(2004) 05 P&H CK 0132

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous Nos. 14305 of 2003 and 2394 of 2004 and Civil Writ Petition No. 3341 of 1991 (O&M)

Laxmi and others APPELLANT

Vs

State of Haryana and others RESPONDENT

Date of Decision : 20-05-2004

Acts Referred:

Citation : (2005) 1 LJR 87 : (2004) 3 RCR(Civil) 768

Hon'ble Judges : Hemant Gupta, J

Advocate : None for the Appellant, For the Respondent No. 3, Mr. Raman Gaur, Advocate, Mr. L.M. Suri, Senior Advocate with Mr. Deepak Suri, Advocate., Advocates for appearing Parties

Judgement

Hemant Gupta, J.—The petitioners have invoked the writ jurisdiction of this Court for quashing of notification dated 27.08.1987. Annexure P1, under Section 4 of the Land Acquisition Act, 1894 (hereinafter to be referred as "the Act") and the notification dated 25.08.1988 under Section 6 of the Act.

2. The petitioners are the owners of land measuring 127 Kanlas 17 Marlas of land. The challenge in the present writ petition is to the acquisition to the extent of the area which is under A Class construction allegedly raised by the petitioners much prior to the acquisition proceedings. The petitioners have alleged that the construction was raised in the year 1987 after spending a sum of Rs. 4 lacs. The construction raised on behalf of petitioner No. 1 is in Rectangle No. 50, Khasra Nos. 17, 18, 19/1/1 and Rectangle No. 76/9/1 whereas the construction raised by petitioner Nos. 2 and 3 is in Rectangle Nos. 76/8, 13/1/1.

3. The petitioners have pleaded that earlier the petitioners challenged the acquisition proceedings by way of a Civil Writ Petition No. 3176 of 1989 which was disposed of on September 28, 1989 on the basis of a following agreed order :

"Parties counsel are agreed with Mr. A. Banerjee, Financial Commissioner (Revenue) and Secretary to Government, Haryana, shall be asked to go to the spot to examine as to whether the premises of the petitioners deserve, in the scheme of things, to be exempted from acquisition and that whatever be his decision with regard to each petitioner, it shall be treated as final.

In terms of the agreement so arrived at, we direct Mr. Banerjee, Financial Commissioner (Revenue) and Secretary to Government Haryana, to go to village Jharsa, which is proximate to the spot, on October 26, 1989 reaching there at 10 O'' clock and then roam about in the area to see what kind of building and plots have been exempted and as to whether there is any parity of those, exempted plots and buildings with those of the petitioners deserving exemption. Any of the petitioners, who may choose to be present on the spot on the aforesaid date and time, may be so and made him such suggestions as are relevant for the purpose. It is expected of Mr. Banerjee to pass a short speaking order in respect of each case. On this understanding we dispose of this writ petition, as also the connected one.

September 28, 1989

Sd/ M.M. Punchhi, Judge

Sd/ A.L. Bahri, Judge

4. In pursuance of the directions of this Court as reproduced above Sh. A. Banerjee, the then Financial Commissioner and Secretary to Government Haryana, Revenue Department, inspected the spot and gave his following report :

"These three petitioners jointly hold 127 Kanals 17 Marlas of land. Laxmi petitioner has constructed two rooms on rectangle No. 50/18 and these rooms are used as residence. The other petitioners have jointly constructed rooms on rectangle No. 76/9, 76/13. They have claimed that the construction was completed before the issue of the notification and is of `A'' class quality.

Spot inspection showed that the entire land is enclosed by a boundary wall and four rooms have been constructed at the four corners of the land. The construction does not seem to be very old although it is difficult to estimate correctly whether it was completed before the issue of the notification under Section 4. The departmental representative, however, conceded that the construction existed before the issue of the notification. However, this land borders on National Highway No. 8 and some of the rooms have been released in Prem Puri Mohalla. This argument is not relevant as Prem Puri Mohalla is a large area where a number of houses have been constructed whereas the land of the petitioners is not located in a builtup area. The rooms bordering on the National Highway No. 8 are liable to be demolished in any case as they have been built in contravention of the provisions of the Act referred to above. Exemption of the rest of the area would mean that this land would be in the midst of land being acquired by HUDA for development of Sector 32. In any case any two rooms have been constructed in the area outside the limits of the prohibited area and this would not justify the land being exempted from acquisition."

