

(2006) 05 P&H CK 0130
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4300 of 2006

Jai Parkash

APPELLANT

Vs

State of Haryana and ors.

RESPONDENT

Date of Decision : 25-05-2006

Acts Referred:

Citation : (2007) 2 PLR 263 : (2007) 1 PLR 215 : (2007) 2 RCR(Civil) 271

Hon'ble Judges : Ashutosh Mohunta, J and Mahesh Grover, J

Advocate : For the Petitioners (In C.W.P. Nos. 4300, 4993, 5042, 6517 and 6522 of 2006), Mr. M.L. Sharma, Advocate. For the Petitioners (In C.W.P. No. 5333 of 2006), Mr. Shailendra Jain, Advocate. For the Petitioners (In C.W.P. No. 7539 of 2006), Mr. Ashok Sharma Nabhewala, Advocate. For the Petitioners (In C.W.P. No. 5089 of 2006), Mr. Sanjay Kumar, Advocate. For the Petitioners (In C.W.P. No. 4305 of 2006), Mr. N.C. Kinra, Advocate. For the Petitioners (In C.W.P. No. 5469 of 2006), Mr. Rahul Dhanotia, Advocate, Mr. Avnish Mittal, Advocate. For the Petitioners (In C.W.P. No. 5447 of 2006), Mr. Suman Jain, Advocate. For the State and other Official Respondent (In the all writ petitions except in C.W.P. No. 7539 of 2006), Mr. H.S. Hooda, Advocate General, Haryana with Mr. Sanjay Bansal, AAG, Haryana and Mr. S.S. Pattar, DAG, Haryana. For the Union of India and National Capital Region Planning Board (In all the writ petitions except in C.W.P. No. 7539 of 2006), Mr. Aman Chaudhary, Advocate., Advocates for appearing Parties

Judgement

Mahesh Grover, J.

1. The petitioners, in these petitions, have challenged the acquisition proceedings initiated by the State of Haryana for the purpose, namely, "for the development and utilisation of land for Residential, Commercial and Institutional Sectors 65, 66, 67 and 68, Sonapat". To achieve this purpose, the State had issued notification under Section 4 of the Land Acquisition Act, 1994 (for short, "the 1894 Act") on 17.11.2005. By this notification, the respondent State sought to acquire approximately 2068 acres of land spread over few villages in the area. Notification under Section 6 of the 1894 Act was issued on 7.2.2006 and by virtue of this, the State actually acquired 2026.87 acres of land. In between

issuance of these two notifications, objections under Section 5A of the 1894 Act were invited and the petitioners submitted their objections on 16.12.2005. Notices for announcement of award under Section 9 of the 1894 Act were issued on 1.3.2006 and the award itself was announced on 2.3.2006.

24. The petitioners have impugned the process of acquisition resorted to by the State by saying that there was complete nonapplication of mind by the State and that their right to be heard before the issuance of notification under Section 6 of the 1894 Act had been seriously prejudiced because of undue haste shown by the State and its authorities in acquiring their land. It has been contended that the entire proceedings regarding hearing of objections was reduced to a sham hearing which has seriously prejudiced their rights. As many as 4000 objections would have been filed, but the same were disposed of in less than 30 days. The petitioners also went to the extent of contending that no proper publication and no munadi had been done with regard to the impugned acquisition. Apart from this, they have pleaded that the proceedings were vitiated because the sanction of the government was not taken before the pronouncement of the award as is the requirement under Section 11 of the 1894 Act. The petitioners have further contended that the acquisition was also contrary to the provisions of the National Capital Region Planning Board Act, 1985 (for brevity, "the 1985 Act").

5. The State of Haryana and its functionaries, on the other hand, justified the acquisition by saying that the provisions of law had been substantially complied with; that there was proper publication and equally proper hearing had been given to the petitioners before finalising the acquisition proceedings. They have averred that the project is a prestigious project where world class Education City by the name of "Rajiv Gandhi Education City" is to be set up and there is no violation of the 1985 Act.

The aforementioned are briefly the rival contentions as per the pleadings of the parties.

6. The questions that have emerged as stark posers in these writ petitions can be summarised as follows :

(1) Whether the State has the absolute right to acquire the land in the garb of public purpose ?

(2) Whether the acquisition proceedings are hit if the provisions of Section 5A of the 1894 Act are not substantially complied with ?

