
(2011) 04 P&H CK 0190

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12360, 13801, 13507, 16570, 13802, 15667, 13949, 10034 and 12292 of 2010 (O&M)

Hukam Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 29-04-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6

Punjab Regional and Town Planning and Development Act, 1995 — Section 77

Citation : (2012) 2 RCR(Civil) 281

Hon'ble Judges : Jasbir Singh, J and Rakesh Kumar Garg, J

Advocate : Mr. M.L. Sagar, Senior Advocate with Mr. G.P. Vashisht, Advocate, Mr. P.S. Dhaliwal, Mr. Hardeep Singh, Mr. V.K. Sanghi, Advocates, Mr. Rupinder Khosla, Sr. Additional Advocate General, Punjab. For the Respondent No. 2, 3, Mr. D. V. Sharma, Senior Advocate with Ms. Shivani Sharma, Advocate., Advocates for appearing Parties

Judgement

Rakesh Kumar Garg, J.

This judgment will dispose of 9 writ petitions i.e. CWP Nos.12360, 12292, 13801, 10034, 13949, 15667, 13507, 13802 and 16570 of 2010 which have arisen out of acquisition proceedings for land measuring 192.75 acres initiated by the respondents for the lands in question vide notification No.6/19/2009/6HGI/2224 dated 10.8.2009 issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the "Act") for a public purpose, namely, for development of missing link II (from Dhandra road to Sidhwan Canal via Malerkotla Road), Ludhiana and notification No.6/20/2009/6HG4/2230 dated 10.8.2009 for a public purpose, namely, for development of residential urban estate along proposed road from Dhandra road to Sidhwan Canal via Malerkotla Road, Ludhiana mainly to adjust oustees of above said road for land measuring 59 acres 1 kanal 12 marlas. CWP Nos.12360, 13802, 15667, 13949, 10034 of 2010 relates to acquisition of an area measuring 192.75 acres of land for development of Missing LinkII whereas CWP Nos.16570, 13507, 12292, 13801 of

2010 pertain to development of Urban Estate for oustees. Further challenge has also been laid to notification issued under Section 6 of the Act on 8.2.2010 and the award No.4 of 2010 dated 7.8.2010 in the cases known as Missing LinkII and notification issued under Section 6 of the Act on 8.2.2010 and award No.3 of 2010 dated 7.8.2010 in the cases pertaining to Urban Estate for oustees.

With the consent of the parties, all these cases were ordered to be heard together. The arguments were heard in CWP Nos.12360 and 12292 of 2010 and were treated to be the lead cases in each category. As per the averments made in the writ petitions, the petitioners are owners of agricultural land, which has been duly shown in the revenue record. They are cultivating the land for years together and the principal source of their livelihood is agriculture. Respondent No.1 issued notification (Annexure P1) attached with CWP No.12360 of 2010 under section 4 of the Act for acquiring land measuring 192.75 acres for a public purpose, namely, Missing LinkII for development (from Dhandra road to Sidhwan Canal via Malerkotla Road), Ludhiana. In pursuance of the notification, the petitioners/land owners submitted their objections under Section 5A of the Act which were dismissed by a nonspeaking order and no opportunity of hearing was given to the petitioners. Thereafter, notification under Section 6 (Annexure P4) attached with CWP No.12360 of 2010 was issued making a declaration that land of the petitioners was acquired.

Challenging the aforesaid acquisition proceedings, it has been averred in the writ petition that the land has been acquired without taking out survey of the area sought to be acquired and without taking into consideration the objections filed by the petitioners. The respondentState had already acquired land for the purpose of a Bye Pass which is four lane dual carriage way. Proposed acquired land for the road passes through many residential houses and before framing the scheme for acquisition, it was not taken into consideration that the petitioners as well as other people, who are running their industries and commercial establishments from their respective premises, had spent huge expenditure for its construction and it will cause immense loss to them and the petitioners have no source of income other than the income from growth of agricultural land. Moreover, the proposed scheme for acquisition is vague. The proposed road goes in a jig jag manner as its width at some places is wide whereas the land belonging to the influential persons has been left out and the width at such places is narrow and therefore, different yard sticks have been adopted by the respondents under the political influence. An objection has also been raised that no Master Plan/Zonal Plan has been framed and in fact, the whole exercise to acquire the land for the alleged road terming it as "Missing Link" is nothing but abuse of power at the behest of builders. In fact, the proposed Missing Link is a redundant project and it is sought to be revived by the respondents for mala fide reasons at the behest of the powerful lobby of colonizers. The proposed "Missing Link", which was envisaged in the year 1998, was not considered feasible and it was recommended that the same will not serve any useful purpose and in fact, the Government had accepted the proposal and the scheme was dropped on

