
(2004) 04 P&H CK 0098

In the Punjab And Haryana At Chandigarh

Case No : Amended Civil Writ Petition No. 8099 of 1991

Kishan Chand and Others

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 19-04-2004

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Land Acquisition Act, 1894 — Section 4

Citation : (2004) 138 PLR 730 : (2004) 3 RCR(Civil) 750

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Advocate : S.D. Sharma, Neeraj Sharma, for Petitioner Nos. 1 to 4 and Harish Rathee, for the Appellant; Mamta Singla, Asstt. A.G., for the Respondent

Judgement

Hemant Gupta, J.—The challenge in the present writ petition is to the acquisition of land sought to be acquired vide notification dated 17.11.1989 issued u/s 4 of the Land Acquisition Act, 1894 (hereinafter to be referred as "the Act") and notification dated 16.11.1900 issued u/s 6 of the Act, inter alia, on the ground that the petitioners have raised construction on that part of the land and that the notification u/s 6 of the Act was not published in the manner prescribed. The acquisition is, thus, alleged to be wholly illegal and discriminatory.

2. It was pleaded in the amended writ petition that petitioner Nos. 1 and 2 are owners of Khasra No. 250/15/5 on which they have constructed a pucca residential house after spending more than Rs. 7 lacs. The acquisition was challenged on the ground that acquisition of such house will cause irreparable loss and injury to the petitioners. The said petitioners have also challenged the acquisition on the ground that while publishing notification u/s 6 of the Act in the locality, Khasra No. 250/-15/5 owned by the petitioners was not mentioned and, thus, the notification u/s 6 of the Act is in contravention of the mandatory provisions of the Act as such notification has not been duly published.

3. In respect of petitioner No. 5, it was pleaded that out of Khasra No. 249/10,

the said petitioner has sold 3 Marias to one Angoori in the year 1965. Smt. Angoori constructed a double storeyed house on the said land whereas on the remaining land, two sons of petitioner No. 5 raised pucca house by spending about Rs. 1 lac. In the notification u/s 4 of the Act, Khasra No. 249/10-was intended to be acquired but in the notification u/s 6 of the Act, 3 Marias of Khasra No. 249/10 which is under the house of Smt. Angoori Devi was not acquired on account of residential house but the remaining area of 16 Marias is sought to be acquired. "

4. In the written statement to the unamended writ petition, the respondent denied the claim of petitioner Nos. 1 to 4 as totally false and concocted and made with mala fide intention. It is mentioned that in the survey conducted after the publication of notification u/s 4 of the Act, the land in dispute mentioned in para No. 2 of the writ petition was completely vacant. There was only tube-well alongwith chamber over the land bearing Khasra No. 249/20/3 and there was no other construction at all. However, in respect of the construction allegedly raised by petitioner No. 5, it was mentioned that the said construction had a covered area of 300 sq. yards. Since petitioner No. 5 has not filed any objection u/s 5-A of the Act, the said petitioner cannot challenge the acquisition proceedings at this stage.

5. The said written statement was filed on 5.9.1991. Although the petitioners have amended the writ petition wherein reference to other Khasra Nos. other than Khasra No. 250/15/5 has been deleted but the fact that there was no construction at the time of survey after the publication on notification u/s 4 of the Act was not sought to be disputed nor the petitioners have filed any replication controverting the averments made in the written statement. The respondent has further pleaded that in Rapat No. 250 dated 18.11.1990 the proclamation was not made in respect of the land of the petitioners in Rapat Raznamcha.

6. Mr. S. D. Sharma, learned senior counsel representing petitioner Nos. 1 to 4, has vehemently argued that unless publication in terms of the mode prescribed u/s 6 of the Act has been made, the acquisition proceedings are not complete. It was vehemently argued that Khasra No. 250/15/5 has not been included in the Rapat Roznamcha after issuance of notification u/s 6 of the Act, therefore, the said notification is not sustainable. However, the said argument of learned counsel for the petitioners is not correct. The original record containing Rapat No. 250 dated 18.11.1990 has been produced. A perusal of the same unequivocally shows that publication in respect of Khasra No. 250/-15/5 has also been caused. The original record has been examined by learned counsel for the petitioners. A photocopy of the same has been retained on the file of the case as well. Therefore, the argument that the publication in terms of the mode prescribed u/s 6 of the Act has not been complied with is factually not found to be correct.

7. Learned counsel for the petitioners has further argued that the present cost of con- sanction raised is over Rs. 20 lacs which was Rs. 7 lacs at the time of

construction. It is apparent from the averments made in the written statement that such construction has been raised even after the survey was completed by the respondents after the publication of notification u/s 4 of the Act. The written statement containing such categorical averments was filed on 5.9.1991. The writ petition has been amended wherein reference to petitioner Nos.3 and 4 have been deleted but the petitioners had neither produced any document nor made any averment to show that the construction has been raised prior to publication of notification u/s 4 of the Act. In view of uncontroverted averments made in the written statement, the stand of petitioner Nos. 1 to 4 is found to be false, concocted and made with mala fide intention. There is no merit in the writ petition filed by petitioner Nos. 1 to 4.

8. However, in respect of the claim of petitioner No. 5, it may be stated that such construction has been found to be in existence prior to publication of notification u/s 4 of the Act. Once the construction was in existence prior to publication of notification u/s 4 of the Act and the fact that the construction raised on 3 Marias of land sold by petitioner No. 5 has been exempted from acquisition, it is totally discriminatory and arbitrary not to exempt the construction raised by petitioner No. 5. Two equals cannot be treated unequally by the respondents.

9. In view of the above, the writ petition filed on behalf of petitioner Nos. 1 to 4 is dismissed with costs. However, the writ petition filed on behalf of petitioner No. 5 is allowed. The acquisition proceedings in respect of the land of petitioner No. 5 are quashed.