

(2010) 05 P&H CK 0162
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 642 of 1984

Kailash Wati Through L.Rs. and Another	APPELLANT
Vs	
State of Haryana and Others	RESPONDENT

Date of Decision : 20-05-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6

Citation : (2011) 1 LLR 517 : (2010) 3 RCR(Civil) 668

Hon'ble Judges : Jitendra Chauhan, J and M.M.Kumar, J

Judgement

M.M.Kumar, J.

1 The petitioners had initially challenged notification dated 31.12.1982 (P1), issued under Section 4 of the Land Acquisition Act, 1894 (for brevity, "the Act"). They had also questioned declaration made under Section 6 of the Act on 9.11.1983 (P2). While issuing notice motion their dispossession was stayed on 3.2.1984. However, their writ petition was dismissed on 4.2.1986 by a Division Bench of this Court by passing the following order :

"The law point, as raised in this petition, has already been decided vide judgment dated July 16, 1985, in Civil Writ Petition No. 694 of 1984. No other point has been raised. Hence, no merit. Dismissed."

2 It is obvious that the basis of dismissal of the instant petition was that another petition bearing CWP No. 694 of 1984 had already been dismissed on 16.7.1985. The petitioners challenged the aforesaid order before Hon"ble the Supreme Court. The Special Leave Petition was granted and the petitioners were allocated Civil Appeal No. 2054 of 1992. On 20.7.1992 (A3), Hon"ble the Supreme Court passed the following order:

"Special leave granted. Heard counsel on both sides. Read the order passed in C.A. Nos. 38123820 of 1986 and C.A.Nos. 38413847 of 1986. In view thereof, we are of the opinion that the High Court should reconsider this case on merits after giving the party sufficient opportunity to file additional affidavit if necessary.

The appeal is allowed accordingly. The impugned judgment of the High Court is set aside and the matter is remitted back to High Court for disposal as stated above. No costs."

3 It is, thus, obvious that this Court was required to reconsider the matter on merit after granting sufficient opportunity to file additional affidavit and the order dated 4.2.1986, passed by the Division Bench dismissing the instant petition was set aside. It is pertinent to mention that petitioner No. 1 Smt. Kailash Wati wife of Shri Ravi Dutt expired during the pendency of the petition and her legal heirs were brought on record by filing CM. No. 6526 of 2009, which was allowed on 3.12.2009.

4 Another application bearing CM. No. 6513 of 2009 was also filed bringing on record numerous other facts. It has been pointed out that the land acquired under the same notifications and also covered by the same award, belonging to one Shri Shiv Dass Mal Kalra and his sons, has been released by the respondent State despite the fact that their writ petition, namely, C.W.P. No. 5781 of 1983 was dismissed by this Court on 20.11.1985 and that Hon"ble the Supreme Court refused to entertain their Special Leave Petition because there was un explained delay of 1693 days. The aforementioned Shri Shiv Dass Mal Kalra and his sons did not furnish any explanation for the delay. However, Hon"ble the Supreme Court while dismissing their SLP on 24.4.1991 had observed that in the event of other applications succeeding, then it was open to them (Shri Shiv Dass Mal Kalra and his sons) to approach any such authorities as they may deem fit. Order dated 24.4.1991 (P6) reads thus:

" The SLP is barred by limitation of 693 (1693 ?) days. The explanation offered does not appeal to us for not providing satisfactory grounds. There is a gross delay of about five years. We accordingly dismiss the special leave petition. In the event of other applications succeeding, it is open to the petitioners to approach such other authorities as he may deem fit."

5 In pursuance to the aforesaid order, Shri Shiv Dass Mal Kalra and his sons succeeded in getting their land released, vide order dated 25.8.2005 (P7), which was acquired by the same notifications, subject matter of instant petition. Their land was comprised in Khasra No. 4247/1767,1768 Min (1 Bigha 7 Biswas), Sector 16, Gurgaon. The releasing order makes an interesting reading, which is as under :

"From The Director, Urban Estates Department Haryana, Panchkula. To The Administrator, HUDA, Gurgaon, Memo No.105/ Dated: Sub: Regarding releasing the land of Sh. Shiv Dass Mal Kalra, Khasra No. 4247/1767, 1768 Min (1B7 biswa), Sector 16, Gurgaon. Reference your letter bearing No. 14533 dated 5.8.2005, on the subject cited matter. In this connection, you are intimated that Government have agreed to release the land of S/Shri Dharamvir Taneja, Mukesh Kalra and Baldev Raj Taneja in Sector 16, Gurgaon, comprising in khasra No. 4247/1767 and 1768 Min, falling within the land measuring 1B7 Biswa, on the

usual terms and conditions, for residential purposes. Besides above, the following conditions shall also be applicable on the applicants :

i) Party will have to deposit the development charges as per their respective shares with HUDA. ii) If the party had filed any case against acquisition, they have to withdraw the same. iii) Party have to execute an agreement with regard to the released land. SdV Deputy Director, Urban Estates Deptt. Haryana, Panchkula."