26.2.2008. Further objection has been raised in the writ petition that no Master Plan is made in accordance with the provisions of the Punjab Regional Town Planning and Development Act, 1995 (in short the "Punjab Act") and thus, the acquisition of the land was against the provisions of the Punjab Act and was liable to be quashed.

In CWP No.12292 of 2010 and other connected matters wherein the notifications issued under Sections 4 and 6 of the Land Acquisition Act for development of Urban Estate for oustees of "Missing LinkII" road. It has been further averred that the acquisition is the result of non application of mind. The proposed Bye Pass road is carved out in a jigjag manner and to favour the persons having political affiliation. The petitioners have been discriminated by acquiring their land whereas the land of influential persons has been released which can be seen from the fact that in the case of petitioners, the width of the road has been acquired upto 400 feet whereas in some parts, the width of road acquired is 160 feet/100 feet only. It has been mentioned that there is no need for acquisition of the land in question because the said road is being proposed to connect the Ferozepur road whereas there are number of existing roads which connects the express highway and the Ferozepur road and thus, the acquisition proceedings are illegal, arbitrary, discriminatory and being against the settled law are liable to be quashed.

The writ petitions were contested by the respondents submitting that the acquisition was being done legally and in accordance with the provisions of the Land Acquisition Act and further that no provision of the Punjab Act has been violated.

Initiating the arguments, Sh.M.L. Saggar, learned Sr. Advocate, appearing on behalf of the petitioners has argued that there already exists enough roads to link the area from Dhandra road to Sidhwan Road via Malerkotla and there was no necessity to make this road in the changed circumstances. Elaborating his argument, learned counsel for the petitioners has submitted that the proposed Bye Pass was envisaged in the year 1998 as per Drawing No.5/90 dated 28.1.1998 wherein it was proposed that in PhaseI, Ferozepur Road be connected to Dhandran Road and in PhaseII, Bye Pass be connected from Dhandran Road to Sidhwan Canal. However, in subsequent proceedings/meeting, alternate routes of proposed road were discussed after considering various factors like structures, length of the road, area required, technical feasibility and convenience of the public and vide letter dated 27.5.2000, PUDA was informed by its Senior Town Planner approving alternative route No.1 to provide road from Pakhowal Road through Roads of Phase I and Phase II, Dugri upto Dhandran Road, Ludhiana and for this, land measuring 2 acres 18 marlas was acquired vide notification dated 12.5.2003 invoking the urgency clause which was followed by a declaration dated 13.5.2003. However, vide CWP No.6825 of 2005 and other connected writ petitions, dispossession of the land owners of the above land, was stayed. Award No.1 was announced on 24.8.2005 during the aforesaid proceedings, however,

