
(2012) 12 P&H CK 0004
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 6257 of 2012

Kashmir Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 10-12-2012

Acts Referred:

Haryana Urban Development Authority Act, 1977 — Section 13, 3
Land Acquisition Act, 1894 — Section 3(f), 4, 5A, 6

Citation : (2013) 3 RCR(Civil) 308

Hon'ble Judges : Rajiv Narain Raina, J; Hemant Gupta, J

Bench : Division Bench

Advocate : N.C. Kinra, for the Appellant; Palika Monga, DAG, Haryana for Respondent No. 1 and Mr. Manish Bansal, Advocate for Respondent No. 2-HUDA, for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The challenge in the present writ petition is to the notifications dated 30.06.2010 (Annexure P-4) issued u/s 4 and dated 29.06.2011 (Annexure P-7) issued u/s 6 of the Land Acquisition Act, 1894 (in short "the Act"), inter alia on the following grounds: i) That the notifications were not published in the newspapers, as contemplated under Sections 4 and 6 of the Act;

ii) Such notifications do not disclose the public purpose for which the land is sought to be acquired;

iii) That the objections u/s 5A of the Act have not been considered in an objective and fair manner and that the Notification u/s 6 has been issued without recording any satisfaction that the land is required for public purpose; and

iv) That though the constructions (7 in number) raised by the petitioner have been left out from acquisition, but he has not been provided passage to approach the constructions so released.

We do not find any merit in any of the arguments raised by the learned counsel for the petitioners. In the writ petition, it has been pleaded that the notification issued u/s 4 of the Act was published only in Hindi Newspaper "Amar Ujala" and the notification issued u/s 6 of the Act in English Newspaper "The Hindu", therefore, the publication is not proper. However, in the written statement, it has been averred that the notification u/s 4 of the Act was published in English Newspaper "The Indian Express" on 04.07.2010 and also in Hindi Newspaper "Amar Ujala" on 13.07.2010. The substance of the notification was also announced by beating the empty drums on the spot and notices were also pasted at various places. The notification u/s 6 of the Act was published in Hindi Newspaper "Amar Ujala" and in English Newspaper "The Hindu" on 03.07.2011. The substance was also announced in the locality in the manner as contemplated in the Act. The petitioners have not filed any rejoinder to the said assertion made by the State in the reply. Therefore, we find that the first argument raised by the counsel for the petitioners is wholly without any basis and untenable.

2. In respect of second argument, it is argued that Sections 4 and 6 of the Act recite that the land is being acquired for Sector 13, Gohana under the Haryana Urban Development Authority Act, 1977 by the Haryana Urban Development Authority. It is contended that the notifications under Sections 4 and 6 of the Act do not disclose; whether the land is being acquired for residential, commercial or institutional purpose, therefore, the notifications do not satisfy the test of acquisition for public purpose, as contemplated by the law.

3. Sections 4 and 6 of the Act contemplate that the appropriate Government may acquire land for any public purpose. The public purpose is defined in Section 3(f) of the Act, which inter alia includes:-

- (i) the provision of village sites or the extension, planned, development or improvement of existing village-sites;
- (ii) the provision of land for town or rural planning;
- (iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;
- (iv) the provision of land for a corporation owned or controlled by the State;
- (v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local-authority or a corporation owned or controlled by the State;
- (vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or, with the prior

approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State, or a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State;

(vii) the provision of land for any other scheme of development sponsored by Government or, with the prior approval of the appropriate Government, by a local authority;

4. The Haryana Urban Development Authority is a local Authority as defined u/s 3 of the Haryana Urban Development Authority Act, 1977. The Haryana Urban Development Authority is a statutory authority, created under the said Act for planned development of the urban areas in the State of Haryana. Once the acquisition of land for the purpose of Section 13 by a local Authority, it satisfies the test of public purpose falling within the scope of Section 3(f)(ii and vii) of the Act. It is not the case set up nor argued that the acquisition is colourable exercise of powers. Thus, the said argument is not tenable.

5. The argument that the objections u/s 5A of the Act have not been considered in an objective and fair manner and that the Notification u/s 6 of the Act has been issued without recording any satisfaction that the land is required for public purpose is again not tenable. The petitioner has produced a noting-sheet (Annexure P-9/1). The said noting-sheet contains the details of objections filed by the petitioners as well as other objectors. The Director General, Urban Estate, has not recommended the release of the land, but the Chief Minister had ordered that all the structures built before the publication of notification u/s 4 of the Act which are being used for residential purposes, except a school and a hatchery which are also operational on the ground, be excluded from the acquisition proceedings regardless of their location without or outside the green belt. In terms of the said orders, the notification u/s 6 of the Act was issued, whereby the land measuring 18 marlas of the petitioners were left out from acquisition. The matter has been considered at different levels, which has not shown any non-application of mind.

6. In respect of the last argument, a perusal of the site plan produced by the petitioner shows that the construction which had been raised by the petitioner is primarily of the temporary rooms except three room small structure; Smadhi Sathal or Hanuman Mandir on the entire land owned by the petitioner. Such construction has been raised on the periphery of the land in a scattered manner more with the purpose to avoid acquisition rather than to use the same for his purposes. Once the construction raised by the petitioners has been left out from acquisition, then the petitioner cannot insist that they are entitled to passage to approach the aforesaid released portion through their land alone. The petitioner has independent access to the released portion. In fact, it appears that the constructions were raised by the petitioners to cover the entire land owned by the petitioners with intent to defeat the acquisition process. The construction

released from acquisition is that of labour rooms or such like structures raised by the Petitioner. Once the land has been released for the reason that the residences were in existence prior to issuance of notification u/s 4 of the Act, the petitioners are not entitled for any other benefit than what has been provided by the State Government while publishing Section 6 notification. In fact, the release of the land irrespective of nature of construction may not be justified. For the reasons recorded, we find that the invocation of writ jurisdiction of this court is without any merit. The present writ petition is dismissed.