
(2004) 01 P&H CK 0075

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 17193 of 2001

Hari Singh Kataria and others

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 12-01-2004

Acts Referred:

Citation : (2004) 2 LJR 77 : (2004) 2 RCR(Civil) 31

Hon'ble Judges : V.K.Bali, J and Jasbir Singh, J

Advocate : Mr. M.L. Sarin, Sr. Advocate with Mr. Hemant Sarin, Advocate.Mr. Raghbir Chaudhary, Sr. DAG, Haryana.For the Respondent Nos. 2 to 3, Mr. Aman Chaudhary, Advocate., Advocates for appearing Parties

Judgement

V.K. Bali, J.—Challenge in this petition filed under Article 226 of the Constitution of India is to letter, Annexure P10, dated 8.3.2001 vide which the Government reviewed its earlier decision and, thus, decided to withdraw its order regarding release of land of the petitioners, measuring 2510 sq. yards situated in Sector 5, Gurgaon, falling in Khasra No. 7360/3072. Earlier in point of time, vide order, Annexure P6, dated 20.7.1999, while dealing with representation of the petitioner, Annexure P5, Government had agreed to release land of the petitioners measuring 2510 sq. yards from the purview of acquisition. It is this order, Annexure P6, that has since been reviewed vide the impugned order, Annexure P10.

2. Brief facts of the case, as projected in the petition, reveal that the petitioners owned land in village Gurgaon. The land was comprised in Khasra Nos. 3045 and 7360/3072. In Khasra No. 3045, however, the petitioners had constructed shops and sheds while in Khasra No. 7360/3072, as per the petitioners, there were two Samadhis of their forefathers, a temple and trees. The total area of Khasra No. 7360/3072 is 1 Bighas 3 Biswas (approximately 5000 sq. yards) and the present petition concerns the land falling in Khasra No. 7360/3072. The State Government issued notification under Section 4 of the Land Acquisition Act, 1894 (for short the `Act of 1894") on 28.3.1985 seeking to acquire a huge tract of

land measuring 169.87 acres situated in the revenue estate of village Gurgaon, for a public purpose, namely, for development and utilisation of land for residential and commercial area at Gurgaon. The entire land of the petitioners, falling in khasra numbers, referred to above, was also intended to be acquired and was indeed acquired when followup declaration came into being on 16.1.1986. Aggrieved, petitioners filed Civil Writ Petition No. 860 of 1986 in this Court challenging the notifications issued under Sections 4 and 6 of the Act of 1894. Notice of motion was issued in the writ petition aforesaid on 20.2.1986. During the pendency of the writ petition, Land Acquisition Collector announced award on 14.1.1988. It is the case of petitioners that they had not accepted compensation awarded to them so far. On 6.7.1982 writ petition aforesaid was disposed of. Insofar as writ petition, as it pertained to Khasra No. 3045, is concerned, same was rendered infructuous as the Government, in wake of its policy not to acquire the constructed area, had left the land falling in Khasra No. 3045 from the array of acquisition, on which construction was in existence. The full text of order passed by this Court in CWP No. 860 of 1986, which was incidentally decided by one of the us (V.K. Bali, J.), has been annexed with the replication as Annexure P14. The short order that was passed in the aforesaid writ petition on July 6, 1992 reads thus :

"The petitioners seek quashing of notifications Annexure P1 and P4 issued under Sections 4 and 6 respectively, of the Land Acquisition Act, 1894, dated 28.3.1985 and 16.1.1986. The only plea raised in support of the contention is that they had built shops and sheds in Khasra Nos. 3045 and 7360/3072 and the Government had framed a policy according to which the constructed portions prior to the issuance of the notification under Section 4 of the Act were not to be acquired. The factum of construction, insofar as Khasra No. 3045 is concerned, has been admitted in the written statement. Not only that, it has also been pleaded in the relevant paragraph of the written statement that the constructed portion of Khasra No. 3045 has already been left from the array of acquisition. That being so, the petition, insofar as the land comprised in Khasra No. 3045 is concerned, has become infructuous.