possession was not taken. Thereafter, on 4.4.2006, a Sub Committee was constituted to see the viability of the Missing Link. On 28.9.2006, in the proceedings of the meeting of the aforesaid Committee, it was found that the private colonizers would get the maximum benefit from such proposed Missing Link and the SubCommittee recommended that the project would hardly act as a true bypass road as envisaged and rather it would help private colonizers and in any case, it should not be a liability of PUDA. The aforesaid proceedings were conveyed to the PUDA, Deputy Commissioner, Ludhiana and STP, Ludhiana. However, CWP No.6825 of 2005 was dismissed by this Court and even the SLPs were also dismissed by the Hon"ble Supreme Court vide order dated 23.2.2007. Thereafter, a request was made to the Government to drop the scheme as the project was not viable and Government was further requested to issue notification to release the land of the petitioners. On 25.11.2007, the Secretary , Department of Housing and Urban Development directed the Chief Administrator, GLADA, Ludhiana to personally visit and resubmit the report and the Chief Administrator, GLADA vide letter dated 16.1.2008 opined that construction of Missing Link may not serve any useful purpose as per grounds mentioned therein and ultimately, vide letter dated 16.2.2008, the GLADA, Ludhian was informed that at the Government level, it has been decided to drop the Missing Link. Learned counsel has also referred to a fact that Master Plan of Ludhiana was approved by the Government on 22.2.2008 wherein there is no mention of the Missing Link and that on 24.5.2008, notification was issued under section 48(1) of the Act for release of the land acquired and ultimately, on 12.9.2008, a Master Plan of Ludhiana dated 22.2.2008/24.7.2008 was notified in which Missing Link finds no mention and even there is no whisper of Missing LinkI and Missing Link II as alleged in this acquisition. Learned counsel has further drawn attention of this Court to the fact that the Government reviewed its earlier decision in a hasty manner and issued impugned notification under Section 4 to acquire land measuring 192.75 acres for Missing LinkII Dhandran Road to Sidhwan Canal via Malerkotla Road and another notification was also issued under Section 4 on 27.1.2010 acquiring .09 acres of land. Objections were filed which were dismissed without granting any opportunity of hearing and in a hasty manner and thereafter, made a declaration under Section 6 acquiring 74 acres 1 kanal and 7 marlas of land and another declaration dated 19.5.2010 acquiring . 09 acres of land. Award No.4 of 2008 was announced regarding the aforesaid lands on 7.8.2010.

On the basis of the aforesaid fact and by referring to the Site Plan (Annexure P17) and the photographs (Annexure P18), it has submitted that the proposed Bye Pass road has been conceived to ease out the traffic problem whereas there exists already enough links and there was no necessity to develop the proposed road, as an expressway almost parallel to the proposed road is coming up to ease out the traffic congestion in Ludhiana. Learned counsel has also referred to another road link in the area as shown in the Site Plan which is running on the bank of a water distributory. Learned counsel has further made a reference to a

fact that there is no mention of proposed Bye Pass in the Master Plan and even otherwise, there is no mention of Missing LinkI as suggested and in the absence of that Missing LinkI, the development of Missing LinkII will be of no use and thus, purpose sought to be achieved by the development of the proposed Bye Pass on the acquired land, cannot be achieved.

It has been further argued by the learned senior counsel that after coming into force of Master Plan on 12.9.2008, in which the proposed Missing LinkII has not been shown, no development of the proposed Bye Pass road can be made and the Government cannot acquire land for the said purpose and the same cannot be termed as a public purpose as the same is in violation of the Master Plan. Learned counsel has also argued that the provisions of Section 76 and 77 of the Punjab Act have been violated in the present case. According to him, as per Section 77 only minor changes can be made in a Master Plan which are necessitated by typographical and cartographical errors and omissions or where details of the proposal are not fully indicated on plan or changes have arisen out of implementation of the proposals in the Master Plan, whereas there exists no such eventuality in the present case and therefore, it cannot be said that the realignment of the road as allegedly amended in the Master Plan as per Agenda dated 6.8.2009 was not in consonance with the provisions of the Punjab Act. Learned counsel has also submitted that moreover any such change as mentioned in Section 77 of the Punjab Act, as aforesaid, can be made in public interest and after notifying the same to the public, which has not been done in the present case. Learned counsel for the petitioners has further argued that the alleged alignment in the Master Plan as per Agenda dated 6.8.2009 is in fact an amendment of the Master Plan and the same can be done only after 10 years of the date on which the Master Plan for an area had come into operation and that too by adopting the procedure under Sections 70 and 75 of the Act. There is a total violation of the aforesaid Section 76 and thus, the impugned acquisition is liable to be quashed. Lastly, learned counsel for the petitioners has argued that from the facts established on record, it has crystallized that the Master Plan has been amended in a hasty manner to give benefit to certain influential persons as there was no necessity of the proposed Bye Pass and the purpose sought to be achieved had become redundant in the changed circumstances and therefore, the same is arbitrary in nature in view of the judgment of the Hon'ble Supreme Court in *Fuljit Kaur v. State of Punjab & others* JT 2010 (6) SC 210 and is liable to be quashed. Learned counsel has also relied upon a judgment of the Hon'ble Supreme Court in *Bondu Ramaswamy and others versus Bangalore Development Authority and others* (2010) 7 Supreme Court Cases 1290 and has placed reliance upon the following paragraphs of the aforesaid judgment:

