
(2010) 06 P&H CK 0020
In the Punjab And Haryana At Chandigarh

Mahender Pal and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 14-06-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition (Mines) Act, 1885 — Section 6
Land Acquisition Act, 1894 — Section 17, 4, 5A, 6, 9

Citation : (2010) 159 PLR 795

Hon'ble Judges : M.M. Kumar, J;Jitendra Chauhan, J

Bench : Division Bench

Judgement

M.M. Kumar, J.—This petition filed under Article 226 of the Constitution challenges acquisition proceedings initiated pursuant to notification dated 14.11.2006 (P-3), issued u/s 4 read with Section 17(4) of the Land Acquisition Act, 1894 (for brevity, "the Act") and declaration made u/s 6 read with Section 17(1) of the Act on 15.11.2006 (P-4). The petitioners have also challenged notice dated 14.3.2007 (P-5), issued u/s 9 of the Act.

2. Brief facts of the case are that the petitioners' land is comprised in Khewat No. 581/554, Khatoni No. 769, Killa No. 96/26 (9-15), in the revenue estate of Village Gokal Garh, Tehsil and District Rewari, as is evident from the jamabandi for the year 2001-02 (P-7) and mutation dated 23.3.2007 (P-8). The aforementioned land was being used by the petitioners for residential purposes and which also has the Samadhis of their ancestors and a Shiva temple.

3. The petitioners initially filed CWP No. 5638 of 2007, challenging notification dated 6.1.2006, issued u/s 4 read with Section 17(4) of the Act and declaration dated 9.8.2006 made u/s 6 of the Act, whereby acquisition proceedings were made for a public purpose, namely, for the development and utilisation of land for residential/commercial purpose. However, the said writ petition was dismissed as withdrawn vide order dated 26.4.2007 with liberty to the petitioners to file a fresh one on the same cause of action. Thereafter the instant petition was filed.

4. On 14.11.2006, a notification u/s 4 read with Section 17(4) of the Act was issued showing the intention of the respondent State to acquire the land for a public purpose, namely, for the development and utilisation of land for outer ring road, green belt on both side, Pataudi Road to Jhajjar Road in the area of village Gokalgarh, District Rewari (P-3). On 15.11.2006, a declaration u/s 6 of the Act was made for acquiring the land for the aforementioned public purpose. On 14.3.2007, notices u/s 9 of the Act were issued to the petitioners to which they filed objections on 29.3.2007. On 29.3.2007 itself, the Land Acquisition Collector, Urban Estates, Haryana, Gurgaon, announced Award No. 47 for the year 2006-07. Possession of the acquired land was taken and an entry to that effect was made in the Roznamcha Wakayati of Patwari Halqua Gokalgarh vide Rapat No. 383, dated 29.3.2007.

5. After the withdrawal of earlier petition the petitioners filed the instant petition impugning the acquisition proceedings. The writ petition was dismissed in limine by a Division Bench of this Court vide order dated 10.5.2007, which reads thus:

Learned Counsel contends that there was no ground for invoking urgency provisions because acquisition was for development and utilisation of land for outer ring road green belt on both sides of Pataudi Jhajjar road. Notification u/s 4 was issued on November 14, 2006. Urgency provisions were invoked and declaration u/s 6 was issued on the following day on November 16, 2006.

Learned Counsel relies on Union of India (UOI) and Others Vs. Mukesh Hans etc., in support of his arguments that the urgency provisions can only be invoked after due application of mind by the Government and it was inherent in this provision that, unless there was no unforeseen emergency, order dispensing with the enquiry u/s 5-A should not be passed. In the above said case land was sought to be acquired for an annual festival called "Phool Walon Ki Sair" which was started during the Mughal Regime and property was needed by cultural organization for holding festival. Indeed in the said case there could not be any urgency but in the present case the acquisition is for road. Therefore, whatever objections the petitioner may have regarding the acquisition being of his house consisting of A class construction, smadhi of his ancestor and statute of his forefathers, temple to the memory of his forefathers cannot be valid ground to withdraw from acquisition.

We find no merit in this petition.

Dismissed.

