
(2013) 05 P&H CK 0008

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 721 of 2012 (O and M)

Kehar Singh and Others

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 27-05-2013

Acts Referred:

Citation : (2013) 172 PLR 100

Hon'ble Judges : G.S. Sandhwalia, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Shailendra Jain, for the Appellant; S.S. Pattar, D.A.G., Haryana for the State and Mr. Rahul Garg for Respondent Nos. 3 and 4, for the Respondent

Judgement

G.S. Sandhwalia, J.

C.M. No. 8513 of 2013

Application filed u/s 151 CPC for placing on record replication on behalf of the petitioners to the written statement filed by respondent No. 2 is allowed and replication is taken on record. Office to tag the same at appropriate place.

C.M. stands disposed of.

C.W.P. No. 721 of 2012

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari to quash the notices/order dated 15.11.2011 (Annexure P-13) issued by respondent No. 4 on the ground that they are violative of the mandatory provisions of Section 18 of the Haryana Urban Development Authority Act, 1977 (for brevity, the "HUDA Act"). A writ in the nature of mandamus is also prayed for directing the respondents to act upon the report dated 25.09.1997 made by the Joint Site Inspection Committee (hereinafter referred to "JSIC") headed by the Administrator, HUDA, Gurgaon whereby the land of the petitioners over which there stood residential houses were recommended to be released from the array

of acquisition. The pleaded case of the petitioners is that they are residents of Village Carterpuri, Tehsil & District Gurgaon and petitioner No. 1 is owner in possession of land comprising in rectangle No. 27 killa Nos. 19/1[1-7], 22/1/1[1-2] whereas petitioners No. 1 to 5 are owners in possession of land comprising in rectangle No. 27 killa Nos. 22/1/3 and 22/1/2, as per jamabandi for the year 2001-02. The said land became the subject matter of acquisition though the petitioners were also owner in possession of some other land comprising in rectangle No. 27, killa Nos. 18/3/2[0-9] and 18/3/3 which was not acquired. The petitioners had constructed their residential houses over the acquired and un-acquired land much before the issuance of notification u/s 4 of the Land Acquisition Act, 1894 (for brevity, the "Act") in which they were living along with their families. The said land was situated adjoining to the phirni of the village. Electricity bills, and photographs showing the status of the construction were also attached. The notification u/s 4 of the Act was dated 13.11.1981 and was for the public purpose of development and utilization of land for residential-cum-commercial area for Sector 23-A at Gurgaon under the HUDA Act and the declaration u/s 6 of the Act was dated 30.01.1984 which was followed by the award dated 02.05.1986. The petitioners, along with other landowners, had filed a joint representation before the Land Acquisition Collector (for short, "the LAC") in the year 1993 and prayed for the release of the constructed portion. A "JSIC" headed by the Administrator, HUDA, Gurgaon submitted its report dated 25.09.1997 that the construction were old built up houses of the village prior to the notification u/s 4 of the Act. The area considered for release was not to affect the layout plan as mentioned at point "F". Even prior to making the said representation, the respondents had been releasing the land of the similarly situated landowners and the land of one Om Parkash Sachdeva comprising in khasra No. 27//9/2/2/2 measuring 2000 square yards which was under construction was released by the respondents vide order dated 03.07.1986 on certain conditions. Similarly, lands of Sita Ram, Deep Chand, Bhagmal, residents of the village, measuring 5 kanals 9 marlas comprising in khasra No. 21//3/1/1, 3/1/2/2, 8/3 and 2/2 were released vide letter dated 04.04.1992. On the basis of the report dated 25.09.1997, the lands of Ram Sarup, Balwant Singh and Jaswant Singh measuring 220 square meters was released from the purview of acquisition on certain conditions vide letter dated 06.11.1998. However, the lands of the petitioners, though recommended by the JSIC, were not released from the acquisition proceedings and the petitioners continued to be in actual and physical possession of their respective lands, even after the acquisition proceedings and had never withdrawn the compensation amount that was assessed by the award. There had been lot of inter-departmental correspondence but no final decision qua the release of the land of the petitioners was taken and representation dated 21.07.2010 was filed before the Chief Minister to consider the case for release on the basis of the report of the JSIC. The said representation was also sent to the Administrator, HUDA who sent its comment dated 08.07.2011 to the Director General, Urban Estates, Haryana and the matter was put up before respondent No. 1 wherein information was sought as to