?136. Sporadic small unauthorized constructions in unauthorized colonies/layouts, are not to be deleted as the very purpose of acquisition for planned development is to avoid such unauthorized development. If hardship is the reason for such deletion, the appropriate course is to give preference to the land/plot owners in making allotments and help them to resettle and not to continue

the illegal and haphazard pockets merely on the ground that some temporary structure or a dilapidated structure existed therein. A Development Authority should either provide orderly development or should stay away from development. It cannot act like unscrupulous private developers/colonisers attempting development of small bits of land with only profit motive. When we refer to private developers/colonisers by way of comparison, our intention is not to deprecate all private developers/colonisers. We are aware that several private developers/colonisers provide large, wellplanned authorized developments, some of which are even better than developments by Development Authorities. What is discouraged and deprecated is small unauthorised layouts without any basic amenities. Be that as it may.

155. It may be possible for the Government and Development Authorities to come up with better solutions. There is also a need for the Law Commission and Parliament to revisit the Land Acquisition Act, 1894, which is more than a century old. There is also a need to remind Development Authorities that they exist to serve the people and not vice versa. We have come across Development Authorities which resort to ?developmental activities? by acquiring land and forming layouts, not with the goal of achieving planned development or provide plots at reasonable costs in wellformed layouts, but to provide work to their employees and generate funds for payment of salaries. Any development scheme should be to benefit the society and improve the city, and not to benefit the Development Authority. Be that as it may.?

In CWP No.12292 of 2010 and other connected matters, it has been additionally argued that a much larger area i.e. 59 acres 1 kanal 12 marlas has been acquired to rehabilitate the oustees of the Missing LinkII whereas the area of such oustees which has been acquired comes to 6 or 7 acres only and thus, the acquisition has been made in a mala fide manner to recover the costs of the project by selling the remaining area for commercial purposes and moreover, the petitioners were being ousted from their land to accommodate other oustees of the land and the same was not justified that people are uprooted for such a reason. Thus, it has been prayed that impugned notifications and the awards passed by the respondents be quashed.

Refuting the arguments of the learned counsel for the petitioners, Sh. Rupinder Khosla, Senior Additional Advocate General, Punjab has brought to the notice of this Court the fact that vide order dated 6.8.2009, the realignment of the proposed road was done as provided under Section 77 of the Punjab Act in accordance with law and therefore, the same cannot be found fault with. Sh. Khosla further brought to the notice of this Court that the proposed Bye Pass under consideration is meant to connect Ferozepur road to Sidhwan Canal to decongest Ludhiana city of the traffic problems and major portion of road already stands constructed. By referring to the Site Plan Annexure R1/7, it has been mentioned that road between point A to D and E to F already stands constructed and it has two missing links between point D to E and F to G. The acquisition of

land for the portion of Missing LinkI (between points D 2 to E) has already been completed vide Award No.1 of 2005 dated 24.8.2005 which has already been upheld by the Hon"ble Apex Court and the acquisition of land for Missing LinkII road i.e. the impugned acquisition, has been made vide Award No.4 dated 7.8.2010. It has been also submitted that the Bye Pass has been planned and realigned keeping in view the availability of open land so that it may not affect the existing buildings and in order to solve the increasing traffic problems in future so as to ensure free and smooth flow of traffic. The realignment was approved by the Punjab Regional and Town Planning and Development Board in its meeting held on 6.8.2009 vide Agenda Item No.7. The realignment of Missing LinkII falls in Zonal Plan No.1 which has been notified vide Notification No.1379 dated 24.2.2011 (Annexure R1/8) and Zonal Plan of Zone No.1 attached as Annexure R1/9. It has been stressed that the proposed Missing LinkII road is very much required for completing the project of Bye Pass from Ferozepur Road to Sidhwan Canal. The 95 feet wide road along water body was merely an internal road which passes through high built up area and cannot bear high traffic load and cannot act as a Bye Pass road, whereas the proposed Bye Pass is meant to divert the heavy volume of traffic from Ferozepur road to National HighwayI.