(3) Whether the acquisition can be sustained if there is nonapplication of mind by the State before resorting to the acquisition and before issuing the notification under Section 6 of the 1894 Act ?

(4) Whether the constructed areas can be acquired or not ?

(5) Whether the acquisition proceedings in the present petitions are violative of Article 14 of the Constitution of India ?

(6) Whether the present acquisition is contrary to the 1985 Act ?

7. Shri M.L. Sharma, learned counsel for the petitioners in some of the writ petitions, submitted that notification under Section 4 of the 1894 Act was issued on 17.11.2005 while notification under Section 6 of the said Act was issued on 7.2.2006 and that the petitioners had filed their objections on 16.12.2005. He submitted that the respondents have failed to show as to when these notifications were published and since the dates of publication have not been given, therefore, an inference should be drawn that they were not published, at all.

8. Although in the written statement of the State, the details of the publication have not been given, yet, on a pointed question being raised, it was disclosed that the notifications were published in newspapers, namely, The National Herald, The Indian Express, Daily Amar Ujala, Dainik Bhaskar and in the Haryana Government Gazette. Besides this, munadi had also been done. Therefore, the contention of the petitioners is falsified by the averments made in the written statement, as also the record of the acquisition proceedings which was perused by us. There is no infirmity on the question of publication and munadi.

9. The foremost contention of the learned counsel for the petitioners is that the entire proceedings have been conducted in haste. They urged that the respondents did not find out the utility of the land by conducting a survey and thereby have violated the provisions of Section 3 of the 1894 Act. They contended that after the notification under Section 4 of the 1894 Act was issued, objections were not heard properly and everything has been done in a great haste. Learned counsel submitted that Section 5A of the 1894 Act is akin to fundamental rights and it cannot be dealt with so lightly as has been done by the respondents. In short, the grievance made on behalf of the petitioners is that hearing had not been conducted properly and the objections had not been dealt with in a proper manner. The learned counsel argued that the Supreme Court has repeatedly held that Section 5A is mandatory and the provisions of the 1894 Act have to be followed strictly. To support their contentions, the learned counsel for the petitioners placed reliance on the judgment of the Apex court reported as 2005(4) RCR(Civil) 289 (SC) : 2005(7) S.C.C. 627, Hindustan Petroleum Corp. Ltd, v. DariusShapur Chenai and others. In paragraph 9 of the said judgment, their Lordships have held as under :

"It is trite that hearing given to a person must be an effective one and not a mere formality. Formation of opinion as regards the public purpose as also suitability thereof must be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones. The State in its decisionmaking process must not commit any misdirection in law. It is also not in dispute that Section 5A of the Act confers a valuable and important right and having regard to the provisions contained in Article 300A of the Constitution, it has been held to be akin to a fundamental right."

10. Learned counsel further relied on the judgment reported as AIR 1980 S.C. 319 The State of Puniab and another v. Gurdial Singh and others. In paragraph 16 of this judgment, it has been held as under :

"Hearing him before depriving him is both reasonable and preemptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons".

11. We have thoughtfully considered the submissions made by the learned counsel for the petitioners. Section 5A of the 1894 Act is in two parts. Upon receipt of objections, the Collector is required to make such further enquiry as he may think necessary whereupon he must submit a report to the appropriate government in respect of the land which is the subjectmatter of notification under Section 4(1) of the 1894 Act. The said report would also contain recommendations on the objections filed by the owner of the land. He is required to forward the records of the proceedings held by him together with the report. On receipt of such report together with the records of the case, the government is to render a decision thereupon. It is now settled that in view of a catena of decisions of the Supreme Court, the declaration made under Section 6 of the 1894 Act need not contain any reasons.

12. There is absolutely, no doubt, that violation of Section 5A of the 1894 Act would result in serious jeopardy as far as the rights of the landowners are concerned, but an allegation ipso facto made by a person that Section 5A has been violated will not render the acquisition proceedings void. He has also to show that he has been prejudiced. If the notification of the State is not vague and there is an exact purpose of acquisition which has been made explicit, then he, in the absence of any prejudice caused, cannot question a sovereign power to exercise its right of eminent domain. The power to acquire by the State emerges from the right of eminent domain. The only test that has to be shown is that it is for a public purpose.