6. Assailing the order dated 10.5.2007, passed by the Division Bench, the petitioners filed SLP (Civil) No. 14187 of 2007, which was converted into Civil Appeal No. 3604 of 2009 after grant of leave by Hon"ble the Supreme Court. Hon"ble the Supreme Court posed the "principal question" for consideration "whether in the facts and circumstances of this case the emergency powers in terms of Section 17 of the Act could have been resorted to by the State". After noticing the factual and legal position as also the judgments of Hon"ble the

Supreme Court rendered in the cases of Mahadevappa Lachappa Kinagi v. State of Karnataka (2008) 12 SCC 418; Union of India (UOI) and Others Vs. Mukesh Hans etc., ; Union of India (UOI) and Others Vs. Krishan Lal Arneja and Others, ; Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, ; Devinder Singh v. State of Punjab (2008) 1 SCC 728; and City Montessori School Vs. State of Uttar Pradesh and Others, , their Lordships" of Hon"ble the Supreme Court set aside the Division Bench judgment, dated 10.5.2007. Their Lordships" stated the law in clear terms by quoting para 32 from Mukesh Hans" case (supra), which reads thus:

32. A careful perusal of this provision which is an exception to the normal mode of acquisition contemplated under the Act shows that mere existence of urgency or unforeseen emergency though is a condition precedent for invoking Section 17(4), that by itself is not sufficient to direct the dispensation of the Section 5-A inquiry. It requires an opinion to be formed by the Government concerned that along with the existence of such urgency or unforeseen emergency there is also a need for dispensing with Section 5-A inquiry which indicates that the legislature intended the appropriate Government to apply its mind before dispensing with Section 5-A inquiry. It also indicates that mere existence of an urgency u/s 17(1) or unforeseen emergency u/s 17(2) would not by itself be sufficient for dispensing with Section 5-A inquiry. If that was not the intention of the legislature then the latter part of Sub-section (4) of Section 17 would not have been necessary and the legislature in Sections 17(1) and (2) itself could have incorporated that in such situation of existence of urgency or unforeseen emergency automatically Section 5-A inquiry will be dispensed with. But then that is not the language of the section which in our opinion requires the appropriate Government to further consider the need for dispensing with Section 5-A inquiry in spite of the existence of unforeseen emergency. This understanding of ours as to the requirement of an application of mind by the appropriate Government while dispensing with Section 5-A inquiry does not mean that in each and every case when there is an urgency contemplated u/s 17(1) and unforeseen emergency contemplated u/s 17(2) exists that by itself would not contain the need for dispensing with Section 5-A inquiry. It is possible in a given case the urgency noticed by the appropriate Government u/s 17(1) or the unforeseen emergency u/s 17(2) itself may be of such degree that it could require the appropriate Government on that very basis to dispense with the inquiry u/s 5-A but then there is a need for application of mind by the appropriate Government that such an urgency for dispensation of the Section 5-A inquiry is inherent in the two types of urgencies contemplated under Sections 17(1) and (2) of the Act.

7. It then went on to observe in para 16 of its order as under:

16. It is a well settled principle of law that an exception carved out from the main provision as a result whereof a citizen of India may be deprived of his property particularly having regard to the fact that if it is considered to be a

human right, procedural safeguards laid down therefore must be scrupulously complied with. It being an expropriatory legislation deserves strict construction. {See Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, ; Devinder Singh and Ors. v. State of Punjab and Ors. (2008) 1 SCC 728; and City Montessori School v. State of Uttar Pradesh and Ors. 2009 (2) SCALE 740}.

8. Accordingly, the matter has been remitted back to this Court for consideration afresh on the aforesaid question, vide order dated 15.5.2009 [reported as Mahender Pal and Others Vs. State of Haryana and Others, . In order to answer the aforesaid question the original record has been summoned and perused.