Thus, keeping in view these factors and also to decongest Ludhiana City from traffic problems, this Bye Pass has been approved and planned in the Master Plan. Mr. Khosla has also submitted that the objections of the petitioners were decided in accordance with law and after granting them an opportunity of hearing. The allegations that the acquisition has been meant for mala fide reasons and at the behest of builders has been strongly denied. It has been also argued by him that acquisition for the development of Urban Estate for oustees of Missing LinkII was very much necessary and in accordance with law as the State Government was under legal obligation to rehabilitate such persons under the National Rehabilitation Policy. In the end, it has been prayed that the writ petitions be dismissed. We have heard learned counsel for the parties and have perused the documents on record.

Though it has been argued by the learned counsel for the petitioners that there exists already enough links and there was no necessity to make the proposed road and the purpose has become redundant in changed circumstances but from the facts established on record, the said argument is found to be without any merit. It is well settled that it is for the Authorities, who are engaged for the development and planning of a City, to ascertain the need to acquire the land for creating infrastructure such as roads etc. and the Courts have little authority to go into such a question of need/necessity to build a road as in question yet there are certain facts which are not even disputed by the learned counsel for the petitioners and which are sufficient to negative the aforesaid argument. Admittedly, there exists a road from point A to D and point E to F as per Site Plan Annexure R1/7 and there are two missing links (i.e. Point D to E known as Missing LinkI and from point F to G known as Missing LinkII road, acquisition of

which is impugned in the present writ petitions) and in case these two missing links are provided, a direct connection will be available connecting Ferozepur road and National Highway I and the southern Bye Pass which will be catering to the areas of Bhai Randhir Singh Nagar between Ferozepur road and Ferozepur Railway Line and Pakhowal Road i.e. Karnail Singh Nagar Chabra Colony, Phullanwal Passi Nagar, Dugri Urban Estate Dugri, Guru Nanak Colony, Manakwal in between Dhandran road and Malerkotla road and the area between Malerkotla road and Southern Bye Pass along with Sidhwan Canal. The argument of the learned counsel for the petitioners that an express highway is being constructed known as Southern Bye Pass which will serve as a connection between Ferozepur road with National Highway I etc. is of no consequence as admittedly both the roads are having a distance of 5 kilometers at Ferozepur road. Not only this, from the Site Plan Annexure P17 as shown, it is also established that the 95 feet wide road along the water distributory is an internal road and may not be enough to take the heavy traffic to decongest the city of Ludhiana in the coming years. Not only this, keeping in view the growth of the city, which is not in dispute, it cannot be said that the purpose for constructing the road which was envisaged in the year 1998 has lost its significance and the proposal has become redundant.

Further the argument of the learned counsel for the petitioners that the proposed Bye Pass road has not been shown in the Master Plan and therefore, the same cannot be developed by acquiring the land is without any force as shown by the learned counsel for the respondents the realignment of the Missing Link II which falls in Zonal Plan I has been notified as per the provisions of the Punjab Act vide notification No.1379 dated 24.2.2011 Annexure R1/8 and the same has been shown in the Zonal Plan of zone No.1 Annexure R1/9. The argument of the learned counsel for the petitioners that the alleged realignment of the road has not been done in accordance with the provisions of Section 76/77 of the Punjab Act, is also without any merit. From the facts established on record, it is clear that the changes have been necessitated which have arisen out of implementation of the proposals as made in the Master Plan and such realignment has been made in public interest and after notification of the same which is clear from Annexure R1/8. Interpretation as given by learned counsel for the petitioners of Section 76 of Punjab Act cannot be accepted. Section 76 of Punjab Act reads as follows:

?Amendment of Master Plan (1) At any time after the date on which the Master Plan for an area comes into operation, and atleast once after every ten years, after that date, the Designated Planning Agency shall after carrying out such fresh surveys as may be considered necessary or as directed by the [State Government] prepare and submit to the [State Government], a Master Plan after making alterations or additions as it considers necessary.

