(2013) 01 P&H CK 0244

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1578 of 2013

Mela Ram and Others APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 30-01-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227
Land Acquisition Act, 1894 — Section 16, 17(1), 18, 4, 4(1)

Citation : (2013) 170 PLR 267

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

Bench : Division Bench

Advocate : Sarju Puri, for the Appellant;

Final Decision : Dismissed

Judgement

G.S. Sandhawalia, J.—The present writ petition, filed under Articles 226/ 227 of the Constitution of India, prays for writ in the nature of certiorari for quashing the notification dated 13.04.1983 (Annexure P-2) issued u/s 4 of the Land Acquisition (Amendment) Act, 1894 (hereinafter to be referred to as the "Act") whereby the respondent. State resolved to acquire the land measuring 12.11 acres including the land owned by the petitioners in village Rail Majra. Tehsil Balachaur and further for quashing the notification dated 02.06.1983 (Annexure P-4) issued u/s 6 of the Act and the mutation letter No. 3546 dated 09.12.2009 whereby the land stood transferred by respondent No. 2 to respondent No. 3. The case set up by the petitioners in the present petition is that Mela Ram, along with his brother, Nand Lal (predecessor-in-interest of petitioner No. 2) were the owners-in-possession of the agricultural land measuring 38 kanals 19 marlas in equal shares, situated within the revenue estate of village Rail Majra, Tehsil Balachaur, District Hoshiarpur (now in District Shaheed Bhagat Singh Nagar). The notification dated 13.04.1983 u/s 4 of the Act was issued whereby it was resolved that the land including the land of the petitioners was sought to be acquired for public purpose, namely, for the manufacture of magnetic tapes and colony for the staff of the company. The petitioners had filed objections to the notification and sought release of the land on the ground that they were agriculturists and the land was allotted to them in lieu of the land left in Pakistan. Thereafter, the notification dated 02.06.1983 u/s 6 of the Act was issued for the said public purpose for setting up the factory. The petitioners received notice dated 24.06.1983 u/s 9 of the Act and the award was notified to be announced on 14.07.1983. The compensation was finally assessed on 12.08.1983 at the rate of Rs. 40,000/- per acre for chahi land, Rs. 35,000/- per acre for chahi mustar and Rs. 25,000/- per acre for barani land as per the award. The petitioners, being dissatisfied, also raised reference u/s 18 of the Act and the compensation was enhanced to Rs. 86,000/- per acre for chahi land apart from other statutory benefits payable to the petitioners. The possession had been taken by the State and the predecessors of the petitioners were dispossessed. However, since 1983 till today, no construction work of the factory and the colony for the staff had been raised. On account of the apathy of the State, the prime land of highest quality was lying unused and nothing had been sown/constructed over the same. The land had remained unused for the last 20-25 years and a representation had been moved by the petitioners on 01.06.2009. Subsequently, the petitioners came to know that the land had been transferred by M/s. Inter magnetic India Ltd. to M/s. Punjab Information and Communication Technology Corporation Ltd., respondent No. 3 and the mutation also stood sanctioned in favour of respondent No. 3. The land had not been utilized and photographs showing the situation of the land were appended. The provisions of the Punjab Land Administration Manual was referred to plead that the land was to be returned back to the owners and in view of the fact that the State had failed to utilize the land for a period of more than 30 years and the object had been defeated, therefore, the petitioners'' right had been violated. Reliance was placed upon Raghbir Singh Sehrawat Vs. State of Haryana and Others, . It was further pleaded that the petitioners were ready to pay back the compensation along with interest accrued thereon and that the notifications were liable to be quashed. Counsel for the petitioners has also placed reliance upon Royal Orchid Hotels Limited and Another Vs. G. Jayarama Reddy and Others, to contend that the delay in filing the writ petition was liable to be condoned.