13. In the present case, to examine the veracity of the contentions of the learned counsel for the petitioners with regard to violation of Section 5A of the 1894 Act, we had sent for the relevant record of the acquisition in question. After perusing the entire record, we are satisfied that so far as is 1894 Act is concerned there is no violation of the provisions of Section 5A of the 1894 Act. The objections of the affected persons have been duly considered and the Land Acquisition Collector has released from acquisition certain lands where it was thought necessary to do so. There is a separate register in which all the objections have been entered separately and the same have been decided as per a detailed reports. We, therefore, conclude that there was sufficient compliance as far as the hearing of objections under Section 5A of the 1894 Act is concerned and there is no infirmity or illegality therein and the petitioners have failed to show any prejudice being caused to them on this count.

14. In C.W.P. No. 5333 of 2006, Shri Shailendra Jain, learned counsel for the

petitioners submitted that hearing which has been granted on such a large scale cannot be termed as an effective hearing and disposal of objections in one line does not satisfy the requirement of Section 5A of the 1894 Act because the Land Acquisition Collector, while disposing of the objections and conducting the enquiry under Section 14 of the 1894 Act, has the power of a Civil Court when it conducts an enquiry as referred to under the said Act.

15. We do not find any merit in the contention of Shri Jain. A perusal of Section 14 of the 1894 Act shows that the Land Acquisition Collector has the power of a Civil Court to force attendance of the witnesses, if required, during the course of enquiry, But, this would be the subjective satisfaction of the Land Acquisition Collector as to whether there is any necessity of doing so. This is in no way relevant to the proceedings or enquiry as is contemplated under Section 5A of the 1894 Act. Therefore, we reject the contention of Shri Jain being misconceived and misplaced.

16. From the perusal of the pleadings of the parties as well as the relevant record, we are convinced that the respondents have amply demonstrated that the acquisition is for a public purpose. The land in question was, in fact, carefully selected. The development plan for this area was prepared in the year 2003 and a notification was issued by the Town and Country Planning Department way back on 2.9.2003. In pursuance to this, a final development plan for Multi Functional Urban Complex on SonapatKundli road was conceived for residential, commercial and institutional purposes. The land is now sought to be used for these purposes and an Education City with world class facilities is proposed to be set up in this region (region ?). A High Level Committee was constituted under the Chairmanship of Chief Administrator, H.U.D.A. which had identified four sites in Sonapat District, two sites each in Districts Rohtak, Jhajjar and Gurgaon. The said Committee visited all the proposed locations and thereafter, in a meeting held on 24.5.2005, after comparing the relative merits and demerits of the sites, shortlisted three sites. Out of these three sites, the sites of Sectors 65 and 67 on Sonapat Kundli road were found to be most suitable. It has also been pointed out that the State proposed to acquire 2068 acres of land after High Level Committee had selected this site. After considering the objections filed by the landowners under Section 5A of the 1894 Act, about 41.65 acres of land has been released from acquisition. A proper report, as is contemplated under the 1894 Act, prepared by the Land Acquisition Collector, as also the Joint Site Inspection Committee, was considered before acquiring the land and subsequently leaving certain area from acquisition. The area which has been left out of the acquisition is on the following counts :

1. Area left out of acquisition by the State Government as per Joint Site Inspection Committee report

2.61 Acres

2. Area left out of acquisition by the State Government as per report of Land

Acquisition Collector

15.81 Acres

3. Area left out of acquisition by the Government which was wrongly included being out of demarcation.

12.98 Acres

4. Area left out of acquisition by the State Government which was wrongly included being CLU Area

10.25 Acres.

Total area left out :

41.65 Acres.

17. The aforementioned areas which have been released fall in different villages, namely, Aswarpur, Sewli, Khedwa and Badkhals. It cannot, therefore, be said that there was no application of mind by the State. If the State had to resort to arbitrariness, then where was the question of releasing such a small area as compared to the large chunk which is sought to be acquired. Therefore, we are in complete agreement with Shri H.S. Hooda, learned Advocate General, Haryana on behalf of the State that the land has been acquired for a public purpose and there was no violation of any provision of the 1894 Act.

