
(2013) 02 P&H CK 0174

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 19127 of 2012

Lahri Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 12-02-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Land Acquisition Act, 1894 — Section 11, 23, 4, 4(1), 5(1)
Punjab Agricultural Produce Markets Act, 1961 — Section 34

Citation : (2013) 170 PLR 283

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

Bench : Division Bench

Advocate : M.I. Sharma, for the Appellant; S.S. Pattar . Sr. D.A.G., Haryana for Respondent Nos. 1, 3 and 5 and Mr. Durgesh Aggarwal for Respondent Nos. 2 and 4, for the Respondent

Final Decision : Allowed

Judgement

G.S. Sandhawalia, J.

C.M. No. 2360 of 2013

Allowed as prayed for.

C.M. No. 2361 of 2013

Application for placing on record the joint replication along with Annexure P-16 is allowed. Joint replication, along with Annexure P-16 is taken on record subject to all just exceptions.

CM stands disposed of.

1. The present writ petition has been filed under Articles 226/ 227 of the Constitution of India for issuance of writ in the nature of certiorari for quashing the acquisition proceedings initiated vide notification dated 22.12.2010 (Annexure P-7) issued u/s 4 of the Land Acquisition Act, 1894 (for brevity, the

"Act") and notification dated 20.09.2011 (Annexure P-9) issued u/s 6 of the Act, being contrary to the provisions of the Act and on the ground of non-publication in the newspaper. The pleaded case of the petitioners is that they are owners of the land measuring 8 acres situated in the revenue estate of Balour, Tehsil Bahadurgarh, District Jhajjar. The respondents issued notification u/s 4 of the Act, showing intention to acquire the land for setting up Market Committee, Bahadurgarh which was in pursuance of the provisions of Sub-Section (1) of Section 34 of the Punjab Agriculture Produce Markets Act, 1961, on the request of the Market Committee, Bahadurgarh. The notification was not in accordance with the provisions of the Act as the aforesaid notification was not published in two daily newspapers, in accordance with the Act which provides the publication of the notification in two daily newspapers and at least one shall be in vernacular language. The substance of the notification had not been pasted on the conspicuous place which rendered the acquisition proceedings illegal. The petitioners had filed objections u/s 5-A of the Act, taking various objections and alleging that barani land adjoining to the land of the petitioners was more suitable for the purpose for which the land was being acquired. The land sought to be acquired had Dharamshala, Samadhi and temple and also residential houses. Information was sought demanding certified copies of the newspapers in which the publication/declaration was done but were not made available. From the said facts, it would be clear that there was no record available with the competent authority to give the certified copies of the notification u/s 4 of the Act in the newspaper and also the substance of the notification.

2. In the written statement, filed on behalf of respondent No. 1, it was admitted that the notification was required to be published in the newspapers for which letters were prepared on 22.12.2010, to be issued to the Director, Public Relation, Haryana, requesting to get these notifications published in two leading newspapers. However, due to the lapse on the part of some officials of the Despatch Section, those letters did not reach the office of the Director, Public Relation, Haryana. When this fact came to the notice of the respondent, Addl. Chief Secretary & Principal Secretary to Government Haryana, Revenue & Disaster Management Department, who was responsible for the maintenance of despatch unit of the office was requested on 08.05.2012 to take disciplinary action against the official who was responsible for the lapse. The Revenue Department held Chatar Singh, Clerk responsible for the lapse and directed him to be careful in future. A letter was written to the Revenue Department stating therein that it was a serious matter which needed a thorough investigation and called for a strict disciplinary action. The publications for acquisition of land in newspapers was a mandatory requirement but due to inadvertence, the said notifications could not be published in the newspapers but later, the notifications were duly published in the Government Gazette for information of the general public and also through munadi by way of beating of drum which was duly carried out in the village to enable the land owners to file objections. The petitioners, who are residents of the same village were trying to take undue

advantage of the technicalities to stall the process of development. They had filed objections u/s 5-A of the Act and could not allege that they were not aware of the proceedings. The land was being acquired for the grain and vegetable market, to take care of the needs of the area for the next 30-40 years. It was also admitted that notification u/s 6 of the Act was also not published in the newspapers. The basic purpose of publication was to effect proper notice and the petitioners being residents of the same area, were aware of the proceedings under Sections 4 & 6 of the Act. The publication was not mandatory but directory.

3. In the reply filed on behalf of respondent No. 3, it was admitted that the above-mentioned notifications were quashed by this Court in CWP No. 6941 of 2012 titled Balbir and others v. State of Haryana and others, vide order dated 21.09.2012. Respondents No. 2 & 4, in their reply, also took the plea that publication of the notifications was not mandatory but only directory, especially, since the petitioners have filed objections u/s 5-A of the Act.

