
(2008) 03 P&H CK 0084
In the Punjab And Haryana At Chandigarh

Kamlesh Chander and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 13-03-2008

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Land Acquisition Act, 1894 — Section 11, 23, 28, 3, 31

Citation : (2008) 2 PLR 668 : (2008) 4 RCR(Civil) 535

Hon'ble Judges : Sabina, 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. 3787, 3808 and 3823 of? 008. However, facts are being referred from C.W.P. No. 3787 of 2008. In all the petitions subject matter of challenge are notification dated 20.1.2003, issued u/s 4 of the Land Acquisition Act, 1894 (for brevity "the Act") and declaration dated 16.1.2004 issued u/s 6 of the Act (Annexures P-1 and P-2 respectively). A further prayer for issuance of direction to the respondents for grant of licence to the petitioners to set up residential plotted colony has also been made, for which an application in the prescribed Form LC-1 has already been submitted and stated to be under consideration of the respondents.

2. It has been conceded by the learned Counsel for the petitioners right at the out set that award has been announced by the respondents in January, 2006.

3. Petitioner Nos. 1 to 11 have filed the petition (C.W.P. No. 3787 of 2008) through their General Power of Attorney Shri Sandeep Mangla son of Shri Shiv Darshan Mangla, whereas petitioner No. 12 is a Limited Company and Shri Sandeep Mangla has been authorized to file the instant petition on its behalf. The case of petitioner Nos. 1 to 11 is that they are owner in possession of land in question as they have entered into collaboration agreement with petitioner No. 12. They have applied for grant of licence for setting up a residential plotted colony. In paras 2 and 3, petitioner No. 12 has given its background claiming

that it is a reputed developer and has acquired expertise in the field of setting up residential and commercial colonies.

4. In para 6, vague averments have been made that the respondents have failed to publish notification u/s 4 of the Act in two daily newspapers and as a result thereof the petitioners could not file objections. Similar vague averments have been made in paras 10 and 11. In fact, the grievance of the petitioners as per averments made in para 12 is that they have applied for development of their land for the purposes of setting up extended residential plotted colony for which requisite application in the prescribed Form LC-1 has already been submitted with the competent authority. Even the requisite fee for licence and scrutiny for an area measuring 53 acres has been deposited (P-3 Colly). Petitioner No. 12 claims that it fulfils all the requirements and conditions to carry out and develop the land for the purposes for which land is sought to be acquired by the State Government. A reference has also been made to a policy framed and followed by the respondents for setting up residential/commercial complexes in the respondent State of Haryana. The policy is stated to have been framed u/s 3 of the Haryana Development and Regulation of Urban Area Act, 1975. The petitioners have also claimed that the respondent State has been releasing land in similar circumstances. In that regard, reliance has been placed on the release of land in favour of M/s Siddharth Co-operative House Building Society in Sector 2 Sonapat, as is evident from order dated 15.2.2007(P-8).

5. We have heard learned Counsel at some length and has perused the paper book.

6. Having heard learned Counsel we find that the writ petition is wholly misconceived. Mr. Sanjay Vij, learned Counsel has conceded that the award has been announced in January, 2006. In that view of the matter, acquisition proceeding could not be challenged by filing a petition under Article 226 of the Constitution. The award in this case has been announced more than two years back and there is nothing on the record to explain the delay in filing the instant petition. It is well settled by catena of judgments of Hon'ble the Supreme Court that no writ petition would be maintainable after passing of award. In that regard reliance may be placed in the cases of *Star Wire (India) Ltd. Vs. State of Haryana and Others*, ; *The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others*, and *C. Padma and Others Vs. Dy. Secretary to the Govt. of T.N. and Others*, and *Swaiika Properties Pvt. Ltd. and Another Vs. State of Rajasthan and Others*, .

