
(1993) 09 P&H CK 0140
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2310 of 1986

Maharaja Prints Private Ltd.

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 08-09-1993

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4, 5A, 6

Citation : (1994) 106 PLR 164

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : M.S. Jain and Adarsh Jain, for the Appellant; N.S. Bhinder, DA, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jhanji, J.—This will dispose of Civil Writ Petitions No. 2310 of 1986, 2335 of 1986, 7272 of 1984, 2273 of 1984, 5185 of 1983 and 3678 of 1986, as common questions are involved therein. The facts are being taken from Civil Writ Petition No. 2310 of 1986.

2. According to the petitioners, the State of Haryana issued a notification u/s 4 of the Land Acquisition Act, 1894 on 18.9.1973, expressing its intention to acquire 238.05 acres of land situated within the revenue estate of Meola Maharajpur for the purpose of development and utilisation as industrial area in Sectors 31, 32, 35 and 36, Tehsil Ballabgarh, District Faridabad. This notification was allowed to lapse. A fresh notification u/s 4 of the Act was published in the Gazette dated 4.11.1977, whereby almost the same land situated in the revenue estates of Meola Maharajpur and Sarai Khwajha was sought to be acquired for the same very purpose. This was followed by a notification dated 1.11.1980 u/s 6 of the Act. According to the petitioners in Civil Writ Petitions No. 2310 of 1986 and 2335 of 1986 and 2273 of 1984, they purchased land measuring 4 kanals 19 marlas equivalent to about 3000 sq. yards vide sale-deed dated 30.1.1992 which

was registered with the Sub Registrar, Delhi, on 1.2.1982. The challenge to the notification u/s 4 of the Act in the writ petitions is:-

(i) that the State cannot be allowed to freeze the price of the land in the locality by keeping the land in question under constant acquisition by issuing notifications and then allowing them to lapse without any justification, (ii) that the State cannot issue notification u/s 4 of the Act for a much larger area than it is actually needed, with a view to freeze the value of the land by keeping the notification u/s 4 of the Act alive by issuing notification u/s 6 of the Act just a few days before the expiry of period of 3 years prescribed for the issuance of notification u/s 6 of the Act, and; (iii) that the land belonging to the petitioners is surrounded by various industries and land of those industries has been excluded from acquisition. The precise challenge is that notification u/s 4 of the Act was issued for acquisition of land measuring 238.50 acres of village Meola Maharajpur, but in notification u/s 6 of the Act, land acquired is only to the extent of 80.73 acres, meaning thereby that land measuring 157.32 acres was excluded from acquisition. Similarly, land measuring 10.28 acres and 88.90 acres in the revenue estates of Aurangapur and Sarai Khwawja respectively, was excluded from acquisition. Thus, according to the petitioners, land was not required by the State for use of industrial development.

3. The State in its written statement has averred by way of preliminary objection that the petitioners have invoked the extra-ordinary jurisdiction after the expiry of period of more than six years, and that the writ petitions suffer from delay and laches. The locus-standi of the petitioners is also challenged on the ground that awards of the land in dispute were announced and possession taken on 2.5.1984. On merits, the State has admitted that initially, notification u/s 4 of the Act was issued in the year 1973, but notification u/s 6 of the Act could not be issued due to heavy rush of work with the Land Acquisition Collector and, thus, notification u/s 4 of the Act lapsed after the expiry of period of three years. With regard to the notification now challenged, the State has averred that notification u/s 6 of the Act was issued on 1.11.1980, within stipulated period of three years, and that the allegation of the petitioners that the State took no action for taking up further proceedings for acquisition of land was wrong and hence, denied. On merits, the other allegations made in the petitions have also been denied.

4. Mr. M.S. Jain, Sr. Advocate, counsel for the petitioners, contended that successive notifications have been issued only for the purpose of pegging down the prices, and in fact the State never required the land for the purpose of industrial development. He further submitted that the land of the petitioners is surrounded by various industries whose land has been excluded from acquisition. Thus, according to him, notifications suffer from the vice of discrimination.