2. After hearing counsel for the petitioner, in our opinion, the writ petition is liable to be dismissed. Firstly, on the ground of delay and laches and even on merits as the petitioners have no legal and vested right and are in fact seeking release of the land acquired which is vested in the State, The factual matrix shows that the notification u/s 4 of the Act was issued on 13.04.1983 and u/s 6 of the Act was issued on 02.06.1983. Almost a period of 30 years has expired since the said notifications were issued. The award was passed on 12.08.1983 and the petitioners received compensation also and they never protested against the said acquisition. In the reference proceedings, the petitioners got the enhanced compensation. Thus, they are estopped, now, from raising a challenge to the acquisition proceedings in which the land has already vested with the

respondent-State after acquisition. The Hon''ble Apex Court, recently, in Leela Wanti and Others Vs. State of Haryana and Others, in similar situation wherein also, land acquired in 1976 was sought to be returned by sending a legal notice in the year 1999, repelled the argument of the petitioners by keeping in mind the principles of delay and laches while upholding the judgment dated 21.01.2008, passed by a Division Bench of this Court in CWP No. 9152 of 2007 titled Leelawanti v. State of Haryana,. The relevant observations on the issue of delay and laches are as under:

13. We have considered the respective submissions and examined the records. In our view, the High Court did not commit any error by not entertaining the appellants'' challenge to the acquisition of land because they did not offer any explanation for the long time gap of more than three decades between the issue of notifications under Sections 4 and 6 i.e. 1976 and filing of the writ petition i.e. 2007.

3. The reference to the judgment rendered in M/s. Royal Orchid Hotels Limited (supra) would not be applicable in the present case. Examining the facts of the said case, there the land had been acquired by the State Government at the instance of the Karnataka State Tourism Development Corporation for the purpose of establishing Golf-cum-Hotel Resort near Bangalore Airport. The said land was transferred by the Corporation to a private person and the Division Bench of the High Court held that there was misuse of the provisions of the Act since a huge chunk of land was acquired by the Government for a public purpose and then a major portion of the acquired land was transferred to private individuals and corporate entities by citing poor financial health of the Corporation. Under the circumstances, it was held that the Corporation had no justification to transfer the land acquired for public purpose to the private individuals and corporate entities and to by-pass the provisions of Part VII of the Act as it amounted to a fraud on the power of eminent domain. In view of the said facts, it was further held that since the land owners had not come to know about the fraud being played, the delay in filing the petition was liable to be condoned. In the present case, there is no such pleading that the land had been transferred to any private company. The transfer has only taken place from one State entity to the other which would be clear from the mutation letter (Annexure P-7) which has been placed on record wherein it has been specifically mentioned that M/s. Inter Magnetic India Ltd., for whom the land had been acquired and M/s. Punjab Information and Communication Technology Corporation Ltd., both were branches of the Punjab Government and the mutation letter was executed on the basis of token money which was Rs. 1/-. Thus, the facts in the present case are totally distinguishable from the facts mentioned in the case of M/s Royal Orchid Hotels Limited (supra).

4. On the merits of the case also, petitioners have no legal or vested right. It is the case of the petitioners themselves that the possession of the land was taken since the passing of the award on 12.08.1983. Even photographs of the acquired

land, showing it to be lying vacant and eucalyptus trees growing on it, have been attached with the writ petition. Under the provisions of Section 16 & 48 of the Act, once the award is passed and possession is taken, the land stands vested in the Government. The law on the said issue also stands settled by this Court as well as by the Hon''ble Apex Court. Reference can be made to a Division Bench judgment of this Court; in Gurkirpal Singh Vs. Financial Commissioner (Revenue) and Secretary, Government of Punjab, Department of Revenue and Others, wherein similar issue arose. In the said case, the challenge was to the de-notification on account of the land-owners seeking execution of the compensation amount. The Division Bench held that once the land had vested in the Government and the proprietary rights had been transferred to the State, the State could not de-notify the acquisition on the ground that the land was not suitable for the purpose for which it was acquired. Accordingly, the notification, de-notifying the land was set aside and the petitioners were held entitled to make recovery of the amount of compensation. Relevant observations read as under:

(13) We are further of the view that the policy of law as reflected in Section 48(1) of the Act cannot be deviated because if the State Government is permitted to de-notify the land after it has vested in the State free from all encumbrances and after taking of its possession then any person whose land has been acquired would be permitted to move the Court for release of his land. It would be negation of the proprietary rights because Section 16 and 17(1) of the Act contemplates that the land is to vest in the Government free from all encumbrances. It is thereafter that the expatriate person would not remain the owner and the proprietary rights are transferred to the State. Such an argument was raised before Hon''ble the Supreme Court in the case of Mandir Shree Sitaramji alias Shree Sitaram Bhandar Vs. Land Acquisition Collector and Others, . In para 16 of the judgment, the argument has been rejected by observing as under:-

(16) Even otherwise, we have seen the scheme sought to be relied upon. We find from the scheme that it only applies in respect of persons/agencies who own and possess the land. In this case possession of the land had already been taken. The scheme also categorically states that the scheme would not take away the rights of the Delhi Development Authority to acquire for development of Delhi. Thus the scheme was not applicable to lands of the Appellants. Even u/s 48 of the Land Acquisition Act once possession is taken the Government cannot withdraw from the acquisition. We thus see no substance in this contention also.