6 A perusal of the aforesaid order shows that the respondents had released the land belonging to Shri Shiv Dass Mal Kalra and his sons on various conditions. Thereafter even their site plans were sanctioned by the Municipal Corporation, Gurgaon, on 19.3.2009 (P8 & P9).

7 The petitioners have further placed on record mutation dated 27.6.2006 showing that the land belonging to Shri Shiv Dass Mal Kalra and his sons, stood mutated in the name of the Haryana Urban Development Authority, Gurgaon (P13). However, there is a specific note by the Patwari that the land comprised in Khasra No. 4247/1767 (170), has been released from acquisition, which was to be utilised for commercial purposes. The afore mentioned land has been sold by Shri Shiv Dass Mal Kalra and his sons to M/s Radiance Infracon and Developers (P) Ltd., New Delhi, vide sale deed dated 31.7.2006 (P14). Further sale deeds by other share holders have also been executed on 31.7.2006 (P15 & P16) and a mutation has been sanctioned on 16.11.2009 (P17). Eventually, the released land was utilised for construction which is evidenced by photographs Annexures P10 and P11. The vendees have succeeded obviously on account of influence.

8 The aforesaid facts have not been seriously disputed in the reply although replication has also been filed by the petitioners. The main objection raised by the respondents is that the application has been filed after huge delay.

9 When the matter came up for consideration on 3.3.2010, a detailed order was passed and the respondents were directed to apprise the Court about the status of the land belonging to the petitioners, comprised in Khasra No. 1768. The respondents were further required to apprise the Court whether any third party rights have come in existence or not. This Court also took notice of the fact that when the order dated 25.8.2005 (P7) was passed in favour of Shri Shiv Dass Mal Kalra and his sons, releasing their land, it was mentioned that there was land available in Khasra No. 1768.

10 In pursuance of the direction issued, Mr. Vikas Yadav, IAS, Deputy Secretary, Urban Estates, Haryana, Panchkula, has filed his affidavit dated 13.5.2010, stating that the land belonging to Shri Shiv Dass Mal Kalra and his sons was released on 25.8.2005 on the ground that it was an isolated plot and could not be left unutilised. However, no satisfactory reply has been given with regard to the land comprised in Khasra No. 1768, belonging to the petitioners. In the third para of the affidavit it has been stated that there was no record available in the department whether any third party rights have been created in the land.

11 A reply to the affidavit has been filed by the petitioners again asserting in para 3 that the land continues to be in possession of the petitioners and it has not been utilised. It has further been pointed out that similar situated land in the adjoining area has been left from acquisition and the status of the land belonging to the petitioners and that of Shri Shiv Dass Mal Kalra and his sons is the same. The land of Shri Shiv Dass Mal Kalra and his sons, which has been released, is situated in Khasra No. 4267/1767 and 1768 Min (IBigha 7 Biswas) and the land of the petitioners is also situated in the same Khasra No. 4267/1768.

12 Mr. M.L. Sharma, learned counsel for the petitioners has vehemently argued that the case of the petitioners is at much higher footing than that of Shri Shiv Dass Mal Kalra and his sons. According to the learned counsel, once the SLP of Shri Shiv Dass Mal Kalra and his sons was dismissed on the ground that it was delayed by 1693 days then there was hardly any scope for release of their land from acquisition. He has further pointed out that the SLP of Shri Shiv Dass Mal Kalra and his sons was dismissed on 24.4.1991 and the order releasing the land was passed after 14 years on 25.8.2005 (P7). According to the learned counsel, the aforesaid order is purported to follow another order passed by this Court on 30.5.1990 (P18) in the case of Kundan Lal v. State of Haryana and another (CM. No. 4918 of 1990 in CWP No. 2583 of 1984). Accordingly, it has been urged that the petitioners by all means deserves to be granted the relief which has been given to Shri Shiv Dass Mal Kalra and his sons.

13 Mr. Kamal Sehgal, learned State counsel has, however, argued that although the order dismissing the writ petition passed on 4.2.1986, was set aside by Hon"ble the Supreme Court and the matter was remitted back, yet the petitioners had failed to file appropriate application for 17 years and, therefore, they do not deserve any parity with that of Shri Shiv Dass Mai Kalra and his sons. According to the learned State counsel the petitioners cannot base their rights on the order dated 25.8.2005 (P7).

