
(1991) 10 P&H CK 0067
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3000 of 1991

Hira Lal and Another

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 31-10-1991

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Land Acquisition Act, 1894 — Section 3, 4, 6

Citation : (1992) 101 PLR 241

Hon'ble Judges : N.C. Jain, J

Bench : Single Bench

Advocate : B.S. Rana, for the Appellant; R.C. Setia, Addl. A.G., for the Respondent

Final Decision : Dismissed

Judgement

N.C. Jain, J.—This judgment of mine would dispose of Civil Writ Petition Nos. 12268 of 1989, 310 to 312, 2440, 2634, 2635, 3277, 3279 to 1990, 3000 of 3003, 4552, 4742, 6032, 6181, 6227 and 6891 of 1991.

2. The counsel for the parties are agreed that this Court may pick up the facts from Civil Writ Petition No. 3000 of 1991, titled Him Lal and Anr. v. State of Haryana and Anr. The facts in the aforementioned petition are that the land in dispute belonging to the petitioners was acquired by issuance of a notification, dated 8-3-1989, Annexure P-2 u/s 4 of the Land Acquisition Act (hereinafter referred to as "the Act")., Subsequently, another notification dated 7-3-1990 Annexure p-4, was issued u/s 6 of the Act. The petitioners filed objections dated 5 4-1989, Annexure P-3, u/s 5A of the Act for releasing their land before the issuance of the notification u/s 6 of the Act. According to the averments made in the petition, the petitioners constructed a house which is so mentioned in Khasra girdawari Annexure P-I. It has further been averred that the State Government has framed a policy in which it has been provided that lands on which construction has been made before the issuance of the notification u/s 4 of the

Act, could not be acquired and that such a policy was referred to in the written statement filed by the State of Haryana, in a reported case of Mohinder Singh Sharma v. State of Haryana 1988 P. L. J. 525. The notifications under Sections 4 and 6 of the Act were challenged primarily on the grounds that the petitioners house was constructed before the issuance of notification u/s 4 of the Act and that the petitioners were not granted an opportunity of hearing u/s 5A of the Act and that the State has released from acquisition the constructed area of other land owners. In the return, filed by the State of Haryana, the averments made in the petition have been denied.

3. During the course of hearing, the learned counsel for the petitioners has vehemently argued that the petitioners constructed a residential house before the issuance of notification u/s 4 of the Act. This argument in the light of the denial of the State does not carry conviction. It has been specifically stated in the return that the land which was acquired by the State, was completely vacant and the same was agricultural land. In fact, in all the cases, a specific stand has been taken that there was no construction in existence in the disputed land at the time of issuance of notification u/s 4 of the Act and if at all there was some construction which was in existence the State took a note of it and did not acquire the constructed portion and in the instant case as well, it is the stand of the State that a part of the construction i.e. area measuring 206 sq. yards was left out of acquisition.

4. As regards policy of the State, which was so mentioned in Mohinder Singh Sharma v. State of Haryana 1988 P. L. J. 525, is concerned," it has been categorically stated in the return and submitted before me during the course of arguments that no policy was framed by the State of Haryana that constructed portion would be released out of acquisition. No policy decision has been brought to my notice by the counsel for the petitioners. According to Mr. R. C. Setia, Additional A. G., Haryana, a wrong admission was made in the written statement, that there was a policy decision. No policy decision was either annexed with the return and nothing was taken note of it by a Single Bench of this Court while deciding the aforementioned case. Consequently, the petitioner cannot take the benefit of the decided case.

5. There is no force in the argument of the learned counsel for the petitioner that they were not given an opportunity of being heard u/s 5A of the Act. It has been stated by the respondents in the written statement that the notification u/s 6 of the Act was issued after granting an opportunity of hearing to the petitioners u/s 5A of the Act.

6. Mr. R. C. Setia, Additional A. G. has drawn pointed attention of this Court to a Division Bench judgment Sohan Lal and Ors. v. State of Haryana 1989 P. L. J. 4. In the aforesaid decided case, the contentions of the land owners that their land should be released from acquisition on the ground that they had built their houses on small pieces of land purchased by them was negated by making the following observations, which were brought to my notice and which goes to the

root of the case :

"The other argument raised is that the petitioners purchased small pieces of land in a privately developed colony and have built their houses and the acquisition is also for the same purpose. If petitioners built their houses before the acquisition they would get compensation for the same, but it cannot be said that the Government is not entitled to acquire land for residential commercial purposes and to frame a planning scheme in this behalf. The purpose of acquisition cannot be said to be beyond the scope of authority because it is for public purpose".

7. The Land Acquisition Act applies to the land as well as building. The definition of the word "land" given in Section 3(a) of the Act includes all benefits which arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth. It has been settled in several judicial pronouncements of various High Courts and of the Hon'ble Supreme Court that land includes buildings. The definition of the word "land" is wider than that of Immovable property under the Transfer of Property Act. Land includes super-structures. The land owners or the persons affected by the acquisition are entitled to compensation and cannot claim as a matter of right that the super structures acquired by the State be released from acquisition until and unless a strong case of discrimination is made out. No such case has been made out in the present case before me. Simply because in some cases constructed portion has been acquired, the same would not be a ground for setting at naught the acquisition.

8. For the reasons recorded above, all the writ petitions are found to be devoid of any merit. They are accordingly ordered to be dismissed with no order as to costs.