whether there was any affect on the planning. However, the petitioners were treated as unauthorized occupants of the premises of HUDA and notice u/s 18(2) of the HUDA Act dated 15.11.2011 was issued directing them to vacate in pursuance of the earlier memorandum dated 20.04.2010 which was never served upon the petitioners. In the absence of the service, the notice/order u/s 18(2) of the HUDA Act was not maintainable. Accordingly, the plea was taken that on the one hand, the petitioners' case was pending whereas on the other hand, the order u/s 18(2) of the HUDA Act had been passed which was totally illegal and hence, the writ petition has been filed.

2. In the written statement filed by respondent No. 2-LAC, plea was taken that notification was issued u/s 4 of the Act on 13.11.1981 and the petitioners filed objections u/s 5A of the Act and the petitioner's father Jisukh Ram appeared before the LAC for hearing of objections. The report was sent to the Government for taking a decision in the matter and the JSIC also sent its report to the Government. After considering the reports, the Government decided to include the land of the petitioners and declaration u/s 6 of the Act was issued on 30.01.1984 for the public purpose of utilization of land for Sector 23-A at Gurgaon. Thereafter, the award was announced and possession was handed over to the representative of HUDA for the land falling in khasra No. 27//18/3/2(0-9) and 18/3/3. The notification in respect of khasra No. 27//18/3/2, 18/3/3 was issued on 08.04.1988 and the declaration u/s 6 of the Act was issued on 10.10.1988 and the award was announced on 05.10.1990. Compensation for the land bearing 27//18/3/2(0-9) had been received by the petitioners vide cheque dated 24.10.1990 and therefore, the writ petition was liable to be dismissed. The present writ petition has been filed by 5 petitioners and petitioners No. 3, 4 & 5 were sons of Kewal Singh who had filed CWP No. 1204 of 1984 titled Kewal Singh v. State of Haryana, against the same notifications were dismissed by this Court on 12.02.1986. Since the writ petition had been filed after passing of the award dated 02.05.1986 and 05.10.1990, the same was not maintainable as the land was handed over to the representative of HUDA, Gurgaon. The process of acquisition was fair and just and the exemption to one would not give a right to all. Accordingly, the petitioners were in illegal possession of the acquired land and the compensation had not been intentionally received by the petitioners.

3. In the reply filed by respondents No. 3 & 4, plea was taken that the possession of the land was handed over to the HUDA on the same date of the passing of the award and the petitioners were in illegal possession.

4. In the replication, plea taken was that the possession of the land comprising in rectangle No. 27 killa No. 19/1(1-7), 22/1/1(1-2), 22/1/2 and 22/1/3 was in possession of the petitioners and the roznamcha rapat was a paper transaction since there existed residential house and possession could not be taken without the presence of the witnesses. The release of the portions of land, as mentioned, amounted to hostile discrimination and in view of the report of the JSIC and in view of the fact that no decision had been taken, the writ petition was

maintainable. In case the land of the petitioners" land comprising in rectangle No. 27 khasra No. 18/3/2(0-9), being ultimately released, they shall deposit the compensation amount along with interest.

5. Counsel for the petitioners contended that in view of the recommendations for release, the land of similarly situated persons had been released and the petitioners were also entitled to the same relief and the order dated 15.11.2011 passed u/s 18(2) of the HUDA Act was totally arbitrary since the application for releasing the land before respondents No. 1 & 2 was pending.

6. Counsel for the State, on the other hand, took the plea that the writ petition qua petitioners No. 3 to 5 had been dismissed way back on 12.02.1986 and the litigation became final inter se the parties and the petitioners could not challenge the acquisition proceedings again.