14 After hearing learned counsel for the parties, perusing the record along with affidavit of Shri Vikas Yadav, dated 13.5.2010 and the reply filed by the petitioners, we are fully convinced that the present case is squarely covered by the observations made by Hon"ble the Supreme Court in the case of Hari Ram v. State of Haryana, (2010) 3 SCC 621. Their Lordships" of Hon,ble the Supreme Court while quoting similar orders in paras 29 to 36, releasing the land of various persons, has concluded that in the respondent State of Haryana, no uniform policy is followed and the orders releasing land were passed even in cases of such persons who had not even challenged acquisition proceedings. Some of them who had challenged the proceedings had failed, were also beneficiary of the release order. In the aforesaid context, Hon We the Supreme Court echoed its concern regarding the arbitrary exercise of power by the respondent State by observing in para 26 as under :

"26.....The policy articulated in the Letter dated 26.6.1991, thus, hardly helps the respondents. Rather it is seen that neither the aforesaid policy nor any other

policy has been followed by the State Government while releasing land of various landowners whose lands have been acquired in the same acquisition proceedings. As a matter of fact, the only policy that seems to have been followed is: "you show me the face and I'll show you the rule".

(emphasis added)

15 It is further pertinent to notice that Hon"ble the Supreme Court was not dissuaded to pass order in favour of those petitioners who could not get benefit from the State. The argument of the State concerning negative discrimination for release of the land in favour of those petitioners was rejected. In paras 40, 41 and 43, their Lordships" voiced their concern to rescue the common man as against the influential/affluent. The aforesaid paras make interesting reading, which is as under :

"40. It is true that any action or order contrary to law does not confer any right upon any person for similar treatment. It is equally true that a landowner whose land has been acquired for public purpose by following the prescribed procedure cannot claim as a matter of right for release of his/her land from acquisition but where the State Government exercises its power under Section 48 of the Act for withdrawal from acquisition in respect of a particular land, the landowners who are similarly situated have right of similar treatment by the State Government. Equality of citizens" rights is one of the fundamental pillars on which edifice of rule of law rests. All actions of the State have to be fair and for legitimate reasons.

41. The Government has obligation of acting with substantial fairness and consistency in considering the representations of the landowners for withdrawal from acquisition whose lands have been acquired under the same acquisition proceedings. The State Government cannot pick and choose some landowners and release their land from acquisition and deny the same benefit to other landowners by creating artificial distinction. Passing different orders in exercise of its power under Section 4 8 of the Act in respect of persons similarly situated relating to same acquisition proceedings and for same public purpose is definitely violative of Article 1 4 of the Constitution and must be held to be discriminatory.

42. xxx xxx xxx

43. It is unfair on the part of the State Government in not considering representations of the appellants by applying the same standards which were applied to other landowners while withdrawing from acquisition of their land under the same acquisition proceedings. If this Court does not correct the wrong action of the State Government, it may leave citizens with the belief that what counts for the citizens is right contacts with right persons in the State Government and that judicial proceedings are not efficacious. The action of State Government in treating the present appellants differently although they are situated similar to the landowners whose lands have been released can not be countenanced and has to be declared bad in law." (emphasis added)

16 When the aforesaid ratio of the judgment of their Lordships" is applied to the facts of the present case, no doubt is left that the petitioners, who are at a higher footing than that of Shri Shiv Dass Mal Kalra and his sons, have to be given at least the same relief. Shri Shiv Dass Mal Kalra and his sons lost litigation up to Hon"ble the Supreme Court and their Special Leave Petition was dismissed on 24.4.1991 (P6). They made representation clinging to cliff hanging observation of Hon"ble the Supreme Court in the order dated 24.4.1991 (P6) and the respondent State vide order dated 25.8.2005 (P7) has released their land from acquisition that too after 14 years. As far as the petitioners are concerned, their petition was deemed to be pending in this Court after Hon"ble the Supreme Court has set aside the order dated 4.2.1986, passed by the Division Bench of this Court dismissing the instant petition. The matter was remitted back to this Court for decision afresh. It has also come on record that the land belonging to the petitioners is part of the same khasra number which has been released in favour of Shri Shiv Dass Mal Kalra and his sons. It is, thus, safe to assume that the land of the petitioners have also not been utilised nor any third party rights have come into existence.

17 As a sequel to the above discussion, the instant petition succeeds. Accordingly, the acquisition qua the land of the petitioners is quashed. All subsequent proceedings in pursuance of notification dated 31.12.1982 (P1), issued under Section 4 of the Act and declaration dated 9.11.1983 (P2), made under Section 6 of the Act are also set aside. The petitioners shall continue to enjoy proprietary rights over the land in question.

18 The writ petition stands disposed of in the above terms. Petition disposed of