
(1987) 11 P&H CK 0012
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2015 of 1985

Om Parkash

APPELLANT

Vs

The State of Haryana and Another

RESPONDENT

Date of Decision : 11-11-1987

Acts Referred:

Land Acquisition Act, 1894 — Section 4

Citation : (1987) 11 P&H CK 0012

Hon'ble Judges : M.R. Agnihotri, J

Bench : Single Bench

Advocate : Gopi Chand, for the Appellant; Mani Ram, for A G (Haryana, for the Respondent

Final Decision : Allowed

Judgement

M.R. Agnihotri, J.—This judgment will dispose of C. W. P. Nos. 1526 and 2015 of 1985 in which common questions of fact and law are involved. For reference sake, the facts have been taken from C.W.P. No. 2015 of 1985.

2. The Petitioner is owner of a plot of land bearing Killa No. 54/5/I. measuring 1 Kanal, situated in the abadi area of village Dharuhera, tehsil Rewari, district Mohindergarh, in the State of Haryana. On 16th June, 1981, a draft plan for the development of Dharuhera was framed by the Department of Town and Country planning, Haryana, which was notified in the Haryana Government Gazette. In this plan, a plot of land measuring 12 acres was earmarked for construction of bus stand. Thereafter, on 9th August, 1983, a notification u/s A of the Land Acquisition Act, 1894, was issued by the State of Haryana for acquiring six acres of land in village Dharuhera for the construction of bus stand. On the same day, that is, on 9th August, 1983, the notification u/s 6 of the Act was also issued. Out of the land proposed to be acquired for the aforesaid purpose, the land measuring 5 Kanals and 6 Maras belonged to Sarvshri Rac Bhup Singh, Smt. Ishwari Devi, Smt. Shakuntla Devi Rac Shiv Rattan Singh and others, while the remaining land measuring 1 Kanal was owned by the Petitioner This piece of land

abutted on the Jaipur-Delhi National Highway road, which is of great potential value on account of its strategic position, being adjacent to the site of the proposed bus stand and the location on the main read.

3. Seen thereafter in addition to the land for which notification u/s 4 of the Land Acquisition Act was issued on 9th August, 1983, yet another notification u/s 4 of the said Act was published in the Haryana Government Gazette, dated 27th October, 1983 (Annexure P-3). This notification was issued in exercise of the emergency powers conferred by Section 5-A of the Land Acquisition Act and was followed by a notification u/s 6 of the Act also on the same date. Aggrieved by the aforesaid notifications, the Petitioner filed C W P. No. 125 of 1984, which was disposed of by a Division Bench of this Court on 9th February, 1984, by the following order:-

Mr. Bishnoi submits that the State Government shall not invoke urgency provisions in regard to the land in dispute ; that the Petitioner would be entitled to file objections u/s 5-A of the Land Acquisition Act, 1894, within thirty days from today and that in case the objections are filed within the said period, then the same shall be disposed of on merits in accordance with law.

In view of what is stated by Mr. Bishnoi, Mr. Gopi Chand, learned Counsel for the Petitioner, states that this petition be dismissed as withdrawn. We order accordingly

Before parting with the order, it may be observed that Mr. Gopi Chand states that the Petitioner shall not raise any construction over the land in dispute till his objections are decided by the State Government.

Sd/- Prem Chand Jain Acting Chief Justice

8th Feb. 1984. Sd/- I. S. Tiwana.

Judge

4. Accordingly, the Petitioner filed his objections to the acquisition u/s 5-A of the Land Acquisition Act, whereupon the State of Haryana, Respondent No. 1, issued a fresh notification u/s 6 of the Act, on 11th September, 1984, Annexure P-5. The present writ petition has challenged the legality, validity and propriety of the notifications issued on 27th October, 1983 (Annexure P-3) and 11th September, 1984 (Annexure P-5), on the variety of grounds, including the absence of cogent reasons for the exercise of emergency powers for dispensing with the entertainment of the objections u/s 5-A of the Land Acquisition Act earlier, change of the site of bus stand without complying with the provisions of the Punjab Scheduled Roads Controlled Area Restriction of Unregulated Development Act, 1963, non observance of the provisions of the Financial Commissioner's Standing Orders, non-application of mind by the Land Acquisition Collector while disposing of the objections u/s 5-A of the Land Acquisition Act, proximity of School Health Centre, Fire Station, etc to the proposed bus stand and non-acquisition of the vacant land available for the aforesaid purpose and acquisition

of the land of the Petitioner for extraneous considerations due to allegations of mala fides arising out of political enmity.