18. The definition of "public "purpose" has traversed a long distance over a period of time. Like the time, it has not remained static. It has to blend harmoniously with the needs of the public and that of the State to enhance economic and social development. What is a public purpose is also a satisfaction of the State as it is its duty to undertake developmental works for the benefit of the society. That is the reason why the concept of the public purpose changes with the needs of the State and the society.

19. In the instant case, the land is required for the purpose of setting up of an Education City of the world class standard by the name of Rajiv Gandhi Education City. The State has already invited expression of interest for the said project. Apart from this, the State and its functionaries are aware of the importance of the area which is in the vicinity of National Capital and since 2.9.2003, the development plan is in existence. So, it cannot be said that the State and its functionaries have resorted to the acquisition in question without there being any planning in this regard. A deep concerted effort seems to have gone into this project to develop the area which is in the National Capital Region as a world class education centre. The public purpose, therefore, stands established beyond doubt. The Supreme Court in the case reported as 1997(1) S.C.C. 134 Ramniklal N. Bhutta and another v. State of Maharashtra and others, has held as under :

"Our country is now launched upon an ambitious programme of allround economic advancement to make our economy competitive in the world market.

We are anxious to attract foreign direct investment to the maximum extent. We propose to compete with China economically. We wish to attain the pace of progress achieved by some of the Asian countries, referred to as "Asian tigers", e.g., South Korea, Taiwan and Singapore. It is, however, recognised on all hands that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in direct (dire ?) need of substantial improvement, expansion and modernisation. These things very often call for acquisition of land and that too without any delay. It is, however, natural that in most of these cases, the persons affected challenge the acquisition proceedings in courts. These challenges are generally in the shape of writ petitions filed in High Courts. Invariably, stay of acquisition is asked for and in some cases, orders by way of stay or injunction are also made. Whatever may have been the practice in the past, a time has come where the courts should keep the larger public interest in mind while exercising their power of granting stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interest of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in a civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest visavis the private interest while exercising the power under Article 226 indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lump sum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong, quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say."

20. The next contention raised by the learned counsel for the petitioners is that there is arbitrariness in releasing the land of some of the persons while acquiring the land of the petitioners even though they are similarly situated. Shri M.L. Sharma, learned counsel for the petitioners referred to the written statement filed in C.W.P. No. 4300 of 2006 where the government has released some land which was acquired for expansion of already existing unit for which C.L.U. permission was under consideration. Learned counsel contended that the petitioner was similarly situated as his application for C.L.U. was also pending, but, on a close scrutiny, we find that the petitioner has made the application for C.L.U. after the acquisition proceedings had been initiated. There was, thus, no parity between the two cases and, therefore, the argument of the learned counsel is totally devoid of any force and is liable to be rejected.

21. Learned counsel for the petitioners then submitted that the entire acquisition

was a result of arbitrary exercise of power as the method of pick and choose has been adopted in releasing the land of some persons while acquiring those of the petitioners. We have already noticed that the State has acquired a huge chunk of land, but has released only about 41.65 acres of land. This itself shows that there is hardly any land which has been released from acquisition and the State has acquired most of the land which was notified. Only some land where there was heavy construction, has been released.

22. The next contention that was raised by the learned counsel for the petitioners is that the the petitioners have raised Aclass constructions over their acquired land and, therefore, the same deserves to be released from acquisition. To support their submission, learned counsel relied on the judgments of the Supreme Court reported as 2004(4) RCR(Civil) 344 (SC) : 2005(1) All India Land Laws Reporter 488, B.E.M.L. Employees House Building Cooperative Society Ltd. v. State of Karnataka & Others and 2001(4) RCR(Civil) 258 (SC) : 2001(7) S.C.C. 545 Sube Singh v. State of Haryana and others.

23. The aforementioned facts regarding constructions are not common to all the writ petitions as some of them pertain to vacant areas, We, however, propose to go into this question and it shall cover those cases where constructions are existing.