4. In the replication filed by the petitioners, it is pleaded that the acquisition was illegal and arbitrary and reliance was placed upon Rakha Singh and others Vs. State of Haryana and others . The Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal, and State of Mysore Vs. Abdul Razak Sahib, Reference was also made to the orders dated 21.09.2012, passed by a Division Bench of this Court in CWP No. 6941 of 2012 titled Balbir and others v. State of Haryana and others, to plead that it was sine qua non to comply with the procedure laid down under Sections 4 & 6 of the Act.

5. The question that arises for consideration of this Court is as to whether, in the facts and circumstances, the notifications dated 22.12.2010 and 20.09.2011, issued under Sections 4 & 6 of the Act respectively, are liable to be quashed.

6. A reading of the provisions of Section 4 of the Act would show that where the appropriate Government needs any land, in any locality, for any public purpose, it would issue a notification in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language. Apart from this, the Collector is also to give notice of the substance of such notification at convenient places in the said locality and the last of the dates of such publication and the giving of such public notice, being referred to as the date of the publication of the notification. On the publication of such a notification, objections u/s 5-A of the Act can be filed within 30 days by the persons interested and objecting to the acquisition of the land and every objection has to be made to the Collector, in writing, who has to give an opportunity of hearing to the person and after making further enquiry, submit a report in respect of the land in question to the appropriate Government. After the said procedure has been followed, the appropriate Government has to make a declaration that the land in question or different parcels of land, covered u/s 4 of the Act, on the basis of the reports) are required for public purpose by the said declaration. The declaration has to be published under Sub-Section 2) of Section 6 of the Act in the Official Gazette and two daily newspapers circulating in the

locality. The said declaration has to be made within a period of one year from the date of publication u/s 4 of the Act. Under Sub-Section (3) of Section 6 of the Act, the said declaration shall be conclusive evidence that the land is needed for public purpose. After making the declaration, the appropriate Government may acquire the land in the manner thereafter provided in the Act.

7. Section 6 of the Act reads as under:

6. Declaration that land is required for a public purpose.-

(1) Subject to the provision of Part VII of this Act, [appropriate Government] is satisfied, after considering the report, if any, made u/s 5A, sub-section (2)], that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders [and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification u/s 4, sub-section (1) irrespective of whether one report or different reports has or have been made (wherever required) u/s 5A, sub-section (2)];

[Provided that no declaration in respect of any particular land covered by a notification u/s 4, sub-section (1)

xxx xxx xxx

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), shall be made after the expiry of one year from the date of the publication of the notification:]

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority. [Explanation 1.- In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued u/s 4, sub-section (1), is stayed by an order of a Court shall be excluded.

Explanation 2.- Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues.]

(2) [Every declaration] shall be published in the Official Gazette [and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the declaration), and such declaration shall state] the district or other territorial division in which the land is situate, the purpose for which it is needed, its

approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be; and, after making such declaration, the [appropriate Government] may acquire the land in manner hereinafter appearing.

8. Admittedly, in the present case, the procedure has not been followed and there has been no declaration in the newspapers of the intention of the Government with respect to notifications issued under Sections 4 & 6 of the Act that the land in question is needed for the public purpose. Declaration u/s 6(1) of the Act is mandatorily required to be published in two daily newspapers circulating in the locality out of which, one shall be in regional language. Besides this, public notice of the declaration shall also be given at convenient places by the Collector. Once that is done, then under Sub-Section (3) of Section 6 of the Act, such declaration shall be conclusive declaration. Section 6(1) of the Act further provides that a declaration, thereunder, has to be made within a period of one year from the date of publication of the notification u/s 4 Sub-Section (1). If the said declaration is not made within the limitation period, then the conclusive evidence that the land is required for the public purpose would not come into effect and the proceedings shall lapse.

9. This Court in Rakha Singh (supra), while examining this issue of the procedure of publication, held as under:

7. It could not be successfully argued on behalf of the State Government that these were only formalities and need not be complied with strictly prior to the amendment of the Act, there was no requirement for publishing the notification u/s 4 or the declaration u/s 6 in two daily newspapers. This was introduced for the first time by way of amendment in the Act. So in section 6 the language used is declaration which, is to be published in the official gazette and the two daily newspapers but declaration will be known only when it is made in the official gazette because it will be at that time that it takes concrete shape and form by publication in the official gazette as observed by the Supreme Court in the para referred to above. It is also clear from sub-section 3 of section 6 of which provides that the said declaration shall be the conclusive evidence that the land is needed for a public purpose and after making said declaration the Government may acquire the land in the manner hereinafter provided. Thus, the said declaration could only be known when it is published in the official gazette and not prior thereto. That being so, it is clear case where on both the occasions there was violation of the mandatory provisions of subsection 2 of section 6 of the Act.