5. On the other hand, learned counsel appearing for the State of Haryana, submitted that arguments advanced by Mr. Jain are based on a Full Bench judgment of this Court reported as *Radhey Shyam Gupta v. State of Haryana* (1982) 84 P.L.R. 743 (F.B.), but the same has not been approved by the Apex

Court and, therefore, the writ petitions are liable to be dismissed. He also placed reliance upon a Single Bench judgment of this Court rendered in Civil Writ Petition No. 2767 of 1982 Arvind Kumar and Another Vs. State of Haryana and Others, decided on 14.5.1993. According to him, the said writ petition related to these very notifications and these very arguments were advanced by Mr. Jain, but the same did not find favour with the learned Judge and, therefore, the present writ petitions also merit dismissal.

6. Having heard the learned counsel for the parties, I am of the view that there is no merit in the writ petitions. It is not denied before me that Radhey Shyam Gupta's case (supra) stands disapproved by the Apex Court in a large number of cases. In Civil Writ Petition No. 2767 of 1982, these very arguments raised by Mr. Jain were repelled by the learned Judge in the following words:

"Mr. M.S. Jain, learned counsel for the petitioners vehemently contended that in the present case, notification u/s 4 was issued in the year 1973, but it was allowed to lapse on the untenable ground that the land Acquisition Collector could not take further action "due to heavy rush of work." He submits that after the notification u/s 4, virtually no transaction of land takes place. Thereafter, the notification u/s 4 was issued on November 4, 1977 and the final notification u/s 6 was issued on November 1, 1980. The further proceedings in the case were stayed by motion Bench. Even during this no transactions of sale and purchase of land have taken place. As a result, in the year 1993, the petitioners would get the price that existed in the year 1973. In the normal course of events, learned counsel appears to be right. Once a notification is issued u/s 4, normally no transaction takes place. As a result, the price does not get fixed. If the acquisition proceedings are not expeditiously completed, the interest, of the land owner is bound to suffer. It is primarily on account of this reason that the Full Bench in Radhey Shyam's case (supra) had taken the view that long and unexplained delay would vitiate the acquisition proceedings and that the petitioner who complained of delay on the part of the authority could not be non-suited on the ground that the petition was belated. However, the Rule in Radhey Shyam Gupta's case having been specifically up-set by the Apex Court and the action of the Government in issuing successive notifications having been up-held by a Full Bench of this Court in Ghanshyam Dass Goyal's case, there is very little that can be done for the petitioners in these cases. One can only hope that some day, the matter would be re-considered. As at present, there is no alternative except to reject the contention that successive notifications were calculated to peg down the prices and amounted to a colourable exercise of power."

I respectfully agreeing with the view taken by the learned Judge in Arvind Kumar's case (supra), find no merit in the contentions of Mr. Jain. It deserves to be noticed that petitioners in Civil Writ Petitions No. 2310 of 1986, 2335 of 1986 and 2273 of 1984 purchased property some time in the year 1982-83, meaning thereby that they were not even the owners at the time the notifications u/s 4 and 6 of the Act were issued. They being purchasers, cannot be on a better

footing than the original owners. After the issuance of notification u/s 4 of the Act, land owners were entitled to make objections u/s 5A of the Act. Some of the land owners and the interested persons made objections and on consideration of their objections as well as on the basis of report of the Joint Inspection Committee, the running factories, mention of which has been made in these writ petitions, were released from acquisition. Petitioners who were not even the owners at the time of making objections u/s 5A of the Act, cannot be allowed to urge that the land which was subsequently purchased, ought to have been excluded from acquisition. In this view of the matter, the petitioners cannot make a grievance that action of the respondents suffers from the vice of discrimination.

7. In Civil Writ Petition No. 5185 of 1983, Mr. M.S. Jain, Advocate, raised an additional argument, i.e. notification u/s 4 of the Act for acquisition of land in the revenue estate of Atmadpur was published in the Gazette on 4.11.1977, but substance of notification was not published in the locality till 9.11.1977. He, thus, contended that delay between the date of publication in the locality concerned renders the proceedings void. According to him, respondents have not given any explanation as to why there was such a delay. In support of this, he referred to a judgment reported as *Satish Kapur and Anr. v. The State of Haryana and Anr.* 1982 P.L.J. 109 wherein notification relating to this very village was quashed because there was a delay of 6 days in publication of notification in the official Gazette and locality concerned. I am not prepared to accept this contention of Mr. Jain because L.P.A. No. 944 of 1982 preferred against the judgment rendered in *Satish Kapur's* case (supra) was dismissed as it had become infructuous because of compromise between the parties. Therefore, decision given in *Satish Kapur's* case (supra) cannot be taken to be final on the subject. Otherwise also, from the averments made in the writ petition, I find that though the petitioners have stated that on enquiry made by them from the Revenue patwari, they came to know that report No. 109 dated 9.11.1987 about the publication of substance of impugned notification exists in the *Roznamcha Waqiat*i, but have not stated as to when they came to know about this report. It is too late at this stage to contend that substance of notification was not published or there was an inordinate delay in publication of substance of notification in the locality.