9. In the pleadings the petitioners have voiced their grievance that on the land in question they have raised "A" class construction and that there exists Samadhis of their ancestors as well as a temple of Lord Shiva is also constructed for the last 40-45 years. There was no urgency involved for dispensing with the inquiry u/s 5-A of the Act by invocation of the provisions of Section 17 of the Act while issuing notification u/s 4. It is claimed that even after issuance of notification u/s 6 of the Act, assurance was given to them that the Samadhi of their ancestors as well as temple of Lord Shiva would be released from acquisition. Even in the objections dated 29.3.2007 to the notice u/s 9 of the Act, they have categorically stated that the land is being used as Ashram, namely, "Par Hans Swami Parmanand Ji Ashram" since 1962. A statute of grandfather of the petitioners was also installed in 1972. Another statute of Shri Tara Chand was installed in 1991. The land is being utilised as prayer home since 1962. The petitioners have also placed on record photographs in support of the aforesaid averment (P-10). Other than this, the petitioners have also placed on record a letter dated 26.6.1991 regarding review of the progress of various schemes of HUDA. In fact, a meeting was held on 20.3.1991 under the Chairmanship of Commissioner and Secretary of Government Haryana, Town and Country Planning Department to review progress of various schemes of HUDA. It was decided that a survey of existing construction be done before the notification under Sections 4/6 of the Act. It was also resolved that constructed area of "A" and "B" grade should also be left out of acquisition (P-12). The petitioners have also placed on record policy instructions dated 8.1.2007 which contemplate that the constructed area would not be acquired (P-13).

10. In the written statement filed on behalf of the respondents the factual position has not been disputed. It has been pointed out that after issuance of notification u/s 4 read with Section 17(4) on 14.11.2006, an entry to that effect was made in the Roznamcha Wakayati Halqa Patwari vide Rapat No. 118, dated 16.11.2006. The substance of the notification was also published in two daily newspapers "Rashtriya Sahara" (Hindi), dated 24.12.2006 and "National Herald" (English), dated 24.12.2006. The substance of the said notification was also pasted on the notice board of Halqua Patwar Khana and Tehsil Office. Munadi was also made by the village Chowkidar by beat of drum (empty

kanastar) in the village as well as in the vicinity of the land to be acquired. On 15.11.2006 declaration u/s 6 was published in the Haryana Government Gazette. The substance of the declaration was also published in the two daily newspapers, namely, "Hari Bhoomi" (Hindi) and "National Herald" (English) and an entry to that effect was made in the Roznamcha Wakayati Halqa Patwari vide Rapat No. 119, dated 17.11.2006. The other formalities viz. pasting of substance and munadi etc. of the declaration u/s 6 of the Act was also religiously accomplished. It has been asserted that since there was urgency in the matter, the filing of objections u/s 5-A of the Act has rightly been dispensed with as per the provisions of Section 17 of the Act. Moreover, the award was announced on 29.3.2007 by the Collector and the possession was handed over to the representative of the Estate Officer, HUDA, Rewari, on the same day. Thus, the land vests in the Government free from all encumbrances. In this manner, the acquisition proceedings have already been completed.

11. On 4.2.2010, when the case came up for consideration the question which arose was that whether the land belonging to the petitioners continues to be vacant. Time was sought and granted to the learned State counsel to file an affidavit indicating as to whether road has been constructed on the land belonging to the petitioners comprised in Khewat No. 58 1/554, Khatoni No. 769, Killa No. 96/26. In compliance with the said order, an affidavit dated 25.2.2010 has been filed by Shri T.C. Gupta, Special Secretary, Urban Estate Department Haryana, Panchkula, stating that as per the report of the Estate Officer, HUDA, Rewari, dated 24.2.2010, at present no road is existing over Khasra No. 96/26 but as per the approved plan a portion of the land in the said khasra number would fall in the way of 60 meter wide road at the time of its construction.

12. Mr. R.K. Kapoor, learned Counsel for the petitioners has submitted that though there is no delay in issuance of notification u/s 4 read with Section 17(4) and the declaration made u/s 6 of the Act, yet no urgency was involved or shown by the Government in the present case to dispense with the filing of objections u/s 5A of the Act by invoking the urgency provisions u/s 17(4) of the Act. According to the learned Counsel 30 days time could have easily been granted for holding an inquiry into objections filed u/s 5A of the Act. He has also pointed out that substance of the notification u/s 4 was published in the newspapers only on 24.12.2006 and the munadi was made at a later stage. Learned Counsel has further argued that right to file objections u/s 5A of the Act cannot be taken away automatically by merely issuing notification u/s 4 read with Section 17(4) of the Act as has been observed by their Lordships of the Supreme Court in their order dated 15.5.2009. There has to be independent and objective application of mind by the competent authority that there is such an urgency, which would not brook delay of even 30 days. Learned Counsel has maintained that no such satisfaction or objective analysis has been made by the respondent Government. In support of his submissions, he has placed reliance on the judgments of Hon'ble the Supreme Court rendered in the cases of Mukesh Hans (supra), Essco Fabs Private Limited (supra) and Om Prakash and Another Vs. State of U.P. and

Others, .