The claim of the petitioners is also to exempt the land comprised in Khasra No. 7360/3072. However, for the aforesaid exemption from acquisition there is hardly any pleading. Neither in the objections filed under Section 5A of the Act nor in the present petition, specific construction has been stated. It is required to be mentioned that in the objections, filed under Section 5A of the Act, it has been mentioned that a Samadhi was built but for that also proper particulars are not forthcoming. It is also not mentioned as to when this Samadhi was constructed. The petitioners, therefore, deserve no relief so far as this Khasra number is concerned. The petition is disposed of in the manner indicated above. There shall, however, be no order as to costs."

3. After a period of two years, when the writ petition with regard to Khasra No. 7360/3072 was dismissed, petitioners filed a suit for declaration with

consequential relief of permanent injunction. No ad interim relief was granted to the petitioners by the trial Court and the said suit came to be dismissed on 3.9.1997, Annexure P4. Even though, there was no stay for all this while when writ petition was dismissed, petitioners were somehow able to manage not to part with the possession of the land, subject matter of dispute in the present writ petition. When, however, in January, 1999, as per the case of petitioners, respondents endeavoured to take possession, they filed yet another Civil Suit No. 8 of 1999 for declaration and permanent injunction. No ad interim relief was granted in that suit as well. The petitioners, without disclosing earlier litigation and the fate of same, either before the High Court or the civil Court, made a representation to the Minister of Urban Development, Haryana on 25.4.1999, Annexure P5. A perusal of representation, Annexure P5, would demonstrate that the only ground pressed into service for release of land was that there was a Samadhi and a temple over the land in question in the memory of forefathers of the petitioners and they had got sentimental attachment not only because the land was inherited by them but also because as per the last wishes of their forefathers, they were cremated there. In paragraph 4 of the representation aforesaid, all that has been mentioned is that their petitions were rejected without considering their objections and taking into account the Samadh and temple, constructed thereon. If reference in paragraph 4 of the representation to the writ petition, same is factually incorrect as the matter with regard to existence of Samadh was taken into consideration by this Court while disposing of CWP No. 860 of 1986 vide Annexure P14. Insofar as civil suit is concerned, pleadings made therein would also reveal that the petitioners had mentioned existence of Samadh of their ancestors as also of a religious temple. If the reference in paragraph 4 of the representation be, thus, to civil suit, same is also incorrect. Representation, Annexure P5, was accepted vide order, Annexure P6, dated 20.7.1999. It appears that when it came to the notice of the Government that petitioners had withheld material information of dismissal of writ petition as also civil suit, order, Annexure P6 was reviewed, resulting into passing of order, Annexure P10, dated 8.3.2001, which, as mentioned above, has been challenged in the present petition.

4. In response to notice issued by this Court, respondents have filed reply and by way of preliminary objections, it has been pleaded that the petitioners had earlier filed Civil Writ Petition No. 860 of 1986 which was decided by this Court on 6.7.1992. The relevant part of order, dealing with the land in question, passed by this Court, has been reproduced in the preliminary objections and it has then been pleaded that in the present petition, same very dispute regarding same land has been agitated by challenging letter dated 8.3.2001 and, therefore, petition is liable to be dismissed. It has then been pleaded that the petitioners had filed civil suit for declaration in the year 1994 which was also dismissed on 3.9.1997, thus, upholding the land acquisition proceedings. The petitioners filed yet another civil suit No. 8 of 1999 but the learned trial Court did not pass any interim order. However, the petitioners submitted a representation for release of

their land to the then Minister for Development on 25.4.1999. In the said representation, the petitioners deliberately concealed the material facts that the suit filed by them was dismissed on 3.9.1997. Thus, having believed in good faith and on the basis of wrong information given by the office of the Land Acquisition Collector, Gurgaon, that the land is under litigation, the Government considered to release the land on general terms and conditions and specifically with condition to withdraw the court case, if any, pending in the Court. However, at the time of executing the agreement, the petitioners supplied the certified copies of civil suit No. 535 of 17.10.1994 and the judgment dated 3.9.1997 vide which the said suit was dismissed. The non disclosure of material facts by the petitioners at the time of submitting the representation led the Government to review its earlier decision and to withdraw the orders regarding release of land and to take possession thereof.

