
(1991) 10 P&H CK 0028
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 905 of 1986

Parhlad Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 01-10-1991

Acts Referred:

Citation : (1991) PLJ 697 : (1992) 1 RRR 54

Hon'ble Judges : V.K.Bali, J

Advocate : R.C. Chauhan, Advocates., Rajinder Goel, Chatter Bhuj Goel,
Advocates for appearing Parties

Judgement

V.K. Bali, J.

1. This order will dispose of C.W.P. Nos. 905, 907, 910, 1353, and 908 of 1986, as common question of law and facts are involved in all the cases.

2. Dealing first with C.W.P. 905/1986, all that requires to mentioned, in so far as the facts are concerned, is that the petitioner had constructed a Pucca house in Khasra No. 3096 as far back as 1966 and ever since he is residing there with his family. Vide notification issued u/s 4 of the Land Acquisition Act (hereinafter called the Act) on 28th March, 1985, the house of the petitioner was intended to be acquired along with other land belonging to the petitioner and many others. The followup declaration u/s 6 of the Act came into being on 16th January, 1986. The prayer of the petitioner is to quash notifications issued u/ss 4 and 6 of the Act for the sole reason that he has constructed a house in Khasra No. 3096 and the policy of the Government not to acquire constructed houses or buildings would not permit the respondents to acquire the house constructed by the petitioner far prior to the issuance of notification u/s 4 of the Act. In the written statement that has been filed, it has been admitted that the petitioner had actually built a house in Khasra No. 3096 and the same has been excluded from the acquisition proceedings.

3. In so far as the facts of C.W.P. 907/1986 are concerned, the same are

identical. The petitioners of the said case had also constructed a house each in Khasra No. 10976/2821 and 10979/2822. The plea of the petitioners is the same i.e. in pursuance of policy of the Government, buildings constructed prior to issuance of notification u/s 4 of the Act cannot be acquired. The respondents have admitted the construction and clearly stated that so far as built houses are concerned the same have already been left out of the array of acquisition.

4. Coming now to the facts of C.W.P. 910/1986, suffice it to say that the fact that petitioner had constructed a shop over Khasra No. 3042 min, situated at Railway Road, Gurgaon, has not been denied anywhere in the written statement. It is further stated in the written statement that the constructed portion which existed at the time of issuance of notification u/s 4 of the Act has been left from the acquisition proceedings strictly in accordance with the decision of the Government without any discrimination.

5. Facts of C.W.P. 1353/1986 would go to show that the petitioner of the said case had constructed one factory and big hall block in Khasra No. 1446 and two shops, chowkidar room and an office room etc. in Khasra No. 1445. The reply of the respondents is that in Khasra No. 1445 the houses are constructed in 07 Biswansi while in Khasra No. 5236/1446, 4 Biswas 10 Biswani is recorded as an industry (Ghair Mumkin for Karkhana). The averments in the written statement further go to narrate that as per spot inspection conducted by the District Town Planner on 22nd of March, 1985, there were two shops of 'B' class constructed in Khasra No. 1445 measuring 30"x 17". Similarly in Khasra No. 1446, according to the said report, there were a pucca shed and a 'B' class factory measuring 30x50" and 50"x50" which have already been left out of the acquisition.

6. In so far as C.W.P. 908/1986 is concerned, the construction raised by the petitioners, although admitted by the respondents, is stated to be after issuance of the notification u/s 4 of the Act. The petitioners, however, seriously dispute this fact.

7. Learned counsel appearing for the petitioners, on the strength of facts as have been reproduced above, contend that even though the constructed portions have been left out from the array of acquisition, the entire remaining land has been acquired in such a way so as to render the nonacquired portion as totally useless. The prayer on behalf of the petitioners is, thus, to leave at least some vacant space around the constructed area so that the nonacquired portion can be put to some meaningful use. There is considerable merit in the contention raised on behalf of petitioners. The respondents cannot acquire the property of a citizen in such a way that the nonacquired portion becomes total useless. If it is not possible to leave vacant space around the constructed area for various reasons, like the area under construction comes under roads, parks or other public places, then it is better to acquire even the Constructed portion. However, when in consequence of the policy of the Government or otherwise, the constructed houses or buildings of a citizen are left out from acquisition, then the same have to be left in such a manner that those can be put to some meaningful use. If

every inch around the constructed area is acquired, then obviously the left out portion will be rendered totally useless. In (Rakesh Kumar and another v. The State Of Haryana, etc., C.W.P. 70/1990) decided on February 18, 1991, the respondents agreed not only to leave 2 Biswas of land where there was a construction but also agreed to release from acquisition proportionate vacant land. Although this decision which was rendered on the statement of the respondents cannot be cited as a precedent yet the same at least provides a reasonable manner of following the policy of not acquiring constructed area.

8. In view of what has been stated above, there shall be a direction issued to the respondents to leave vacant land proportionate to the constructed area.

9. In so far as C.W.P. 908/1986 is concerned, the construction although admitted is stated to have been raised after issuance of the notification u/s 4 of the Act. As observed earlier, this is refuted by the petitioner. The petitioners cannot take advantage of the policy of the Government not to acquire the constructed areas prior to issuance of notification u/s 4 of the Act. In this writ petition, thus, no relief can be granted. However, as mentioned above, the petitioners dispute the assertion of the respondents and the counsel appearing for them vehemently contends that the construction raised by the petitioners was prior to issuance of the notification u/s 4 of the Act. This, however, is purely a question of fact and cannot be gone into in writ jurisdiction of this court. The petitioners of this case are, thus, relegated to the remedy of a civil suit. It is, however, made clear that if the civil Court comes to a finding that the construction in question was raised prior to issuance of notification u/s 4 of the Act, the said construction with proportionate area will be left out from the array of acquisition.

10. No other plot has been raised.

11. The writ petitions are, thus, disposed of in the manner indicated above, with no order as to costs.