
(2011) 07 P&H CK 0038
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 9093 of 2010

Jagdish Kumar Jain and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 07-07-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 17(1), 17(2), 17(3), 17(4), 4

Citation : (2011) 07 P&H CK 0038

Hon'ble Judges : Jasbir Singh, J; Augustine George Masih, J

Bench : Division Bench

Judgement

Jasbir Singh, J.—An affidavit of the Land Acquisition Collector, Urban Estate, Haryana, Rohtak, has been filed today in the Court and it is

taken on record. A copy of the same is supplied to the counsel opposite.

2. By filing this writ petition, the Petitioners have laid challenge to a notification dated July 8, 2008, issued u/s 4 read with Section 17 of the Land

Acquisition Act, 1894, (in short the Act), proposing to acquire, besides other land, 3 Acres of land situated in village Badkhalsa district Sonapat.

Further challenge has been made to a notification issued u/s 6 read with Section 17 of the Act on July 10, 2008.

3. As per facts on record, the Petitioners are the owners of land falling in Khasra No. 23//13(8-0), situated in village Badkhalsa. The land was

acquired for a public purpose, namely, for construction of a road between Sectors 65 to 68, Sonipat. The Petitioners came to this Court to lay

challenge to the above said notifications by stating that there was no urgency to acquire the land and denying opportunity of hearing to them. To

say so, reference was made to a notification issued u/s 9 of the Act on May 3, 2010. Taking note of the same, on May 18, 2010, notice of motion

was issued in the following terms:

Learned Counsel for the Petitioners, inter alia, contends that notification u/s 4 read with Section 17(4) of the Lnd Acquisition Act, 1894 (for

brevity, "the Act") and declaration made u/s 6 read with Section 17(4) of the Act were issued on 18.7.2008 and 10.7.2008 respectively. He has

further submitted that possession of the land has not been taken till today and a notice u/s 9 has been issued on 3.5.2010 (P-18) for presentation

of the claim by the Petitioners on 19.5.2010. Learned Counsel has further submitted that the information furnished under the Right to Information

Act, 2005, on 14.5.2010 (P-20) shows that the public purpose for which the land was required, namely, construction of Sector road of Sectors

65 to 68 , Sonipat, no longer survives because according to the information given the land in dispute does not fall in the EPE alignment as per

approved site plan Annexure P-21 nor does it fall in any sector road as per the approved siteplan.

Notice of motion for 14.7.2010.

Notice re: stay.

Dispossession of the Petitioners shall remain stayed in the mean while.

Mr. S.S. Pattar, Sr. DAG, Haryana, who is present in the Court, accepts notice on behalf of Respondent Nos. 1 and 2. Three copies of the paper

book shall be handed over to him during the course of the day by the learned Counsel for the Petitioners.

4. It is further case of the Petitioners that the land in dispute is no more needed for the public purpose, for which it was acquired. To say so,

reference was made to a letter written by the Estate Officer, HUDA, Sonipat, to one of the Petitioners, a reading of which indicates that the land is

no more required for construction of a road as stated above and it is being acquired for future planning.

5. In response to the notice issued, reply has been filed refuting the objection raised by the Petitioners. Today, in Court, an affidavit of the Land

Acquisition Collector, Urban Estate, Haryana, Rohtak, has been placed on record. Relevant contents of the affidavit read thus:

I, Jagdish Sharma, Land Acquisition Officer, Rohtak, do hereby solemnly affirm & state as under:

1. That the present case is listed for next hearing on 15.3.2011.

2. That the present affidavit is being filed to clarify the issues involved in the assertion of the Petitioner made in its replication that, ""the Khasra No.

23/13 situated in village Badh Khalsa, Tehsil and Distt. Sonipat has been acquired in isolation and the purpose for developing the green belt could

not be fulfilled without acquiring the remaining land adjacent to it.