5. Mr. Sarin, learned Senior Advocate, who represents the petitioners, vehemently contends that the impugned order, Annexure P10, dated 8.3.2001 has been passed without hearing the petitioners and on that count alone, it is liable to be set aside. In the facts and circumstances of the case, we, however, find no merit in the contention of learned counsel, as noted above. The land in this case was finally acquired while issuing notification under Sections 4 and 6 of the Act of 1894 and then by pronouncing award and depositing compensation, though the petitioners may not have withdrawn the same. The challenge to notifications and award, that came into being during the pendency of the writ petition, fizzled out. Once the land had since been finally acquired, there was no question of its being released from the array of acquisition. Further, no right as such had come to be vested with the petitioners by releasing the land which stood finally acquired. It was at the most a concession, withdrawal whereof required no notice or hearing to the petitioners.

6. Mr. Sarin, however, for grant of hearing, relies upon a judgment of the Supreme Court in *State Govt. Houseless Harijan Employees Association v. State of Karnataka & Ors.*, 2001(1) RCR(Civil) 424 (SC) : 2000(6) Supreme 358. The point dealt with in the case aforesaid by the Hon'ble Supreme Court was as to whether, where acquisition proceedings are initiated under Section 3(b)(vi) of the Land Acquisition Act, beneficiaries have right to be heard before withdrawal of acquisition under Section 48(1) for Section 48(1) does not exclude principles of natural justice. The appellant Society in the case aforesaid had 360 members, all the whom were the State Government employees belonging to Scheduled Castes. It wanted to provide house sites for its members, all of whom were houseless. In 1983, the appellant approached the Government to acquire 15 acres of land belonging to respondents 5 to 7. By a letter dated 10.1.1983, the Planning Authority wrote to the Assistant Commissioner, Tumkur, stating that a resolution had been passed to issue "No objection Certificate" for suitability of the land for house sites in favour of the appellant. It was further said that the land was earmarked partly for residential and partly for open place in the draft lay out plan of Tumkur. The appellant was asked vide letter dated 16.7.1984 by

