
(2011) 08 P&H CK 0208
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 17093 of 2010

Misrani

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 03-08-2011

Acts Referred:

Constitution of India, 1950 — Article 14
Land Acquisition Act, 1894 — Section 4, 5(A), 6

Citation : (2011) 08 P&H CK 0208

Hon'ble Judges : Jasbir Singh, J; Augustine George Masih, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Jasbir Singh, J.—This writ petition has been filed to lay challenge to the notifications issued under Sections 4 and 6 of the Land Acquisition Act, 1894, (in short the Act), on September 26, 2007, and September 25, 2008, respectively proposing to acquire a vast track of land, for a public purpose, namely, for the development and utilisation of land for residential area in Sector 2, Part 3,4 and 5 Pinjore. Petitioner is the owner of 5 Biswas of land. It is her contention that in that land, she has constructed a house.

2. When notice of motion was issued, following contention of counsel for the Petitioner was noticed on September 22, 2010:

Counsel for the Petitioner states that constructed residential house of the Petitioner on 0.5 biswas of land has been ordered to be acquired, whereas adjoining big houses have been released from acquisition. Counsel further submits that the Petitioner had constructed his house much before issuance of notification u/s 4 of the Land Acquisition Act, 1894 on 16.9.2007. He further says that electricity and water connections were obtained before issuance of above-mentioned notification.

Notice of motion for 9.11.2010.

3. In response to the issuance of notice, replies have been filed by the Respondents. In para No. 3 of the reply (preliminary objections) filed by Respondents No. 1 and 2. , it is admitted that two shops were in existence when notification u/s 4 of the Act was issued. It is further stated that the relief was not given to the Petitioner because she had not filed objection u/s 5-A of the Act. It is also an admitted fact that adjoining house to the house of the Petitioner, situated in about 10 Biswas, was kept out of acquisition.

4. It is case of the Petitioner that it has wrongly been stated by the Respondents that the shops were in existence , whereas to the contrary it is house of the Petitioner. To say so, reference has been made to the photographs on record.

5. The relief was declined to the Petitioner merely on a ground that she had not filed objection u/s 5-A of the Act. During pendency of this writ petition, the Petitioner filed an application to bring on record a document Annexure P-13, supplied to her by the Department against an application moved under the Right to Information Act, 2005. The said document contains the list of those owners, whose land was released from acquisition without filing any objection u/s 5-A of the Act. The State counsel, when confronted with the said fact, has admitted that about 47 properties were released from acquisition where construction was in existence before issuance of notification u/s 4 of the Act and objections were not filed by the owners u/s 5-A of the Act. If that is so, we feel that in not releasing a small construction of the Petitioner, a discrimination has been done to her. The Petitioner appears to be a poor person. As stated by her counsel, she does not have any other house. There is nothing on record to show that if land of the Petitioner is released from acquisition, it will interfere in the infrastructure to be provided in the Scheme.

6. Under similar circumstances, the Hon''ble Supreme Court in Sri Radhy Shyam (Dead) through L.Rs. and Others Vs. State of U.P. and Others, , after noting that the land has been released in a pick and choose manner, observed as under:

86. We also find merit in the Appellants'' plea that the acquisition of their land is vitiated due to violation of the doctrine of equality enshrined in Article 14 of the Constitution. A reading of the survey report shows that the committee constituted by the State Government had recommended release of land measuring 18.9725 ha. Many parcels of land were released from acquisition because the landowners had already raised constructions and were using the same as dwelling units. A large chunk of land measuring 4.3840 ha was not acquired apparently because the same belonged to an ex-Member of the Legislative Assembly. The Appellants had also raised constructions on their land and were using the same for residential and agricultural purposes. Why their land was not left out from acquisition has not been explained in the counter-affidavit filed by the Respondents. The High Court should have treated this as sufficient for recording a finding that the Respondents had adopted the policy of pick and choose in acquiring some parcels of land and this amounted to violation of Article 14 of the Constitution. Indeed it has not been pleaded by the Respondents that

the Appellants cannot invoke the doctrine of equality because the other parcels of land were illegally left out from acquisition.

7. In view of above, this writ petition is allowed and the impugned notifications qua the Petitioner are quashed.