

(1988) 05 P&H CK 0081
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5968 of 1986

Mohinder Singh Sharma and Others	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 26-05-1988

Acts Referred:

Land Acquisition Act, 1894 — Section 16, 31

Citation : AIR 1989 P&H 110 : (1989) 1 ILR (P&H) 3

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : C.B. Goel and Sanjiv Sharma, for the Appellant; Pardeep Gupta, for the Respondent

Final Decision : Allowed

Judgement

J.V. Gupta, J.—This order will also dispose of "Civil Writ Petitions Nos. 5894 to 5896 of 1986, as the question involved is common in all these cases.

2. The land of the petitioners was acquired by notification u/s 4 of the Land Acquisition Act, (hereinafter called the Act), dt Nov. 17, 1982 and vide notification u/s 6 of the Act, dated Dec. 10, 1984. The award is said to have been given on Sept 21, 1986. The petitions were filed in this Court in Oct. 1986. The facts as stated in Civil Writ Petition No. 5968 of 1986 are that the award was announced for the purpose on Sept. 21, 1986, when there were no funds whatsoever with the authorities to be paid to the owners of the land. It has also been stated in para 13 of the writ petition that other chunks of agricultural land of the petitioners were also acquired under another notification regarding which the award was announced on the same date i.e. on Sept 21, 1986 and the petitioners and others approached the authorities for receiving compensation under protest with regard to the said agricultural land. However, as there was no money with the authorities, nothing has been paid nor the amount deposited in the treasury, as required under the law. It has also been averred that the petitioners raised pukka houses on the land acquired in the year 1978 and that

the petitioners along with their respective families are living in those houses. According to the petitioners, the entire acquisition is discriminatory on the part of the authorities inasmuch as similarly situated persons' houses and land have been left out of acquisition whereas the land on which the houses have been constructed by the petitioners has been acquired. In the written statement filed on behalf of the Land Acquisition Collector, it has been stated as a preliminary objection that the possession has already been taken and, therefore, the land has vested in the State Government and that the writ petition was liable to be dismissed on this ground alone. As regards the construction of the houses, it has been pleaded in para 2 of the return that it was denied for want of knowledge whether the families of the petitioners are residing therein. Again in paragraph 6 it has been reiterated that the petitioners were not having any house on the land in dispute on Nov. 17, 1982, i.e., the date of the issuance of the notification u/s 4 of the Act. As regards the payment of compensation, it was stated in para 13, that the compensation of the land will be given to the petitioners shortly.

3. On the last date of hearing, i.e., Jan. 12, 1988, the Land Acquisition Collector was directed to file an affidavit that the amount of award was tendered to the petitioners at the time of the making of the award on Sept. 21, 1986, as required u/s 31 of the Act or in case of refusal the amount was deposited before the District Judge concerned. In pursuance of the said order, an affidavit dt. Feb. 10, 1988, was filed by the Land Acquisition Collector in this Court, which reads as under :

"As per the office report dt. 8-2-88 none of the petitioners was present at the time of the announcement of the award dt. 21-9-86. Therefore, the petitioners could not be paid the amount of compensation on the said date. The said amount has not been deposited in the R.D. or with the District Judge and is still lying with the office of the deponent."

4. The learned counsel for the petitioners contended that since they have already constructed houses on the land acquired prior to the issuance of the notification u/s 4 of the Act, the same was liable to be exempted from acquisition according to the Government policy. It was further submitted that the land on which the houses have been constructed by the other persons, has been exempted from acquisition and, therefore, the petitioners' land was also liable to be exempted. In any case, argued the learned counsel, no payment has been made up-till today under the award, nor the amount has been deposited with the District Judge, as contemplated u/s 31 of the Act. The award, if any, was of no consequence and, therefore, the proceedings are vitiated.

5. On the other hand, the learned counsel for the respondent submitted that once the possession has been taken, the land vests in the State Government and, therefore, the writ petition was liable to be dismissed on this short ground alone. In support of this contention, reference was made to the Full Bench judgment of this Court in *Narinjan Singh and Another Vs. State of Punjab and Another*, . The learned counsel further submitted that there was no requirement

of law that the amount after the award should be deposited with the District Judge concerned in case the claimants were not present at that time.

6. At the time of the motion hearing, the dispossession of the petitioners from the land acquired was stayed. The respondents never challenged the said order or made any application for setting aside the same on the ground that the possession of the land had already been taken. According to the return, the possession thereof was taken on September 21, 1986. No documentary evidence has been produced to show that the possession was taken on that date as the award itself was given on that date. Thus, on the facts and circumstances of the case, it could not be held that the possession of the land acquired had been taken by the respondents then and, therefore, the land acquired had vested in the State Government.

It is not disputed that according to the Government policy, the land over which the persons have raised construction was not to be acquired. The petitioners have specifically pleaded that they have raised construction over the land acquired prior to the notification u/s 4 of the Act. Rather, it has been stated in paragraph 2 of the writ petition that the petitioners raised pucca houses thereon in the year 1978. Now the petitioners along with their respective families are living in these houses. In the return filed on behalf of the respondents, in para 2, it is stated that there was no pucca house in the land at the time of the issuance of notification u/s 4, on Nov. 17, 1982, and, if any construction has been made after that, it was illegal and unauthorised. Moreover, it has been denied for want of knowledge whether the families of the petitioners are residing therein or not. Apart from that,, the petitioners filed objections u/s 5A of the Act wherein was pleaded that the land of Kirti Nagar be exempted from acquisition and in fact on the recommendations of the Land Acquisition Collector, the land of Kirti Nagar was exempted because of the construction of the houses thereon. Since the petitioners have also raised construction on the land acquired, it was also liable to be exempted. In the return filed on behalf of the respondents, it was admitted that the Government has taken a policy decision that all built up area existing at the time of the issuance of notification u/s 4 of the Act be left out of acquisition. However, according to the return, the petitioners were not having any house on the land, in dispute, on Nov. 17, 1982, Though it may be a disputed question of fact, but from the facts and circumstances of the case, it is clear that the petitioners had raised construction over the land acquired prior to the notification u/s 4 of the Act.

7. Section 31 of the Act, so far as it is relevant for the purposes of these petitioners, reads as under :

"31. Payment of compensation or deposit of same in Court.-- (1) On making an award u/s 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference u/s 18 would be submitted."

From the affidavit dt. Feb. 10, 1988, filed in this Court, it is quite evident that the said amount was not deposited either in the R.D. or with the District Judge. That being so, the award dt. Sept. 21, 1986, was not a valid award as regards the petitioners.

8. Section 11A of the Act further provides that the award u/s 11 is to be made within two years from the date of the publication of the notification u/s 6 and if no award is made within that period, the entire proceedings for the acquisition of the land shall elapse.

9. In these circumstances, all the writ petitions succeed and are allowed. The impugned notifications by which the land of the petitioners has been acquired and over which they have already raised construction prior to the issuance of the notification u/s 4 of the Act, stand quashed to that extent. There will be no order as to costs.