(17) Therefore, consistent with the public policy and the policy of law as implicit in Sections 16, 17(1) and 48(1) of the Act, once the possession has been taken there is no possibility of the respondent State to de-notify the acquisition.

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(18) We are further of the view that the respondent State is not barred from

utilizing the land for any other purpose than the one for which the land was required. It is well settled principle laid down in a catena of judgments. In the case of Union of India and Others Vs. Jaswant Rai Kochhar and Others, , it has been held that land acquired for public purpose may be used for another purpose. Therefore, when notification had mentioned that land was sought to be acquired for housing scheme but it is sought to be used for District Centre then the public purpose does not cease and notification on that ground could not be quashed. Similar view has been taken in the cases of Ravi Khullar and Another Vs. Union of India (UOI) and Others, ; State of Maharashtra Vs. Mahadeo Deoman Rai alias Kalal and Others, ; and Bhagat Singh Vs. State of U.P. and Others, Therefore, the respondent State cannot put forward the excuse that since the site of the acquired and was not suitable for construction of a Judicial Court Complex it cannot be used for another purpose.

(19) In view of the above, the instant petition succeeds. The impugned notification dated 23.2.2007 (P-1) is hereby set aside. The petitioner shall be entitled to make recovery of the amount of compensation from the respondents in accordance with law.

5. The Hon''ble Apex Court in Govt. of A.P. and Another Vs. Syed Akbar, while allowing the appeal in a case where the Division Bench of the Andhra Pradesh High Court had upheld the order of the Learned Single Judge, directing the authorities to hand-over the un-used portion of the land to the petitioners by collecting the amount of compensation already paid with interest @ 12% per annum and after noticing the standing orders, held as under:

10. It is neither debated nor disputed as regards the valid acquisition of the land in question under the provisions of the Land Acquisition Act and the possession of the land had been taken. By virtue of Section 16 of the Land Acquisition Act, the acquired land has vested absolutely in the Government free from all encumbrances. u/s 48 of the Land Acquisition Act, Government could withdraw from the acquisition of any land of which possession has not been taken. In the instant case, even u/s 48, the Government could not withdraw from acquisition or to reconvey the said land to the respondent as the possession of the land had already been taken. The position of law is well settled.

14. From the position of law made clear in the aforementioned decisions, it follows that (1) u/s 16 of the Land Acquisition Act, the land acquired vests in the Government absolutely free from all encumbrances; (2) the land acquired for a public purpose could be utilized for any other public purpose; and (3) the acquired land which is vested in the Government free from all encumbrances cannot be re-assigned or re-conveyed to the original owner merely on the basis of an executive order.

6. In National Thermal Power Corporation Ltd. Vs. Mahesh Dutta and Others, , it was held as under:

16. It is a well settled proposition of law that in the event possession of the land,

in respect whereof a Notification had been issued, had been taken over, the State would be denuded of its power to withdraw from the acquisition in terms of Section 48 of the Act. Whether actual or symbolic possession had been taken over from the land owners is essentially a question of fact. Taking over of possession in terms of the provisions of the Act would, however, mean actual possession and not symbolic possession. The question, however, is as to whether the finding of fact arrived at by the High Court that physical possession, indeed, had been taken over by the Collector is correct or not.

17. We have noticed herein before the background facts. The emergency provisions were resorted to. Even 80% of the compensation had been paid way back in 1984. Had possession of the vacant land been not taken, the question of payment of 80 % of compensation would not have arisen. All other legal requirements to invoke the said provision have been complied with.

7. This was followed in the case of Leelawanti (supra) wherein also the Hon''ble Apex Court came to the conclusion that the standing orders of the Land Administrative Manual no-where suggested that the State Government was duty bound to return the acquired land to the owners after the purpose of acquisition was accomplished and dismissed the appeal filed by the land-owners by holding that it would be contrary to the language of Section 16 of the Act.