3 That, in this regard, it is hereby submitted that the land of the Petitioner has been acquired vide award dated 19-052010. The said pocket has

been acquired along with other unacquired pockets falling in Sector 6568, Sonipat.

4 That the land of the Petitioner falls in the 100 meter restricted belt/ green belt with Tramway along the Eastern Peripheral Expressway. A copy of

the Layout Plan of Rajiv Gandhi Education City indicating the site of the applicant as well as the green belt is enclosed herewith at Annex-A/1. The

portion of green belt that already stands acquired by HUDA has been indicated in green colour on the said plan, and the remaining portion

acquired by NHA has been shown in yellow colour, whereas the acquired land of the Petitioner has been shown in red colour.

5 That a perusal of the said Annex-A/1 makes it apparent that a majority of the area under the green belt already stands acquired, and thus the

assertion of the Petitioner is wrong.

6 That it is very much clear from the said Annex A/1 that only a small portion of land adjoining the land of the Petitioners remains unacquired, on

account of oversight and the same shall also be acquired in due course shortly. Most of the said unacquired portion adjoining the said khasra No.

23/13 of the Petitioner is also under the ownership of the Petitioner.

7. That in view of the facts submitted above, it is very much clear that the Khasra No. 23/13 of the Petitioner has not been acquired in isolation

and only a very small pocket of the entire stretch of the green belt, which is also mainly under the ownership of the present Petitioners remains

unacquired on account of oversight, which cannot form the basis for grant of any relief to the Petitioners and the left out pocket of the land adjacent

to the land in dispute would be acquired within 6 months.

It is thus prayed that this writ petition being entirely bereft of facts may be dismissed with cost.

6. It is also a contention of the Petitioners that the land surrounding the land in

dispute and owned by them was not acquired. Unless and until that is done, the land under acquisition cannot be used for the purpose, for which it was acquired. In the reply filed, it is stated that the land will be used for mandatory 100 meters green belt to be left on both sides of the Eastern Peripheral Expressway. In the affidavit, it is admitted that a portion of the land, adjoining the land of the Petitioners is not under acquisition and the same will be acquired in the near future. It is also an admitted fact that after issuance of notifications under Sections 4 and 6 read with Section 17 of the Act and denying a right of filing objections u/s 5A of the Act to the Petitioners, no further action was taken. Rather the authorities continued to wait and ultimately notice u/s 9 of the Act was issued on May 3, 2010, i.e., after a gap of 1 year and 10 months. The facts indicated above clearly show that there was no urgency. The provisions of Sections 17 (1) and (4) of the Act were put into operation without any justification and application of mind. As such we feel that the invoking of the emergency provisions was not justified. Their lordships of the Supreme Court in *Sri Radhy Shyam (Dead) through L.Rs. and Others Vs. State of U.P. and Others*, , after discussing virtually the entire case law on the subject have laid down the guidelines as to under what circumstances the provisions of Section 17 of the Act can be invoked. In the conclusion arrived at by the Supreme Court, it was held as under:

53. From the analysis of the relevant statutory provisions and interpretation thereof by this Court in different cases, the following principles can be culled out:

(i) Eminent domain is a right inherent in every sovereign to take and appropriate property belonging to citizens for public use. To put it differently, the sovereign is entitled to reassert its dominion over any portion of the soil of the State including private property without its owner's consent provided that such assertion is on account of public exigency and for public good. *Dwarkadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others*, , *Chiranjit Lal Chowdhuri Vs. The Union of India* (UOI) and *Others*, and *Jilubhai Nanbhai Khachar, etc. etc. Vs. State of Gujarat and another, etc. etc.*, .

(ii) The legislations which provide for compulsory acquisition of private property by the State fall in the category of expropriatory legislation and

such legislation must be construed strictly - D.L.F. Qutab Enclave Complex Educational Charitable Trust Vs. State of Haryana and Others, ; State

of Maharashtra and Another Vs. B.E. Billimoria and Others, and Dev Sharan v. State of U.P., Civil Appeal No. 2334 of 2011 decided on

7.3.2011.