the Assistant Commissioner to furnish particulars with regard to list of members of the association, financial soundness of the association etc. and on 17.8.1984 the required particulars were furnished. The appellant desposited the amount required to be so deposited by the Government in 1984. The Government granted prior approval to the acquisition vide letter dated 7.9.1986. A notification under Section 4(1) of the Land Acquisition Act was published on 6.8.1987. The appellant was then called upon to deposit a further sum towards the cost of acquisition which was done. On 13.5.1988 the appellant wrote to the Assistant Commissioner for giving particulars of the Housing Scheme and again enclosing a proposed lay out plan. On 30.5.1988 the appellant had addressed a letter to the Divisional Commissioner requesting for expedition in which it was stated that 361 sites as per the draft plan, measuring East to West and North to South, 30x40 ft. respectively, apart from road and park in 15 acres of the acquired land. Before recommending the case of the appellant, all aspects of the case were considered and, in particular, "an extent of 18x210 sq. feet had been left for public amenities as per the site plan, which was enclosed in the file. The Town Planning Authority had pointed that 10% of the land should be left for public amenities. The Society had agreed to this". The State Level Committee thereafter recommended the acquisition of land in favour of the appellant on 28.7.1988 for providing house sites to its members. A direction was thereafter given on 10.8.1988 to the concerned authorities to issue final notification under Section 6(1) of the Act. Inasmuch as notification under Section 4(1) had since expired, a fresh notification under the said Sector was directed to be issued. After some correspondence, a second notification under Section 4(1) of the Act was issued on 27.2.1990. However, once over again, the Government did not issue the declaration under Section 6 of the Act within the time prescribed. After some correspondence, once over again, third notification was issued under Section 4(1) of the Act on 22.7.1991. This was challenged by respondents 5 to 7 before the High Court. No interim order was passed and acquisition proceedings continued. The owners filed objections to the land acquisition proceedings, which were rejected. The said order of rejection of objections was affirmed by the Deputy Secretary to Government, Revenue Department on 3.12.1991 which was approved both by the Minister of Revenue as well as the Law Minister. The directions were accordingly issued to proceed under Section 6(1)(a) of the Act on 12.3.1992. The notification under Section 6 of the Act was published on 15.5.1992 declaring that the acquisition was for the public purpose of allotment of house sites to the members of the appellant Society. This was followed by award under Section 11 of the Act on 7.9.1992. The appellant was directed to deposit the balance amount representing the difference between the amounts already deposited by the appellant and the amount of award, which was deposited on 19.11.1992. The total amount deposited by the appellant towards costs of acquisition was Rs. 19,01,915/-. The award was approved by the Divisional Commissioner vide orders dated 26.5.1993. The approval recorded a fact that an enquiry was held by the Deputy Commissioner and Assistant Commissioner regarding the members of Society and the authorities were

satisfied that the appellant Association consisting of SC/ST members. According to the orders of the Divisional Commissioner, possession of the acquired land was to be handedover to the appellant in accordance with law. It is at this stage that a letter was written by the department of Revenue to the Land Acquisition Officer directing him not to handover possession of land to the appellant until further orders, as, it appears, the local MLA had objected to the finalisation of the land acquisition proceedings in favour of the appellant. The Minister instructed the Revenue Commissioner to stop the land acquisition proceedings which, in turn, passed on the instructions to the Secretary to the Revenue Department of the State Secretariat. On 6.7.1993 the respondents 5 to 7 withdrew the writ petition which was filed by them in the High Court. It appears from reading of the Judgment that acquisition proceedings were withdrawn under Section 48(i) of the Land Acquisition Act. This was published in the official Gazette on 5.8.1993. It is in the facts and circumstances, as fully detailed that on the issue as mentioned above, the Hon"ble Supreme Court held as under :

"The requirement of natural justice will be read into statutory provisions unless excluded expressly or by necessary implication..... Section 48(1) does not in terms exclude the principles of natural justice. However, the section has been construed to exclude owner's right to be heard before the acquisition is withdrawn. This is because the owner's grievances are redressable under Section 48(2). No irreparable prejudice is caused to the owner of the land and, if at all the owner has suffered any damage in consequence of the acquisition proceedings or incurred costs in relation thereto, he will be paid compensation thereof under Section 48(2) of the Act." But as far as the beneficiary of the acquisition is concerned, there is no similar statutory provision. In contrast with the owner's position the beneficiary of the acquisition may by withdrawal from the acquisition suffer substantial loss without redress particularly when it may have deposited compensation money towards the cost of the acquisition and the steps for acquisition under the Act has substantially been proceeded with. An opportunity of being heard may allow the beneficiary not only to counter the basis for withdrawal, but also, if the circumstances permitted, to cure any defect or shortcoming and fill any lacuna. No reason has been put forward by the respondents to exclude the application of the principle of natural justice to Section 48(1) of the Act."