7. We also remained unable to persuade ourselves to accept the contention raised by the learned Counsel that the respondents may be permitted to consider the application filed by the petitioners for grant of licence to develop a residential plotted colony by then because after announcement of award, possession of the land is taken, which result into vesting the same in the respondent State free of any encumbrances. Accordingly, the land stand acquired for establishment of a public purpose for which notification u/s 4 of the Act was earlier issued and after

consideration of objections, declaration u/s 9 of the Act has been made. Thereafter, notice u/s 9 of the Act is issued and award u/s 11 of the Act is announced. If the land is permitted to be utilized for establishing a private plotted colony at the instance of petitioner No. 12 after announcement of award and taking of possession, then it would mean that the land of the land owners has not been acquired for the avowed public purpose. It is well settled that compulsory acquisition sustains its justification from the public purpose of acquiring the land. If the land by the respondent State is to be acquired for the purpose of releasing it to the colonizer after taking possession then it would result into traversery of justice on the general public.

8. The general public would feel defrauded if such an action by the respondent State is permitted. For the aforementioned view, we place reliance on the following observations made by 3-Judge Bench of Hon'ble Supreme Court in the case of Chameli Singh and others etc. Vs. State of U.P. and another, .

18. In every acquisition by its very compulsory nature for public purpose the owner may be deprived of the land, the means of his livelihood. The State exercises its power of eminent domain for public purpose and acquires the land. So long as the exercise of power is for public purpose, the individual's right of an owner must yield place to the larger public purpose. For compulsory nature or acquisition, Sub-section (2) of Section 23 provides payment of solatium to the owner who declines to voluntarily part with the possession of land. Acquisition in accordance with the procedure is a valid exercise of the power. It would not, therefore, amount to deprivation of right to livelihood. Section 23(1) provides compensation for the acquired land at the prices prevailing as on the date of publishing Section 4(1) notification, to be quantified at later stages of proceedings. For dispensation or dislocation, interest is payable u/s 23(1-A) as additional amount and interest u/s 31 and 28 of the Act to recompensate the loss of right to enjoyment of the property from the date of notification u/s 23(1-A) and from the date of possession till compensation is deposited. It would thus be clear that the plea of deprivation of right to livelihood under Article 21 is unsustainable.

8. A similar observation has been made by another 3-Judge Bench in the case of Scindia Employees' Union Vs. State of Maharashtra and Others, . It has been observed that for exercise of power, eminent and domain public purpose must subsist. If there is no public purpose then there cannot be any compulsory acquisition. It is true that the State may acquire land by exercising power of eminent domain for a public purpose and if the land is not utilized then it could be utilized for another public purpose. On the ground of change of public purpose, the acquisition cannot be set aside, as has been held by Hon'ble the Supreme Court way back in the case of Gulam Mustafa and Others Vs. The State of Maharashtra and Others, . In the case of Srinivasa Cooperative House Buildings Society Ltd. Vs. Madam Gurumurthy Sastry and Others, , Hon'ble the Supreme Court was examining the acquisition of land belonging to small farmers for

private co-operative house building society for development and allotment to its members, who are Advocates, Chartered Accountants and Businessmen, for construction of their houses. After notification u/s 4(1) and report u/s 5A of the Act, an agreement was entered into by the society u/s 41 whereby the Society was treated as a company. However, the proceedings under para 7 dealing with for acquisition of land for Companies (Sections 38A to 44B) were dropped and the State by contributing Rs. 100/- for each acquisition, published declaration u/s 6 of the Act. It was in these circumstances, held that the land was being acquired for a private society, which is not any of the public purpose specified u/s 3(e) or Section 40(1)(a) of the Act and that it was for the transfer of the acquired land to the members of the society, who were Advocates, Chartered Accounts and businessmen etc. The acquisition was set aside holding that it was for a colourable exercise of power.

9. When the facts of the present case are examined in the light of the principles laid down in various judgments noticed above, we are left with no doubt that after announcement of award and taking of possession, no licence could be given to a private colonizer because the land has come to be vested in the State free from any encumbrances. The amount of compensation also stand deposited and paid to the land owners. Even the writ petition would not be maintainable in view of various judgments to which references has already been made.

10. Therefore, these petitions are wholly misconceived and the same are accordingly dismissed.