

(2001) 05 P&H CK 0017

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11567 of 2000, Civil Miscellaneous No. 19461 of 2000 with Civil Miscellaneous No's. 12058, 12059 and 12060 of 2001

Hari Chand

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 17-05-2001

Acts Referred:

Forest (Conservation) Act, 1980 — Section 2
Land Acquisition Act, 1894 — Section 3, 4, 6

Citation : (2002) 1 CivCC 90 : (2001) 3 RCR(Civil) 686

Hon'ble Judges : N.K. Sud, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Mr. O.P. Goyal and Mr. O.P. Dabla, for the Appellant; Ms. Palika Monga, AAG and Mr. C.M. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—The Bar Association, Panipat, filed a writ petition with a prayer that the State Government be directed to construct a judicial complex. This Civil Writ Petition No. 204 of 1998 was disposed of by a Bench vide order dated December 20, 1999. In pursuance to the interim orders passed by the Court, a piece of land was identified and considered suitable for the constructions of the complex. However, it was found that it belonged to the Ministry of Defence. The Bench by an interim order of May 18, 1999 had directed the Government of India through the Secretary, Ministry of Defence, to "identify any suitable land for the Ministry of Defence near Ambala Cantonment or anywhere else in the State of Hary-ana....." in exchange for the land at Panipat. The needful was done. On 15.2.2000, the State of Haryana issued a notification u/s 4 of the Land Acquisition Act, 1894, declaring its intention to acquire the land comprised in Villages Janetpur, Tundla and Tundli, Tehsil and District Ambala. A copy of the notification has been produced as Annexure P-1 with the writ petition. Aggrieved by the notification, the petitioners filed objections, a copy of which has been produced as Annexure P-2. The matter was considered by the

Collector, who made his report vide Annexure P-3. At this stage, the petitioners have approached this Court through the present writ petition. They pray that the notification dated 3.2.2000, which was published in the Haryana Government Gazette on 15.2.2000 (Annexure P-1 with the writ petition) be quashed. It is claimed that the land is not being acquired for a public purpose. The recommendations of the Collector have not been considered. A part of the land is under forest. Permission of the Central Government as required under the provisions of Section 2 of the Forest (Conservation) Act, 1980, has not been obtained. The petitioners are small farmers. If they are deprived of the land, they will lose their bread and butter. Thus, the petitioners pray that the impugned notification should be annulled by the issue of an appropriate writ, order or direction.

2. The claim made by the petitioners has been controverted. In the written statement filed on behalf of respondent Nos. 1 and 2, it has been averred that the land at Panipat belongs to the Ministry of Defence. In pursuance to the directions by a Bench of this Court, the land was being taken over by the State Government for construction of Court complex etc. Thus, as directed by the Court, the land at Ambala Cantonment is being acquired. The allegations that the land is not being acquired for a public purpose or that the land at Panipat did not belong to the Ministry of Defence have been controverted. Still further, it has been pointed out that there is no violation of the provisions of the Forest (Conservation) Act, 1980. Since the land is being acquired for a public purpose, the respondents maintain that no ground for interference is made out.

3. The petitioners have filed a replication and reiterated their stand.

4. Counsel for the parties have been heard.

5. It is not disputed that a Bench of this Court while deciding Civil Writ Petition No. 204 of 1998 had, inter-alia, observed that the land which is described as Camping Ground, Panipat, belongs to the Ministry of Defence, Government of India. The State Government was directed to acquire land at Ambala Cantonment or at any other place and to make it available to the Ministry of Defence. It is in pursuance to the directions of the Division Bench that the respondents have proceeded to acquire the land. It is being acquired by the State for the purpose of being used by the Ministry of Defence. This is calculated to serve the public purpose.

6. Mr. Goyal contends that the petitioners are not bound by the directions given by the Division Bench. Their rights cannot be affected in pursuance to those directions.

7. We are unable to accept this contention. Firstly, the directions were given by a Bench of this Court to the State Government and it is bound by those directions. Secondly, the petitioners can not be permitted to challenge the directions in the present proceedings especially when the District Bar Association, Panipat, which had filed Civil Writ Petition No. 204 of 1998 is not a party to this writ petition.

8. Mr. Goyal contends that the judgment proceeds on a wrong assumption of fact. The land which is described as Camping Ground, Panipat, does not, in fact, vest in the Central Government. It had been acquired by the State Government and had been handed over to H.U.D.A. The claim made on behalf of the petitioners has been controverted by Ms. Palika Monga, appearing for the respondent-State.