(2) The provisions of [sections 70 and 75] shall mutatis mutandis as far as may be possible, apply to the Master Plan submitted under subsection (1).?

A perusal of Section 76(1) of Punjab Act clearly indicates that the Master Plan

can be amended at any time after the date on which the Master Plan for an area comes into operation and not after 10 years from such date as argued by the learned counsel for the petitioners. Even otherwise, this Court is of the view that in the present case, Section 76 of Punjab Act has no applicability and in fact the realignment has been done under Section 77 of the Punjab Act and thus, there is no violation of the provisions of the Punjab Act.

It may also be noticed at this stage that the acquisition of land for Missing LinkI from point D to E as per Site Plan Annexure R1/7 which was acquired vide notification dated 12.5.2003 has already become final upto the Apex Court. It is relevant to point out that thereafter, vide order dated 16.2.2008, the Government had decided to drop the scheme. But the same has been reviewed by the Government on 3.10.2008.

It is also relevant to point out at this stage that after the acquisition for Missing LinkI had become final, a CWP No.17495 of 2007 was filed before this Court in public interest to direct the respondents to take possession of the land and also to construct the Missing LinkI. In that writ petition, an affidavit of the Additional Chief Administrator, GLADA dated 27.11.2008 was filed submitting that the order to drop the scheme was reviewed and approval for construction of second Missing LinkII (i.e the acquisition in question) was given as there was no connectivity between Dhandran road to Sidhwan Canal and in fact this Court vide its judgment dated 16.12.2008 passed in CWP No.17495 of 2007 observed as under:

?In the circumstances, therefore, nothing really survives for our consideration in these proceedings. The writ petition is accordingly disposed off with the observations that the authorities concerned would be well advised to expedite the process of construction of the road so that substantial expenditure already incurred on construction of the two stretches that have already been constructed does not go infructuous. All pending applications shall also stand disposed off in light of the above order. No costs.?

Not only this, in another litigation i.e. CWP No.11596 of 2010, this Court passed the following order dated 1.12.2010:

?Shri Khosla states that in view of the notification, issued by the State Government on November 26, 2010 copy of which has been placed on record of CWP No.13841 of 2010, the authorities shall make an earnest effort to comply with the directions issued by this Court on December 16, 2008, in CWP No.17495 of 2007. In view of above, we are of the view that the authorities are free to take possession of the land, acquisition of which has become final upto the Hon''ble Supreme Court, and start construction of the road in question forthwith. Disposed of.?

It cannot be said that the impugned notification has been made in a mala fide manner and the decision of the respondents is arbitrary. It has also been mentioned in the reply of the respondents, which could not be disputed, that

every effort has been made by them to save the existing structures and buildings and only vacant land has been acquired for construction of the road and may be to achieve the aforesaid purpose of saving the existing buildings, at some places the width of the proposed acquisition is narrow than at other places and therefore, it cannot be said that there is any arbitrariness on the part of the respondents in acquiring land of the petitioners. The judgments relied upon by the learned counsel for the petitioners are not relevant in the given facts and circumstances of the case as neither the decision of the Government is arbitrary nor the same has been done in violation of any of the provisions of the Punjab Act/Land Acquisition Act. Nor the proposed road has been made to give benefit to some individual persons. There is not an iota of evidence to support the plea that the road is meant only for colonizers. Nothing has come on record that such specific colony alleged to be constructed by a colonizers is going to be benefitted in an illegal manner by proposing of this road. The argument raised, in the connected writ petition i.e. CWP No.12292 of 2010, wherein a challenge has been made to the acquisition of land for developing a colony for the oustees, that there was no necessity of acquiring such a vast land and the same has been done to recover the costs, remained unsubstantiated.

No other point was argued.

For the reasons recorded above, we find no merit in these writ petitions.

Dismissed.