely to be highly developed. Once that is the situation with regard to area which has not been notified u/s 4 and 6; it does not require much imagination to conclude that the area which is to be released from acquisition after notification issued u/s 4 would become highly precious. In releasing of land in bulk to colonizers, the State or its agencies are not advancing the public purpose for which the land is acquired but would be doing dis-service to the society by releasing the land either in favour of a colonizer or a private individual to advance their private interest. We are of the firm view that such a course is not available to the respondent-State. The discretion for releasing the land from acquisition is available, for example, in favour of those persons who had built houses, factories etc. before issuance of notification u/s 4 but no discretion could be exercised by granting licence to those who have entered into any Collaboration Agreement with the land owner after issuance of notification u/s 4. It would amount to colourable exercise of power because the land which is sought to be acquired for a public purpose would be released to advance a private purpose which is against the basic principles of eminent domain. Therefore, we cannot accept the policy of the State Government to grant licence in favour of a colonizer who had no interest in the land before issuance of notification u/s 4 and who has acquired interest either by entering into a collaboration Agreement or by acquiring ownership rights after notification u/s 4 of the Act. The respondent-State would not be entitled to issue license to land owners or a private colonizer, after issuance of notification u/s 4.

14. Even otherwise the reasons given by the third respondent-Director as well as the Appellate Authority-Financial Commissioner and Principal Secretary to Government, Haryana are unexceptionable. It has been highlighted that earlier the petitioner has filed an application for grant of licence in respect of the same land for the purpose of Group Housing Scheme and the same was rejected on 14.09.2004 by a detailed order passed by the third respondent-Director. Even an appeal filed u/s 19 of the 1975 Act filed by petitioner No. 4 on its own behalf and on behalf of the other petitioners was rejected on 12.09.2005 (R-1). Thereafter, the High Powered Committee considered various aspects and came to the conclusion that the claim of the petitioners could not be acceded to. The third respondent-Director has again passed an order on 12/14.5.2008 rejecting the claim made by the petitioners which has been upheld by the Appellate Authority on an appeal u/s 19 of the 1975 Act vide its order dated 29.09.2008 (Mark. X).

The application filed by the petitioners for grant of licence for Cyber Park Colony could not be granted because of State policy which provides for only 5% of the sector area for the afore-mentioned purpose. It issued to any colonizer after issuance of notification u/s 4 or thereafter.