8. In Civil Writ Petition No. 3678 of 1986, Mr. A.K. Mittal, Advocate, counsel for the petitioners, raised the following additional arguments:

(i) that notification u/s 4 of the Act is liable to be quashed on the ground that there is no specific mention of the public purpose. In support of this, he relied upon a judgment of this Court in *Shiv Datt Sharma v. The State of Haryana and Ors.* (1982) 84 P.L.R. 20

(ii) that the petitioners had also purchased land for setting up a factory and the purpose of acquisition is "development and utilisation of land as industrial area" and thus, the purpose being the same, the land of the petitioners ought to have been excluded from acquisition. For this, he referred to a judgment reported as

Union of India v. Bal Ram Singh and

(iii) that the petitioners have never been paid, till date, any compensation on account of acquisition and, thus, the acquisition proceedings are liable to be quashed on this score alone. In support of this, he referred to a judgment of this Court reported as *Capital Stone Crushers Vs. The State of Haryana and Another*, .

I find no merit in the afore-mentioned arguments of Mr. Mittal. In *Shiv Datt Shanna's* case (supra), notification was quashed because public purpose stated therein was "planned development of the area of Sector 19 in village Faridabad, Tehsil Ballabgarh, District Gurgaon". There was no specific mention of the public purpose for which the land was acquired. In the present case, the land was acquired for specific purpose, i.e. "development and utilisation of land as industrial area". In its judgment reported as *Arnold Rodricks and Another Vs. State of Maharashtra and Others*, , the Supreme Court by majority opinion pointed out that "development and utilisation of land as industrial and residential areas" is a public purpose. The Supreme Court further held that "public purpose" varies with the times and the prevailing conditions in the locality and in some towns like Bombay, the conditions are as such that it is imperative that the State should do all this to increase the availability of residential and industrial sites will be ultimately allotted to these very members of the public, but the main idea is not the private comfort or advantage of the public but the general public mood of the community as well. If the members of the general public are unable to set up factories, there can be no colourable exercise of powers in this situation." Thus, in no circumstances, it can be held that acquisition was not for public purpose as contended by Mr. Mittal. The above-quoted observation of the Supreme Court also answers the second argument of Mr. Mittal that land of the petitioners was required to be excluded from acquisition because the petitioners also intend to set up an industry. The judgment in *Bal Rant Singh's* case (supra) is of no help to Mr. Mittal because in that case, the residential building was excluded from acquisition as in the facts and circumstances, the Supreme Court found that the residential houses and the land appurtenant thereto would not create any problem in the matter of development plan operation of Delhi Development Authority.

9. Now coming to the last argument of Mr. Mittal that acquisition is liable to be quashed because of non-payment of compensation, suffice it to say, there is no averment in the petition that the amount of compensation was not deposited despite the provisions of Section 31 of the Act, which provides for deposit of compensation in Court. In the absence of such an averment, it cannot be assumed that the amount was not deposited in Court. *M/s Capital Stonp Crushers'* case (supra) has no application to the facts of the present case as in that case, neither the amount of compensation was deposited nor the possession taken for a long time. However, in the present case, according to the State, the possession was taken and transferred to the Estate officer, H.U.D.A. vide Rapat No. 354 dated 2.5.1984. Thus, there is no merit in all the additional arguments

of Mr. Mittal. Even otherwise, these writ petitions deserve to be dismissed on the ground of delay and laches. As already noticed, notification u/s 4 of the Act was issued on 4.11.1977 and notification u/s 6 of the Act on 1.11.1980. The writ petitions were filed in the years 1983-86, i.e. almost after 4-7 years of the issuance of notification u/s 6 of the Act. Thus, these writ petitions deserve to be dismissed on the ground of delay alone.

10. Consequently, Civil Writ Petition No. 2310 of 1986, 2335 of 1986, 2272 of 1984, 2273 of 1984, 5185 of 1983 and 3678 of 1986 are dismissed, with no order as to costs.