7. After hearing counsel for the parties, we are of the opinion that the petitioners are entitled for a decision on his release application before they can be evicted from the land in dispute. The recommendations of the JSIC read as under:

F. The land bearing Khasra No. 27/19/1, 22/1/3, 22/1/1, 22/1/2, 18/3/2, 18/3/3 measuring 4 kanals 14 marlas as shown on the site plan and part demarcation plan as pocket F1, F2, F3 also falls along the Phirni in the same row of structures left out in the planning, 528 sq. meter of land and some A and C type construction. Since comes under 10 mt. wide road proposed in the planning, it can not be left out. 3 marlas land of the owner was left u/s 5A. Therefore, 1411 sq. meter of land in addition to 3 marla already released as per the dimension shown on the site plan is recommended by the committee for release. 2.5M ? 2.5M Samadhi of the family which falls beyond 10 mtr. wide road is also recommended for release which shall be adjusted in the layout plan later on.

8. It is the categorical case of the petitioners that the petitioners" request for release was pending and respondent No. 1 had asked for information as to whether the development plan would be affected in any manner. The said fact has not been denied by respondents No. 1 & 2 in the written statement. Instead, the plea taken is that exemption cannot be asked as a matter of right. From the written statement of respondent No. 2, it would be clear that the LAC report in the case of the petitioners had not been made and sent to the Government and the release of the land of the petitioners was not considered before the issuance of notification u/s 6 of the Act. Thereafter, report dated 25.09.1994, reproduced above, came in existence and thus, it is apparent that the matter is still pending consideration before respondents No. 1 & 2. Respondents No. 3 & 4, on the other hand, are proceeding to pass orders u/s 18(2) of the HUDA Act, treating the petitioners as unauthorized occupants in spite of the fact that the case of the petitioners is still under consideration before the competent authorities. Thus, the petitioner are well justified in asking for a hearing before they are evicted from the land and that there should be a decision on their application.

9. A perusal of the letter dated 08.07.2011, issued by the Administrator, HUDA to

the Director General, Urban Estate, HUDA shows that he had mentioned the fact that the detailed recommendations of JSIC regarding each of the landowners stands already sent way back in the year 1997 and the decision was yet to be taken by the said office. Thereafter, the Director General, Urban Estates Department on 09.11.2011 asked the Administrator, HUDA regarding the layout-cum-shajra plan of Sector 23 relating to the letter dated 30.09.2011. These facts have not been denied by the respondents in their reply.

10. Another factor which requires consideration is that similarly situated persons of the same village wherein construction had been raised had been given the benefit of release which would be clear from the letter dated 31.07.1986 pertaining to Om Parkash Sachdeva where area measuring 2000 square yards had been released. Similarly, vide letter dated 04.04.1992, land measuring 5 kanals 9 marlas, belonging to Deep Chand and Bhagmal was released subject to various conditions. Land measuring 220 square meters falling in plot No. 1365-P wherein small portion of the constructed area was released in favour of Ram Samp, Balwant Singh, Jaswant Singh sons of Richpal Singh vide letter dated 06.11.1998. All these facts have not been denied by the respondents. In such circumstances, the respondents cannot act arbitrarily and plead that the release is a matter of policy. Undisputedly, the State of Haryana has framed a policy wherein construction has been raised before notification u/s 4 of the Act, is liable to be exempted from acquisition. In accordance with the said policy, the respondents are required to consider the application of the petitioners otherwise their action would be rendered violative of Article 14 of the Constitution of India. The dismissal of CWP No. 1204 of 1986 qua respondents No. 3 to 5 would not render the present petition non-maintainable as challenge therein was to the acquisition proceedings itself whereas the release orders had been issued thereafter and the report of the JSIC is dated 25.09.1994, i.e., much after the writ petition was dismissed. The action of respondents No. 3 & 4 issuing notices u/s 18(2) of the HUDA Act, thus, cannot be sustained till the time representation of the petitioner for release of the land is decided by the respondents No. 1 & 2.

11. Accordingly, a direction is issued to respondents No. 1 & 2 to decide the representation of the petitioners keeping in view the recommendations of the JSIC dated 25.09.1994 and the policy decisions of the Government wherein the land where construction is raised before the issuance of notification is liable for exemption and that similarly situated persons have been granted benefit in the village. The respondents shall decide the representation within a period of 2 months from the receipt of certified copy of this order. Needless to say that it shall be open to the petitioners to challenge the decision on their representation in case they are aggrieved therefrom. The proceedings u/s 18 of the HUDA Act shall remain in abeyance till decision is taken upon the representation of the petitioners by respondents No. 1 & 2. Writ petition is, accordingly, allowed to the extent as indicated above.