13. Ms. Palika Monga, learned State counsel on the other hand has submitted that the public purpose of development and utilisation of land for the outer ring road, green belt on both side of Patuadi road to Jhajjar road at Rewari would justify invoking of urgency provision as contemplated by Section 17(4) of the Act. Controverting the arguments of the petitioners, Ms. Monga has submitted that the judgments of Hon"ble the Supreme Court rendered in the case of Mukesh Hans (supra) and Essco Fabs Private Limited (supra) would not apply in cases where the public purpose of construction of road concerns invoking of urgency. She has placed reliance on the judgment of Hon"ble the Supreme Court rendered in the case of Sheikhar Hotels Gulmohar Enclave v. State of Uttar Pradesh (2008) 14 SCC 716, where the public purpose of construction of road was in question and their Lordships" has upheld the notification issued u/s 4 read with Section 17(4) and Section 6 read with Section 17(4) of the Act. Learned Counsel has also submitted that the physical possession of the land in question free from all encumbrances had already been taken on 29.3.2007 when the award was announced by the Collector, which is prior to filing of the instant petition. Therefore, the petitioners cannot question the acquisition proceedings. In that regard, she has placed reliance on the judgments of Hon"ble the Supreme Court rendered in the cases of Shri Kishan Das and others Vs. State of U.P. and others, and U.P. Jal Nigam, Lucknow through its Chairman and another Vs. M/s. Kalra Properties (P) Ltd. Lucknow and others, as also a Division Bench judgment of this Court rendered in the case of Automax Limited v. State of Haryana 2008 (4) PLR 513.

14. Having heard learned Counsel for the parties at a considerable length we have also minutely perused the original record, which has been summoned to answer the basic question framed by their Lordships" of Hon"ble the Supreme Court in their order dated 15.5.2009. The question which emerges for determination is "whether the State Government has formed any opinion that along with the existence of urgency there is further necessity to dispense with inquiry contemplated u/s 5-A of the Act by proper application of mind". A close scrutiny of the record and the noting goes to show that a proposal to acquire the aforesaid land was prepared on 29/30.8.2006. The file after crossing various channels i.e. office of the District Town Planner (NCR), the Chief Town Planner, HUDA, the Assistant Director Urban Estates (A.D.U.E.), the Director, Urban Estates, it reached the Secretariat of the Chief Minister on 3.10.2006. In none of these notings there is a whisper with regard to the necessity of dispensing with inquiry u/s 5-A of the Act as per the law laid down by Hon"ble the Supreme Court in the cases of Mukesh Hans (supra) and Essco Fabs Private Limited (supra). There is no application of mind showing that acquisition of land involve such an urgency or an emergency that if Section 5A of the Act is followed then it would be impossible to enforce the public purpose contemplated by Section 4 read with Section 17(2)(c) and Section 6 read with Section 17(1) of the Act. It has already been noticed from reading of para 32 from the judgment of Hon"ble

the Supreme Court rendered in the case of Mukesh Hans (supra) that such application of mind is imperative and inquiry u/s 5A has been dispensed with automatically merely because while issuing notification u/s 4 urgency provision has been invoked. Therefore, the principle of law laid down by Hon"ble the Supreme Court in the case of the petitioners itself vide order dated 15.5.2009 would fully apply to the facts of the present case because there is no assessment by any of the competent authorities to the effect that hearing of objections is likely to consume vital time which may obstruct the implementation of the public purpose contemplated for acquisition of the land. The acquisition suffers from patent illegality and, therefore, is liable to be quashed.

