

**(1999) 09 P&H CK 0020**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Writ Petition No. 5140 of 1998, Civil Miscellaneous No"s. 8256 and 29832 of 1998 and 8829 of 1999

Hari Parashad Sharma and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

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**Date of Decision :** 07-09-1999

**Acts Referred:**

Land Acquisition Act, 1894 — Section 4, 5A, 6

**Citation :** (2001) 1 ILR (P&H) 23 : (2000) 125 PLR 352 : (2000) 1 RCR(Civil) 707

**Hon'ble Judges :** N.K. Sud, J;N.K. Sodhi, J

**Bench :** Division Bench

**Advocate :** R.S. Mittal and Palika Moga, for the Appellant; S.M. Sharma, D.A.G. for Respondent Nos. 1 and 3 and Anil Rathee, for the Respondent

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## **Judgement**

N.K. Sodhi, J.—On the request of the Market Committee, Kaithal the State Government initiated the process to acquire a total area of 30 acres 2 kanals and 19 marlas of land for a public purpose, namely of the establishment of a new grain market, staff quarters, Rest House and Gadda Shed at Siwan, Tehsil Kaithal, District Kurukshetra. A notification dated 22.6.1978 was issued u/s 4 of the Land Acquisition Act (for short the Act) inviting objections to the acquisition. This land notified for acquisition was not found suitable as it was prone to floods and was low lying area situated in a deep depression. No further steps were taken by the State Government and the notification was allowed to lapse. Thereafter, another area measuring 25 acres and 3 kanals at Siwan was notified u/s 4 of the Act for the same purpose. The provisions of Section 17 of the Act were invoked and both the notifications u/s 4 and 6 of the Act were issued on 21.6.1982. The State Government exercising its powers u/s 48 of the Act excluded/withdrew from acquisition an area of 51 kanals 5 marlas from the land notified for acquisition under the notification dated 21.6.1982. The notification under Sections 4 and 6 as also one u/s 48 of the Act were challenged by Smt. Jai Kaur and others in civil writ petition 4884 of 1985. That writ petition stands admitted and is pending in this Court. Dispossession of the petitioner therein has

been stayed. It is not in dispute that the Land Acquisition Collector has not given an award u/s 11 till date and, therefore, the entire proceedings initiated for acquisition have lapsed in view of the provisions of Section 11-A of the Act. By a notification dated 18.7.1994 issued u/s 4 of the Act the State Government again notified yet another area of land for the same purpose of constructing a new grain market, office building, staff quarters. Rest House, Gadda shed etc. at Siwan. Objections were invited from all the interested persons. Petitioners filed their objections on 25.8.1994 and while those objections were still pending they filed a civil writ petition No. 13488 of 1994 in this Court challenging the notification u/s 4 of the Act. This writ petition was dismissed as pre-mature on 20.10.1994 and a direction was issued to the Land Acquisition Collector to decide the objections expeditiously. However, the State Government issued the declaration u/s 6 of the Act on 28.4.1995 and the land which was earlier notified on 18.7.1994 was acquired. Petitioners again challenged the notification u/s 6 of the Act by filing civil writ petition No. 8645 of 1995 which came up for hearing before a Division Bench on 30.5.1997 and the same was allowed primarily on the ground that the objections filed by the petitioners had not been decided even though the declaration u/s 6 of the Act had been issued by the State Government. The notification dated 28.4.1995 was quashed and a direction issued to the respondents therein to decide the objections filed by the petitioners and thereafter it was left open to the authorities to issue a fresh notification in accordance with law. It may be mentioned that when this writ petition came up for motion hearing proceedings in the acquisition were stayed on 7.6.1995. The Land Acquisition Collector then decided the objections filed by the petitioners and made his recommendations to the State Government in December, 1997. He recommended that the land of the petitioners along the road side be excluded from acquisition. On receipt of the report from the Land Acquisition Collector, the State Government considered the recommendation and by a notification dated 10.2.1998 the declaration u/s 6 of the Act has been issued acquiring the land which was earlier notified on 18.7.1994 u/s 4 of the Act. The present writ petition has been filed challenging both the notifications as issued under Sections 4 and 6 of the Act. Allegations of mala fides have been levelled against Shri Harpal Singh, former Agriculture Minister, Haryana as, according to the petitioners, their land was acquired at his behest by the State Government but these allegations were not pressed at the time of arguments.

2. In response to the notice issued by this court the respondents have filed their written statements controverting the allegations made in the writ petition.

3. It was strenuously urged by the learned counsel for the petitioners that while deciding their objections u/s 5-A of the Act, the Land Acquisition Collector made a recommendation to the State Government to release the land of the petitioners and that the State Government while taking final decision thereon did not take into consideration proceeding that recommendation and, therefore, the acquisition proceedings qua them were illegal. We find no merit in this contention. The learned Deputy Advocate General, Haryana produced before us

the original records and having perused the same we find that the Land Acquisition Collector did recommend that the land of the petitioners be excluded but that recommendation after being duly considered by the competent authority was not accepted and it was decided that the land as notified including that of the petitioner be acquired.

4. It was then urged that the acquisition proceedings are a colourable exercise of power by the state Government inasmuch as the notifications issued on 21.6.1982 acquiring, 25 acres of land for the same purpose were allowed to lapse and thereafter the notification were issued acquiring the land belonging to the petitioners. This notification tatted on 21.6.1982 alongwith the notification u/s 48 of the Act withdrawing some area from acquisition stand challenged in this court in civil writ petition No. 4884 of 1985 and the dispossession of the petitioners therein has been stayed. According to the petitioner these notifications have been withdrawn though the respondents claim that the acquisition proceedings lapsed because the Land Acquisition Collector did not give his award within the specified period. Be that as it may, these notification are no longer subsisting and the State Government thereafter chose to acquire the land covered by the impugned notifications including that of the petitioners. Merely because another land was sought to be acquired by the notifications issued on 21.6.1982 does not mean that the present acquisition proceedings have become a colourable exercise of power. No meaningful argument could indeed be advanced to show as to how the acquisition proceedings were a colourable exercise of power by the State Government. Initially, when the writ petition was filed the petitioners made allegations of mala fides against Shri Harpal Singh, former Agriculture Minister but those allegations were given up and his name was deleted from the memorandum of parties by order dated 13.11.1998. We have no hesitation in rejecting this argument of the learned counsel for the petitioners.

5. No other point was raised.

6. In the result, there is no merit in the writ petition and the same stands dismissed. No costs.

7. Office is directed to list civil writ petition No. 4884 of 1985 for final hearing after informing the counsel for the parties.