A perusal of the report shows that the entire area is enclosed by a boundary wall and four rooms have been constructed at the four corners of the land and the construction does not seem to be very old. It has been further found that the rooms bordering on National Highway No. 8 are liable to be demolished as they have been builtup in contravention of the provisions of the Act whereas exemption of the rest of the area would mean that this land would be in the midst of the land acquired by the Haryana Urban Development Authority for development of Sector 32. In any case, only two rooms have been constructed in the area outside the limits of the prohibited area and this would not justify the land being exempted from acquisition.

5. The petitioners have sought quashing of the notification challenging the report of the Financial Commissioner, inter alia, on the ground that the construction of the land of the petitioner is surrounded by builtup area; they have been paying Chula tax and are also ration card holders; the petitioners are entitled to an alternate plot; and that the report is based upon surmises and conjectures etc.

6. While admitting the writ petition on 27.2.1991, this Court stayed dispossession from the constructed area. Subsequently, M/s Ranbaxy Laboratories moved an application for being impleaded as a respondent on account of the fact that some portion of the land in dispute has been allotted to it. The said application was allowed by this Court on November 1, 2002 when the following order was passed :

"M/s Ranbaxy Laboratories Limited has moved this application for being impleading as a respondent on account of the fact that some portion of the land in dispute had been allotted to it. Shri Sibal states that his client would not be putting in any written statement.

Despite a number of opportunities having been given, learned counsel for the petitioners has not put in any affidavit in opposition of the prayer made by the applicant in its application.

In view of this, C.M. No. 7245 of 2002 is allowed as prayed for subject to all just exceptions.

It is, however, made clear that being a beneficiary, the petitioner would not be entitled to file any pleadings in the opposition."

Subsequently, respondent No. 3 moved an application for vacation of interim order dated February 27, 1991. While issuing notice to the writ petitioners on July 14, 2003, it was ordered that the writ petition itself be listed provided the parties file written synopsis of the arguments along with relevant case law before the next date. The written synopsis on behalf of newly added respondent No. 4 were filed on 11.2.2004 vide Civil Misc No. 2394 of 2004. The case was adjourned at the request of Mr. R.S. Chahar, learned counsel for the petitioners, on February 12, 2004, March 05, 2004, March 18, 2004, April 05, 2004 and April 08, 2004. However, none appeared on behalf of the petitioners on May 07, 2004.

Thus, in the absence of learned counsel for the petitioners, the arguments were heard on May 13, 2004 and the order was reserved.

7. A perusal of the order passed by this Court in Civil Writ Petition No. 3176 of 1989 shows that the parties agreed that the decision of Shri A. Banerjee, Financial Commissioner (Revenue) in respect of each of the petitioners shall be treated as final. The Court expected that Shri Banerjee shall pass a short speaking order in respect of each case. Mr. Banerjee has passed a speaking order wherein it has been mentioned that four rooms have been constructed at four corners of the land. Out of such four rooms, two rooms are on the border of National Highway No. 8 which have been built in contravention of the statutory provisions. The other construction is in the midst of the land being acquired by the Haryana Urban Development Authority for development of Sector 32. It has been found that said two rooms do not justify that the land be exempted from acquisition. It has also been found that the construction does not seem to be very old.

8. A perusal of the averments made in the writ petition further shows that it is the case of the petitioners that the construction was raised in April, 1987. Notification under section 4 of the Act is of August 27, 1987. It looks like that petitioners raised construction in view of the impending notification for the acquisition of the land. It has been mentioned in the written statement that petitioner No. 1 has raised three rooms and a boundary wall in the area of 20 Kanals 4 Marlas leaving too much space between the rooms. It has been pleaded in the written statement that the construction has been raised with ulterior motives and with mala fide intention. Petitioner No. 1 is not residing in the said house at all. The land is not surrounded by builtup area at all and is at least at a distance of 5 acres from the unauthorised Basti known as Prem Mohalla. The said Basti was left out from acquisition as there was construction in one single block. It has been further explained that in respect of petitioner Nos. 2 and 3, the construction is of `B'' class and has been raised with ulterior motive to raise false pleas. The construction has been raised leaving too much space with ulterior motive. The land is at least at a distance of 2 acres from the village Abadi. Such written statement was filed on 26.06.1992. The petitioners had not chosen to controvert the allegations levelled in the written statement.

9. In view of the uncontroverted averments made in the written statement and keeping in view the report of the Financial Commissioner (Revenue) appointed with the consent of the parties, there is no illegality in the acquisition proceedings. The construction raised by the petitioners is with a view to defeat the acquisition proceedings and is not for bona fide purpose. The acquisition is not that of a compact residential unit in which the petitioners are residing. In fact, the construction raised is just before the acquisition and scattered over a large area with a view to frustrate the public purpose.

Consequently, I do not find any merit in the present writ petition and the same is hereby dismissed with costs.