15. The argument of the learned State counsel based on the judgment of Hon"ble the Supreme Court in Sheikhar Hotels Gulmohar Enclave's case (supra) would not require any detailed consideration merely because the public purpose of construction of road was construed to have urgency. The aforesaid issue has itself been considered by their Lordships" of Hon"ble the Supreme Court in their order dated 15.5.2009 when the petitioners had filed the appeal in this very case and the aforesaid argument stood already rejected in para 13, which reads thus:

13. The purported public purpose for which the land is to be acquired is for laying down a road.

We are not unmindful of the fact that the road connection is one of the purposes mentioned in Sub-section (2) of Section 17 of the Act in respect whereof Sub-section (4) thereof would apply. But the same would not mean that for the purpose of road connection irrespective of the nature of cases and/ or irrespective of the nature of the road to be constructed; Sub-section (4) of Section 17 of the Act could be invoked.

16. The next para 14 of the order clearly spells out the proposition of law that even when the provision concerning urgency is invoked, there has to be independent application of mind by the competent authorities to dispense with inquiry u/s 5-A because in para 14 the ratio of the judgment in Mukesh Hans" case (supra) has been quoted by their Lordships". Therefore, no such argument would be available to the respondent State.

17. The other argument that the land free from all encumbrances stood vested in the State on 29.3.2007 would not be available to the respondent State. In the present case, urgency provisions have been invoked by issuing notifications u/s 4 read with Section 17(4) and Section 6 read with Section 17(1) of the Act on 14.11.2006 and 15.11.2006 (P-3 & P-4). Thereafter notice u/s 9 of the Act was issued on 14.3.2007. The award has been announced on 29.3.2007 and the petitioners approached this Court on 4.5.2007, which is within less than a period of 11/2 months. On the one hand the petitioners cannot be accused of approaching this Court after inordinate delay or laches and on the other hand the principle of challenging the notifications before award has to be taken into account. Even if award has been announced there is no absolute bar against a

citizen to challenge the acquisition proceedings particularly in cases where urgency/emergency provisions u/s 17 have been invoked. If the State Government intends to proceed with acquisition after issuing notifications u/s 4 and 6 read with Section 17 of the Act and take possession of the land within a week thereof then it would render the land owner without a remedy if principle that after announcement of award no person could approach the Court is applied. Therefore, in the facts and circumstances of the case the equitable rights of the parties are balanced by rejecting this argument because there was no delay on the part of the petitioners/land owners to approach this Court. It is further appropriate to mention that the petitioners had earlier filed C.W.P. No. 5638 of 2007 and the same was dismissed vide order dated 26.4.2007 with liberty to file a fresh one on the same cause of action.

18. We are further of the view that consideration of the claim filed by the petitioners after Section 9 notice is perfunctory. A perusal of the award shows that the Collector has noticed "Demand of the Owners and Other Interested Persons" under the sub-heading but went on to observe that "the right holder/interested persons who turned up for hearing did not submit any documentary proof in support of their contentions nor laid any evidence to substantiate their claims". However, the original file would reveal that the petitioners have filed detailed reply to the notice issued u/s 9 of the Act on 29.3.2007 along with revenue record, copy of Aksh Shijra 1959-60 and a site plan. They have also placed on record various photographs showing the construction of their ancestor's Samadhi, Shiva Temple and other residential houses. The award has failed to take into consideration any of those things and has disposed of the claim in perfunctory manner. The whole acquisition proceedings, therefore, have been reduced to a sham and an empty formality. Consequently, the invocation of urgency contemplated by Section 17(4) read with Section 4 is vitiated. We would have confined the quashing of notification u/s 4 read with Section 17(4) of the Act but no useful purpose would be served because a period of more than three years have passed since the issuance of notification u/s 4 read with Section 17(4) and declaration u/s 6 read with Section 17(1) of the Act.

19. As a sequel to the aforesaid discussion, the writ petition succeeds. The notification dated 14.11.2006 (P-3), issued u/s 4 read with Section 17(4) and the declaration dated 15.11.2006 (P-4), made u/s 6 read with Section 17(1) of the Act are hereby quashed. Thus, the question posed by Hon"ble the Supreme court in its order dated 15.5.2009 is answered in favour of the petitioners and against the respondent State.

20. The writ petition stands disposed of in the above terms. The original record be returned to the learned State counsel.