
(2008) 02 P&H CK 0186
In the Punjab And Haryana At Chandigarh

Janardhan Dutt

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 05-02-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4, 5A, 6, 9

Citation : (2008) 2 PLR 86

Hon'ble Judges : T.P.S. Mann, J;M.M. Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This order shall dispose of C.W.P. Nos. 19513 of 2005 (Janardhan Dutt v. State of Haryana and Ors.) and 10232 of 2006 (Arjun v. State of Haryana and Ors.), which have been filed under Article 226 of the Constitution, challenging notification No. 189/1-L, dated 10.1.2003, issued u/s 4 of the Land Acquisition Act, 1894 (for brevity, "the Act") seeking to acquire land at public expenses for public purpose, namely, for the extension of Pundri Drain No. 1 from RD 55000 to 84412 in village Dussain, Ahun, Sangroli, Sakra and village Kheri Sakra, Tehsil and District Kaithal, notification No. 8389/14 (Kaithal (1), dated 17.11.2003, issued u/s 6 of the Act and notice dated 16.9.2005, issued u/s 9 of the Act. Further, prayer has been made for directing the respondents to survey the entire area again and to shift the drain to other place as per original plan, claiming that the land of the petitioners has been bifurcated and half of the land cannot be irrigated.

2. It is admitted position that the land of the petitioners was included in the notification dated 10.1.2003, issued u/s 4 of the Act. The petitioners did not file any objections u/s 5A of the Act and eventually the land belonging to them was acquired on 17.11.2003, vide declaration u/s 6 of the Act. The award was announced on 19.9.2005 and these petitions have been filed thereafter on 14.12.2005 (C.W.P. No. 19513 of 2005) and 11.7.2006 (C.W.P. No. 10232 of

2006).

3. Mr. J.P. Dhull, learned Counsel for the petitioners, has submitted that originally alignment of the drain in question was taken out through Khasra No. 87 Killa Nos. 21 to 25, Khasra No. 36 Killa Nos. 21 to 25, Khasra No. 85 Killa Nos. 15, 16 and 21 to 25. However, on 28.10.2005, the alignment was changed by the respondents to adjust the persons of their choice on extraneous considerations. Accordingly, alignment was taken through Khasra No. 89 Killa Nos. 1 to 5, Khasra No. 90 Killa Nos. 1, to 5, Khasra No. 91 Killa Nos. 1 to 5, Khasra No. 84 Killa Nos. 10, 11, 20 & 21 and Khasra No. 91 Killa No. 1. He has referred to preliminary objection raised in the written statement that after announcement of the award the work was resumed in village Sakra and during the execution of the work it was observed that two tube wells fall in the alignment. After considering the notification of rectangles notified under Sections 4 and 6 of the Act some modifications in the alignment was initiated and accordingly the modification of alignment was approved by the Chief Engineer/Construction, Panchkula, on 30.11.2005. He has also referred to the letters dated 28.10.2005, 17.11.2005 and 30.11.2005 to argue that so called technical reason for changing alignment has not been explained in the written statement.

4. Mr. Ashish Kapoor, learned State counsel has pointed out that the petitioners did not file any objection u/s 5A of the Act and the instant writ petitions have been filed after announcement of the award. According to learned State Counsel the change of alignment without anything more cannot, constitute basis for vitiating the acquisition u/s 4 and 6 of the Act, even if the land of some of the objectors was excluded. He has maintained that in the absence of any specific allegation of malafide it has to be regarded that the allegations are vague and cannot be gone into by this Court.

5. After hearing learned Counsel for the parties and perusing the record, we are of the considered view that there is no merit in these petitions. The petitioners were given full opportunity at the stage of acquiring land when notices u/s 5A of the Act were issued and objections were invited. The petitioners preferred not to file any objection. The change of alignment subsequently for the express reason that two tube wells were coming in their way, cannot be challenged because it is based on relevant consideration and we are not able to find out any extraneous consideration for change of alignment. Even otherwise, the allegation of malafide by impleading particular persons have not been made and in the absence of specific allegation such accusation cannot be gone into, as has been held by a Constitution Bench of Hon"ble the Supreme Court in the case of S. Pratap Singh Vs. The State of Punjab, . There is, thus no merit in these petitions.

6. Dismissed.