(iii) Though, in exercise of the power of eminent domain, the Government can acquire the private property for public purpose, it must be

remembered that compulsory taking of one's property is a serious matter. If the property belongs to economically disadvantaged segment of the

society or people suffering from other handicaps, then the Court is not only entitled but is duty bound to scrutinize the action/decision of the State

with greater vigilance, care and circumspection keeping in view the fact that the land owner is likely to become landless and deprived of the only

source of his livelihood and/or shelter.

(iv) The property of a citizen cannot be acquired by the State and/or its agencies / instrumentalities without complying with the mandate of Sections

4, 5A and 6 of the Act. A public purpose, however, laudable it may be does not entitle the State to invoke the urgency provisions because the

same have the effect of depriving the owner of his right to property without being heard. Only in a case of real urgency, the State can invoke the

urgency provisions and dispense with the requirement of hearing the land owner or other interested persons.

(v) Section 17(1) read with Section 17(4) confers extraordinary power upon the State to acquire private property without complying with the

mandate of Section 5A. These provisions can be invoked only when the purpose of acquisition cannot brook the delay of even few weeks or

months. Therefore, before excluding the application of Section 5A, the concerned authority must be fully satisfied that time of few weeks or months

likely to be taken in conducting inquiry u/s 5A will, in all probability, frustrate the public purpose for which land is proposed to be acquired.

(vi) The satisfaction of the Government on the issue of urgency is subjective but is a condition precedent to the exercise of power u/s 17(1) and the

same can be challenged on the ground that the purpose for which the private property is sought to be acquired is not a public purpose at all or that

the exercise of power is vitiated due to malafides or that the concerned

authorities did not apply mind to the relevant factors and the records.

(vii) The exercise of power by the Government u/s 17(1) does not necessarily result in exclusion of Section 5A of the Act in terms of which any

person interested in land can file objection and is entitled to be heard in support of his objection. The use of word ""may"" in Sub-section (4) of

Section 17 makes it clear that it merely enables the Government to direct that the provisions of Section 5A would not apply to the cases covered

under Sub-section (1) or (2) of Section 17. In other words, invoking of Section 17(4) is not a necessary concomitant of the exercise of power u/s

17(1).

(viii) The acquisition of land for residential, commercial, industrial or institutional purposes can be treated as an acquisition for public purposes

within the meaning of Section 4 but that, by itself, does not justify the exercise of power by the Government u/s 17(1) and/or 17(4). The Court can

take judicial notice of the fact that planning, execution and implementation of the schemes relating to development of residential, commercial,

industrial or institutional areas usually take few years. Therefore, the private property cannot be acquired for such purpose by invoking the urgency

provision contained in Section 17(1). In any case, exclusion of the rule of audi alteram partem embodied in Section 5A (1) and (2) is not at all

warranted in such matters.

(ix) If land is acquired for the benefit of private persons, the Court should view the invoking of Section 17(1) and/or 17 (4) with suspicion and

carefully scrutinize the relevant record before adjudicating upon the legality of such acquisition.

7. The action of the Respondents in this case, if analysed in terms of the judgment of the Hon"ble Supreme Court, the same cannot be upheld. It

appears that there was no emergency and furthermore unless the area adjoining to the land owned by the Petitioners is also acquired, the land

under acquisition cannot be put to any purposeful use. It has been brought to our notice that the Award in this case was passed on May 19, 2010,

however, possession of the land, in dispute, is still with the Petitioner.

8. Under the circumstances, taking note of the facts, mentioned above, we allow this writ petition and quash the notifications issued u/s 6 of the Act

and the Award passed thereafter qua the Petitioners. However, liberty shall

remain with the Respondents authorities to issue a fresh notification to acquire the land in dispute, in future, if need be.