5. In reply to the writ petition written statement was filed by the Under Secretary to Government, Haryana, Transport Department, on behalf of Respondent No. 1, the State of Haryana, and Respondent No. 2, Land Acquisition Collector, Rewari, in which the proposed acquisition is sought to be justified. In the written statement it has been stressed time and again that various sites for construction of bus stand at Dharuhera were inspected and ultimately it was decided that the land in question was most suitable for being acquired for the purpose of bus stand. It has been stated that the objections filed by the Petitioner before the Land Acquisition Collector, Rewari, were duly considered but the same were rejected as there was no force in the same. The allegations of political rivalry have also been refuted. Later on, a supplementary affidavit was also filed by the Joint State Transport Controller, Haryana, stating that there was no alternative site which was as suitable as the one in question from the point of view of the nearness to the main abadi exit/entrance to the main road and the adequate area required for the bus stand. The site was, therefore, considered most suitable for the construction of bus stand at Dharuhera. It is further admitted that while issuing the original notification dated 9th August, 1983, for the acquisition of land for the bus stand at Dharuhera, the area of 6 Kanals and 6 Marias of land was either deliberately or through error omitted.

6. After hearing the learned Counsel for the parties and having gone through their pleadings, I am of the considered view that the objections filed by the Petitioner have not been considered in accordance with law. As a result thereof, unless the same is done, the proposed acquisition, in pursuance of the impugned notifications dated 27th October, 1983 (Annexure P-3) and 11th September, 1984 (Annexure P-5) cannot be permitted to proceed further. The learned Counsel for the Petitioner has placed reliance on the unreported judgment of the Supreme Court in *M. Maniklal v. The State of Mysore and others* Civil Appeal No. 1948 of 1968. Civil Appeal No 1948 of 1968, decided on 23rd November, 1976-1977 U. J. (S. C) 35, *Pt. Mehar Chand and Ors. v. The State of Haryana and Anr.* 1983 P. L. J. 25. and *Lenappan v. Sub-Collector, Palghat* A. I. R. 1959 Kar. 343., to contend that the object of the Legislature in enacting Section 5-A was that no final order directing acquisition should be made by Government without giving the owner of the land proposed to be acquired or persons interested in it an opportunity to put forward their objections to the proposed acquisition and without the Government considering these objections. In order to implement and further the object of Section 5-A, notice to the concerned department was necessary to be issued before the hearing of the objections filed u/s 5-A in order to provide an opportunity to the department for the original requisition being reviewed or reconsidered in the light of the objections raised by the owner of the land and other persons interested in it. The omission to issue notice to the department concerned invalidates and renders the consideration and disposal of the objections filed u/s 5-A as illegal. Further, according to para 19-A of the

Financial Commissioner's Standing Order No. 28, which is binding on the Collector and other functionaries of his office, the enquiry envisaged by Section 5-A of the Land Acquisition Act is quasijudicial in nature as it has civil consequences of depriving a person of his property. Therefore, the opportunity intended to be granted to the objector has to be of substance and not of form only. Therefore, it is incumbent on the authorities disposing of the objections that merits of objections must be dealt with Otherwise; it would be no consideration of the objections at all in the eye of law. Since in the present case, there has not been any compliance of the Financial Commissioner's Standing Order nor was any notice issued to the concerned department, much less the availability of record, indicating any proper consideration and disposal of the objections raised by the Petitioner u/s 5-A of the Land Acquisition Act. I have no option but to issue a writ of certiorari and quash the impugned notifications dated 27th October, 1983, and 11th September, 1984, so far as the Petitioners in these two writ petitions are concerned.

7. Consequently, both these writ petitions are allowed. The Petitioners shall also be entitled to the of costs of the petition which are quantified at Rs. 1,000/- in each writ petition.