10. Recently, Hon''ble Apex Court, in Surinder Singh Brar and Others Vs. Union of India (UOI) and Others, , while quashing the acquisition of land by Chandigarh Administration for the I.T. Park, laid down that it is mandatory for the

appropriate Government to record its satisfaction and also to take a decision regarding the formation of opinion on the acquisition of land for public purpose and failure to adhere to such procedural safeguards would lead to the violation of the mandate of the revisions. Relevant observations read as under:

52. Upon receipt of the Collector's report, the appropriate Government is required to take action u/s 6(1) which lays down that after considering the report, if any, made u/s 5-A(2), the appropriate Government is satisfied that any particular land is needed for a public purpose, then a declaration to that effect is required to be made under the signatures of a Secretary to the Government or of some officer duly authorised to certify its orders. This section also envisages making of different declarations from time to time in respect of different parcels of land covered by the same notification issued u/s 5(1). In terms of clause (ii) of the proviso to Section 6(1), no declaration in respect of any particular land covered by a notification issued u/s 4(1), which is published after 24-9-1989 can be made after expiry of one year from the date of publication of the notification. To put it differently, a declaration is required to be made u/s 6(1) within one year from the date of publication of the notification u/s 4(1).

53. In terms of Section 6(2), every declaration made u/s 6(1) is required to be published in the Official Gazette and in two daily newspapers having circulation in the locality in which the land proposed to be acquired is situated. Of these, at least one must be in the regional language. The Collector is also required to cause public notice of the substance of such declaration to be given at convenient places in the locality. The declaration to be published u/s 6(2) must contain the district or other territorial division in which the land is situated, the purpose for which it is needed, its approximate area or a plan is made in respect of land and the place where such plan can be inspected.

54. Section 6(3) lays down that the declaration made u/s 6(1) shall be conclusive evidence of the fact that land is needed for a public purpose. After publication of the declaration u/s 6, the Collector is required to take order from the State Government for the acquisition of land to be carved out and measured and planned (Sections 7 and 8). The next stage as envisaged is issue of public notice and individual notice to the persons interested in the land to file their claim for compensation. Section 11 envisages holding of an enquiry into the claim and passing of an award by the Collector who is required to take into consideration the provisions contained in Section 23.

xxxx xxxx xxxx

58. What needs to be emphasised is that hearing required to be given u/s 5A(2) to a person who is sought to be deprived of his land and who has filed objections u/s 5A(1) must be effective and not an empty formality. The Collector who is enjoined with the task of hearing the objectors has the freedom of making further enquiry as he may think necessary. In either eventuality, he has to make report in respect of the land notified u/s 4(1) or make different reports in respect

of different parcels of such land to the appropriate Government containing his recommendations on the objections and submit the same to the appropriate Government along with the record of proceedings held by him for the latter's decision. The appropriate Government is obliged to consider the report, if any, made u/s 5A(2) and then record its satisfaction that the particular land is needed for a public purpose. This exercise culminates into making a declaration that the land is needed for a public purpose and the declaration is to be signed by a Secretary to the Government or some other officer duly authorised to certify its orders. The formation of opinion on the issue of need of land for a public purpose and suitability thereof is sine qua non for issue of a declaration u/s 6(1). Any violation of the substantive right of the landowners and/or other interested persons to file objections or denial of opportunity of personal hearing to the objectors) vitiates the recommendations made by the Collector and the decision taken by the appropriate Government on such recommendations. The recommendations made by the Collector without duly considering the objections filed u/s 5A(1) and submissions made at the hearing given u/s 5A(2) or failure of the appropriate Government to take objective decision on such objections in the light of the recommendations made by the Collector will denude the decision of the appropriate Government of statutory finality. To put it differently, the satisfaction recorded by the appropriate Government that the particular land is needed for a public purpose and the declaration made u/s 6(1) will be devoid of legal sanctity if statutorily engrafted procedural safeguards are not adhered to by the concerned authorities or there is violation of the principles of natural justice. The cases before us are illustrative of flagrant violation of the mandate of Sections 5A(2) and 6(1). Therefore, the second question is answered in affirmative.

11. A Co-ordinate Bench of this Court in CWP No. 6941 of 2012 titled Balbir and Others v. State of Haryana and others, has on 21.09.2012, also quashed the said notification on the same ground but only qua the petitioners, in the said case. Once the mandatory procedure has not been followed, in our opinion, the notifications have to be quashed in their entirety.

12. There is no gain saying the fact that the acquisition of land is a very serious matter which has time and again been reiterated by the Hon'ble Apex Court. If the intention of the Government is lacking and it does not follow the mandatory procedure, the benefit has to go to the land owners. Once this procedure, admittedly, has not been followed, the inevitable conclusion is that the notifications under Sections 4 & 6 of the Act have to be quashed. Accordingly, a writ of certiorari is issued, quashing the notifications dated 22.12.2010 (Annexure P-7) issued u/s 4 and dated 20.09.2011 (Annexure P-9) issued u/s 6 of the Act. Writ petition is allowed in the above-said terms.