
(1989) 11 P&H CK 0046
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6350 of 1988

Mangal Singh and ors.

APPELLANT

Vs

State of Haryana and ors.

RESPONDENT

Date of Decision : 30-11-1989

Acts Referred:

Citation : (1990) PLJ 184 : (1990) 1 RRR 544

Hon'ble Judges : S.S.Sodhi, J and J.B.Garg, J

Advocate : H.N. Mehtani, Advocate., Advocates for appearing Parties

Judgement

S.S. Sodhi, J.

1. The challenge here is to the acquisition of 59.53 acres of land in village Kharak Mangoli, Tehsil Kalka, District Ambala for the development and utilisation of land as residential and commercial area under the Haryana Urban Development Authority Act, 1977. The notification for the acquisition of the land under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) was issued on July 2, 1985 and that under Section 6 thereof on June 27, 1986. The award of Collector was thereafter made on June 26, 1988. Included in the land acquired was some land and buildings of the present petitioners.

2. The acquisition of the land acquired was sought to be impeached on a number of grounds. To begin with, it was said that there were well planned shops, commercial establishments and residential houses, as also a Timber Market and Motor Market catering to the needs of the residents of the area. There was thus no necessity or occasion for the acquisition of this land which was branded as being a colourable exercise for power to enable the Haryana Urban Development Authority to earn profits by sale of plots that it carves out from this area.

3. A plea of discrimination in the matter of acquisition of this land was also raised with particular mention being made of the Shopping Complex of one Shrimati Amarjit Kaur in village Majri being left out of this acquisition besides the residential and commercial area of villages Devi Nagar and Maheshpur.

4. Further, the acquisition proceedings were sought to be questioned on the ground that the notification under Section 6 of the Act had not been published within a year of the notification under Section 4 thereof and it was consequently argued that the acquisition proceedings stood vitiated merely on that account. It was also contended that, at any rate, the Award had not been announced within the stipulated period of two years from the date of the notification under Section 6 of the Act and what is in announcing the Award, the Collector had not followed the procedure laid down for the making of an Award as contained in Section 11 of the Act. Grievance; was also made that the petitioners had been denied an opportunity of hearing before the Award was announced by the Collector. Finally, it was contended that no Award had been made for the constructions that existed on the land acquired.

5. There is no substance or merit in either of the contentions raised. A reference to the return filed on behalf of the respondent State would show that as far back as 1972 when the Master Plan for Punchkula was prepared and published, the area of the land acquired was earmarked and shown there as Wholesale Grain, Vegetable and Timber Market. It has also been pointed out that. this area had since been encroached upon with haphazard constructions thereon resulting in congestion of the main artery of Punchkula Town which is also National High Way No. 22. Further, as it now exists the Area acquired has no infrastructure facilities like stormwater drainage sewerage, individual water pipes and the like. The allegation that the acquisition of the land was a colourable exercise of power to enable the Haryana Urban Development Authority to earn profits was negated with, the assertion that the land had been acquired for provision of a wholesale Grain, Vegetable and Timber Market, Auction Platforms, Shops cum Flats, Parking spaces and other utility plots to be provided in this area, in a planned manner. Plots for this purpose, it was, said, Would be sold according to the well established policy of the Haryana Urban Development Authority.

6. As regards the plea of discrimination based upon some area being left out of acquisition in village Majri as also of village Devi Nagar and Mahashpur, a very plausible explanation for it is forthcoming from the side of the respondents. In the first instance, it has been stated that the shops mentioned on the left side of the Ambala Kalka Road are those on Govt. land and cases with regard to them are already before the competent Court under, the Public Premises Act for getting those premises vacated; they all being encroachments on Government land. As regards village Majri, only 4 Kanals and 6 Marlas of land had been left out from acquisition which fell in the abadi deh. Further, it has also been stated that land of village Maheshpur except the abadi thereof had also been acquired while acquisition proceedings in village Devi Nagar were under process. In this situation, there is clearly no ground to warrant a finding of discrimination.

7. Equally devoid of merit was the other contention raised, namely that there was no compensation awarded for the construction on the land acquired. This plea has been specifically denied with the explanation that no compensation has,

of course, to be awarded for unauthorised encroachments on Government land.

8. The main challenge to the acquisition was, on the ground that the notification under Section 6 of the Act had not been made within one year from that under Section 4 thereof. As mentioned earlier, the notification under Section 4 was issued on. July 2, 1985 and that under Section 6 on July 27, 1985. An error however, crept into this notification under Section 6, namely, that the area of the land acquired was mentioned as 50.93 acres instead of 59.93 acres. This was later rectified by a corrigendum annexure P/4 issued on July 25, 1986. It was from this that counsel for the petitioner sought to take the date of notification under Section 6 to be July 25, 1986 i.e. the date of the corrigendum and to contend on that basis that the notification under Section 6 had not been issued within one year from that under Section 4. This is indeed an untenable contention. The notification under Section 6 was clearly the one published on July 27, 1985, annexure P/3. The corrigendum annexure P4 was merely to correct an obvious printing error and it cannot, therefore, be construed to shift the date of the notification under Section 6 from when, it was published to that of the issuance of the corrigendum. The correction of a mere printing error, therefore, cannot in the circumstances here, be construed as a factor vitiating the acquisition.

9. Next, it was said that the Award of the Collector annexure P/5 had not been Made within two years of the notification under Section 6 of, the Act. This Award bears the date June 26, 1988. It will be seen that allegation in the petition to the effect that on June 26, 1988 the petitioners were told by officials in the office of the Collector that the Award had not been finalized and that it would take about two weeks to complete it, has been specifically denied, Great stress was no doubt laid upon the fact that this day was a Sunday, but counsel could, however, point to no rule or law. which could be construed as barring in Award being made on Sunday. The important point to note is that according to the respondents, the amount for payment to the landowners had been withdrawn before this date and was with the Collector at the , time of the Award. There is no material on record to doubt the veracity of this statement.

10. Faced with this situation, counsel for the petitioners sought to contend that in making the Award, the Collector had not followed the procedure laid down in Section II of the Act. Particular reference, being made in this behalf to the averments made to the effect that no opportunity was granted to the petitioners to be heard and to adduce evidence The respondents, on their part, have not only controverted this allegation but have gone on to state that hearing was indeed granted to the petitioners on June 9, 1988. Here too, counsel could point to no material to seek to question thereby the veracity of this assertion. At any rate, a mere error or omission in following the prescribed procedure, leading to. the Award of the Collector, cannot vitiate the acquisition proceedings, as remedy for correction of any such error is available to the landowner; by 4 reference under Section 18 of, the Act,

11. It will, thus, be seen that the challenge to the acquisition of land cannot be sustained and no occasion is thus, provided here for setting it aside.

12. As a last resort, it was the prayer of the counsel for the petitioners that the person whose land had been acquired, were entitled to allotment of residential plots according to the policy framed by the Haryana Urban Development Authority. The petitioners, it was stated, were entitled to allotment of plots under the said policy. They consequently claimed such allotment. Mr. S.C. Mohunta, Advocate General, Haryana on his part, has no hesitation in conceding that if the petitioners, were indeed covered by the policy framed, a plot each, would be allotted to them. A direction is accordingly hereby issued to the Haryana Urban Development Authority to allot residential plots, to the petitioners, if, as per the policy, framed by it, in this behalf, the petitioners are eligible for such allotment. This writ petition is hereby disposed of with this direction. There will, however, be no order as to costs.