9. It is undoubtedly correct that a notification for the acquisition of the land described as Camping Ground at Panipat had been issued by the State Government. However, as has been pointed out on behalf of the respondents, the said notification had been issued under a mistake of fact. It was wrongly assumed that the land vested in private persons and not in the Central Government. Otherwise, the averments made in the written statement clearly show that the land has been recorded as belonging to the Central Government. Even a copy of the Jamabandi for the year 1993-94 produced by the respondents shows that the land actually vests in the Central Government. Since, the land actually belonged to the Central Government and the State Government was bound by the directions of the Court for the purposes of establishing a judicial complex, it was incumbent upon the authorities to provide an alternative piece of land to the Central Government. In fact, there was a specific direction by the Court in this respect. It is in pursuance to the directions of the Court that the land has been acquired. Still further, the notification indicates that the land is being taken over for the purpose of use by the Ministry of Defence. This is clearly a public purpose.

10. Mr. Goyal contends that providing an alternative land to the Ministry of Defence does not fall within the definition of public purpose as contained in section 3(f) of the Act.

11. The expression "public purpose" is of a very wide amplitude. It has varied implications. The definition as given in Section 3(f) is not exhaustive. The provisions of sub-clauses (i) to (viii) are merely illustrative of the purposes for which the land can be acquired. With changing situations, it can become essential for the authority to acquire land in public interest. Normally, it is only when the land is acquired to serve some private interest that the action may become questionable. So long as the dominant purpose of acquisition of land is to serve the interest of community as against that of an individual, the acquisition shall fall within the definition of a public purpose.

12. In the present case, the land is being acquired for use by the Ministry of Defence. It may not be in public interest to exactly specify or to disclose the real use of the land. Acquisition of land for the Ministry of Defence, even if it is in lieu of the some other piece of land, is ultimately intended to serve a public cause. Consequently, the contention that the land is not being acquired for a public purpose cannot be accepted.

13. Mr. Goyal referred to the decision of a Division Bench of the Kerala High

Court in *Ramesh v. State of Kerala* 1992 LACC 543. We have examined this case. The factual position was materially different. The land was being acquired for the purpose of rehabilitating the villagers who were uprooted as a consequence of acquisition proceedings. The action was not upheld. We do not find any observation which may be of help to the petitioners.

14. Reference was also made to a Single Bench decision in *Prem Nath and others v. State of Jammu and Kashmir and others* AIR 1960 J & K 78. In this case, the Court had frowned upon the action of the authority in acquiring land of one person forgiving it to another. But, this is not the position in this case. Thus, the petitioners can derive no advantage from this judgment.

15. It was, then, contended that the recommendations of the Collector had not been considered by the appropriate authority before issuing the notification u/s 6. This contention has been specifically controverted by the respondents. However, it deserves notice at this stage that by an interim order of 31.8.2000, a Bench of this Court while directing issue of notice of motion, had stayed the operation of the notification u/s 4. That being so, the State Government could not have proceeded to issue notification u/s 6. Mr. Goyal submits that factually, the notifications have been issued. Ms. Palika Monga points out that the said notification had been published as it had already been sent to the Press before the receipt of the orders of the Court. However, no steps for further publication of the notification u/s 6 have been taken. However, she states that the observations made by the Land Acquisition Collector have been considered by the State Government before deciding to issue the notification u/s 6. The land has been duly approved by the military authorities before a decision to acquire it was taken.

16. It may be mentioned that the observations of the Collector are not being on the State Government. At best, these embody his own perception and view. The competent authority has the right to agree or disagree. It is for the authority to take a view on a consideration of the matter. In the circumstances of the case, we do not find anything in the observations of the Collector which may vitiate there action of the State Government.

17. Mr. Goyal contends that 182 acres of land is being acquired. Out of this, 50 acres of land is under a dense forest. The forest land cannot be de- reserved without the permission of the Central Government. The learned counsel referred to the provisions of Section 2(ii) of the Forest (Conservation) Act, 1980.

18. We have perused the provision. It undoubtedly provides that the State Government or any other authority shall not use any forest land "for any non-forest purpose" without the prior approval of the Central Government. However, it is not disputed that till now, the land has not been used for non-forest purpose. Thus, no violation of the provisions of Section 2(ii) has been committed. As and when an occasion arises, we have no doubt that the appropriate authority shall act in conformity with law.

19. Lastly, it has been contended that the petitioners are small land owners. Their land has been repeatedly acquired. Thus, the action is bad.

We have considered this submission. The principle of eminent domain empowers the State to acquire private property. The power is exercised to serve a larger public interest. It is undoubtedly true that compulsory acquisition of property uproots the owners. It puts them to a considerable inconvenience and hardship. However, individual interests have to yield to a larger public interest. That is precisely the purpose which the impugned notification seeks to serve.

No other point has been raised.

In view of the above, we find no ground to interfere. The writ petition is accordingly dismissed.

No costs.

20. Petition dismissed.