8. The judgment relied upon by the counsel for the petitioners in the case of Raghbir Singh Sehrawat (supra) would not be applicable since it was a case where the land owners had challenged the acquisition under Sections 4 & 6 of the Act on the ground that they were violative of Article 14 of the Constitution of India since similarly situated portions of the land had been released. The Hon''ble Apex Court, firstly, came to the conclusion that the possession had never been taken by the HSIDC and; secondly, that the land owners'' objections u/s 5-A(2) of the Act had not been properly considered by the State. A further finding was recorded that the objections had been considered by forging the signatures of the appellants and therefore, no opportunity of hearing had been given. Keeping in view these factors, the appeal and the writ petition of the land owners were allowed and acquisition of the land was held illegal and quashed along with costs. Relevant paragraphs of the judgment reads as under:

32. The next issue which merits consideration is whether the acquisition of the appellant''s land is vitiated due to violation of Section 5A(2) and the rules of natural justice. A careful scrutiny of record reveals that the Land Acquisition Collector had fixed 29.10.2006 as the date for hearing the objections. He issued notices dated 2.11.2006 to inform the objectors that hearing will take place on 29.11.2006 at 11 a.m. in P.W.D. Rest House, Rai and asked them to appear either in person or through their agent. The notices were delivered to some of the landowners, who acknowledged the receipt thereof. However, the notices issued to the appellant and his wife were not served upon them. This is evident from the fact that other objectors had acknowledged the receipt of notices by putting their signatures, the notices allegedly served upon the appellant and his

wife do not bear their signatures and no explanation has been offered by the respondents about this omission.

33. The Land Acquisition Collector proceeded to decide the objections by assuming that the notice has been delivered to all the objectors. Not only this, someone in the office of Land Acquisition Collector forged the appellant''s signature to show his presence in P.W.D. Rest House, Rai on 29.11.2006. A bare comparison of the signatures appearing against the appellant''s name at serial No. 90 (page 184 of the paper book) and those appearing on the vakalatnama and affidavit filed in support of the special leave petitions shows that there is no similarity in the two signatures. Not only this, in the list, appended with Annexure R-3, the appellant''s wife has been shown as widow of Raghbir Singh. It is impossible to believe that a woman who knows how to sign a document would put signatures against her name showing her as a widow despite the fact that her husband is alive.

34. When the Court pointed out to the learned counsel for the respondents that the signatures appearing against serial No. 90 at page 8 of Annexure R-3 (page 184 of the paper book) do not tally with the signatures of the appellant on the vakalatnama and the affidavit filed in support of special leave petitions, the learned counsel expressed his inability to otter any explanation. He also expressed helplessness in defending the description of the appellant''s wife Smt. Moorti Devi as widow of Raghbir Singh.

35. From what we have stated above, it is clear that the appellant had not been given opportunity of hearing as per the mandate of Section 5A(2). The importance of Section 5A(2) was highlighted by this Court in Munshi Singh v. Union of India in the following words:

7..... Sub-section (2) of Section 5-A makes it obligatory on the Collector to give an objector an opportunity of being heard. After hearing all objections and making further inquiry he is to make a report to the appropriate Government containing his recommendation on the objections. The decision of the appropriate Government on the objections is then final. The declaration u/s 6 has to be made after the appropriate Government is satisfied, on a consideration of the report, if any, made by the Collector u/s 5-A(2). The legislature has, therefore, made complete provisions for the persons interested to file objections against the proposed acquisition and for the disposal of their objections. It is only in cases of urgency that special powers have been conferred on the appropriate Government to dispense with the provisions of Section 5-A......

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39. In this context, it is necessary to remember that the rules of natural justice have been ingrained in the scheme of Section 5A with a view to ensure that before any person is deprived of his land by way of compulsory acquisition, he must get an opportunity to oppose the decision of the State Government and/or its agencies/instrumentalities to acquire the particular parcel of land. At the

hearing, the objector can make an effort to convince the Land Acquisition Collector to make recommendation against the acquisition of his land. He can also point out that land proposed to be acquired is not suitable for the purpose specified in the notification issued u/s 4(1). Not only this, he can produce evidence to show that another piece of land is available and the same can be utilized for execution of the particular project or scheme.

In view of the above, no case is made out to entertain the present writ petition. Accordingly, the writ petition is dismissed in limine.