24. While relying on the judgment of Sube Singh's case (supra), learned counsel for the petitioners wanted us to believe that all constructed areas have to be left out of acquisition unless they were required for the purposes of building roads or hospitals. We are afraid, we cannot give such a narrow interpretation as the petitioners want us to hold. A perusal of the judgment in Sube Singh's case (supra) shows that the Supreme Court was seized of the matter wherein there existed a policy of the State by which it had classified the constructions as A, B and C class and had said that A class constructions should not be acquired. The Supreme Court had struck down this policy and while doing so, their Lordships held that in the facts and circumstances of the case before it, the matter ought to have been reconsidered by the State so as to release those constructed areas which did not come in the way of construction of roads and hospitals. In view of this, it cannot be made a general rule. Once, it is held that the State has an absolute right to acquire any land, provided it is in pursuance to a public policy, then there can be no exception to the rule. The State, however, can release the lands according to its own subjective satisfaction provided they are not germane to the scheme of acquisition and provided some areas are not required for the integrated planning. The State can also release lands where it feels that the economics of the costs of acquisition would outweigh the benefits of the acquisition. This can particularly be the case where there are areas in which dense constructions exist, but again this would be a matter of policy and not of a law and the State is free to formulate such policy if it deems necessary. The Supreme Court in the judgment reported as 2005(1) RCR(Civil) 224 (SC) : 2005(9) S.C.C. 164, Anand Buttons Ltd. v. State of Haryana and others

reiterated this view that the State is the best Judge to see as to which land is to be acquired and which land can be exempted without jeopardizing the development scheme.

25. The State has an absolute right to acquire any land or constructed area as long as it is for a public purpose. This decision of the State is always subject to judicial review. As long as the public purpose exists, the State can resort to the power to acquire land regardless of the fact whether the owner of the land is willing or unwilling. There is an underlying element of compulsion in the 1894 Act and that is why the Courts must put the acquisition under a scanner because it results in deprivation of valuable and important right of a person whose land is subjected to acquisition. However, in the facts and circumstances of these petitions, we are of the opinion that there existed a public purpose for which the land has been acquired and there is no illegality or infirmity in the decision of the State and its functionaries to release certain areas, whether having construction or not, from acquisition.

26. The last contention raised by the learned counsel for the petitioners is that the acquisition proceedings are violative of the provisions of Sections 16, 17, 18 and 19 of the 1985 Act. According to them, no sanction of the National Capital Region Planning Board (for short, "the Board") was taken before resorting to the acquisition in question.

27. Shri Aman Chaudhary, learned counsel appearing for the Union of India and the Board has stated that the primary concern of Board is that the region is utilized as per the plan, and each such plan is updated and continues to be in existence for 15 years. The current plan which is in existence is known as 2020 Plan and this was notified in the year 2005. According to him, the area which is sought to be acquired is meant for residential and institutional purposes which is as per the plan of the Board. He submitted that since the State has acquired the land in question both for residential and institutional purposes, there was no violation of any provisions of the 1985 Act.

28. It may be noticed that the Board was created under the 1985 Act. The Board was responsible for preparation of plan for the development of the National Capital Region and for coordinating and monitoring the implementation of such plan and for evolving harmonized policies for the control of land uses and development of infrastructure in the National Capital Region so as to avoid any haphazard development of the region. Shri Aman Chaudhary, learned counsel for the Board has filed a short written statement according to which the Board has prepared a Regional Plan under Section 10 of the 1985 Act with the perspective year 2021. This was notified 17.9.2005 under Section 13 of the 1985 Act. The regional plan is a policy document which provides for inter related policy framework for the development of the region and provides for various sectors such as settlement pattern, economic activity and fiscal policy, transport, power, water, sewerage etc. Particularly, the perspective of 15 to 20 years is taken into consideration and the planning has been done at macro level. As such, it is not

possible to pinpoint the exact location of the land in terms of Khasra numbers. However, the urbanisable areas in the regional land use map are approximate. It has also been categorically averred in the written statement filed by the Board that :

"That the State of Haryana had prepared a Development Plan of SonapatKundli Multifunctional Urban Complex 2021 which was approved by the NCR Planning Board and it has been notified by the Government of Haryana. Accordingly, the urbanisable area of the notified Development Plan of SonapatKundli Multifunctional Urban Complex 2021 was incorporated in the finally published Regional Plan, 2021 notified on 17.9.2005."

29. In view of the fact that the land in question has been identified as urbanisable area in the National Capital Region Plan and the State of Haryana has given effect to one of the schemes which is not offending the said plan, there can hardly be any fault with such an action of the State.

Thus, we do not find that any of the provisions of the 1985 Act has been violated while making the impugned acquisition.

As a sequel to above discussion, we hold that there is no merit in the writ petitions which deserve dismissal. Ordered accordingly.