7. We have given our thoughtful consideration to the contention raised by learned counsel with regard to nonissuance of notice or nonhearing of the petitioners before order releasing land was reviewed. On the basis of judgment of the Hon"ble Supreme Court in State Govt. Houseless Harijan Employees Association's case (supra) and find no merit in the contention of learned counsel. The land in the case aforesaid was acquired for the benefit of appellant society which, during the course of time, had paid the entire consideration. It was not only beneficiary of the land acquisition proceedings but by virtue of depositing the entire amount towards acquisition, a right had indeed come to be vested in it and if the same was to be taken away, hearing was necessarily required. The

position herein is not similar to the one that was before the Hon^{ble} Supreme Court in the case aforesaid. Here, the land had since been acquired finally and even the compensation assessed by the Land Acquisition Collector was deposited. At that stage, land could be released only under the provisions of Section 48 of the Act of 1894. What happened in the present case, however, is that a simple representation was given to the Minister and that too by not disclosing the material facts pertaining to litigation at two forums that the petitioners had lost and orders of release were obtained. The release of land was neither legal nor justified nor having come into being under the provisions of the Act of 1894. The same can only be termed to be a concession and concession, as in contrast to a right, would not necessarily need any notice or hearing.

8. What, however, nails the case of petitioners is that even if the petitioners were to be heard in the matter, after issuing a notice to them, they could not have succeeded in the matter as, after dismissal of the writ petition and the fate of civil suit being no different, they could not urge anything that could entail an order of release of their land. The Government had been resisting the claim of petitioners tooth and nail at every stage and we may mention that both the writ petition and civil suit were primarily based upon the existence of Samadh and temple in the Khasra Number, subject matter of dispute. It is this very ground which prevailed with the concerned Minister to release the land on the representation made by the petitioners. If the petitioners had perhaps mentioned the fate of their long drawn litigation, order releasing the land could not have been passed. In any case, after the aforesaid undisputed facts came to the notice of the Government and which stare at the face of the petitioners, no meaningful point could be raised by them for releasing the land on the same very grounds, on which they lost the legal battle twice over. Even if, therefore, the argument of Mr. Sarin is accepted that there was some right that came to be conferred upon the petitioners by passing the order of release. Annexure P6, and, therefore, the petitioners were entitled to be heard, we are of the considered view that such a hearing would be of no meaning and consequence as the petitioners had already lost the legal battle at two forums on the ground on which they seek to sustain their representation. The setting aside of order, Annexure P10, and remitting the matter to the Government to reconsider the whole issue after hearing the petitioners, in the facts and circumstances of the present case, would be an exercise in futility.

9. Mr. Sarin then contends that the principle of promissory estoppel would apply to the facts of this case and on that ground as well, respondents can not be permitted to pass the impugned order, Annexure P10, withdrawing order of releasing the land from the array of acquisition. It is urged by learned counsel that in tune with order, Annexure P6, the petitioners had withdrawn the second civil suit and, thus, changed their position to their detriment. It is only on account of conditions mentioned in order, Annexure P6, that petitioners had withdrawn civil suit and they were left with no remedy available to them at this stage. We have given our thoughtful consideration to the contention of learned

counsel but, in the facts and circumstances of this case, we do not find any merit therein as well. It may be recalled that the writ petition of the petitioners had since been dismissed since long ago. The suit of the petitioners was also dismissed on 3.9.1997, even though by closing evidence of the petitioners under Order 17 Rule 7 C.P.C. as they had not produced evidence despite number of opportunities that were granted to them. In the second suit filed by the petitioners, no stay was granted to them. The question that arises is as to whether, in view of the dismissal of the writ petition as also civil suit, on the same cause of action, second civil suit on the same very cause of action and same pleadings was at all competent. Prima facie, we are of the view that the second suit may not have had a different result than that the petitioners met with regard to their writ petition as also first civil suit. Be that as it may, petitioners may even now file a civil suit and all that we observe is that in case the said suit may not have been barred by time when it was filed as such, same shall not be dismissed on the ground of limitation, whereas, all other grounds, inclusive of res judicata shall be open to the respondents.

Any expression of opinion, even through prima facie, with regard to maintainability of suit, would not be binding upon the civil Court.

With the observations made above, this petition is dismissed, leaving, however, the parties to bear their own costs.