
(1998) 03 P&H CK 0056

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 15204 of 1993

Partap Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 30-03-1998

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 5A

Citation : (1998) 120 PLR 247

Hon'ble Judges : Nanak Chand Khichi, J

Bench : Single Bench

Advocate : K.K. Jagia, for the Appellant; N.S. Bhinder, District Attorney, for the Respondent

Final Decision : Dismissed

Judgement

Nanak Chand Khichi, J.—In this writ petition under Article 226 of the Constitution of India, the petitioners have prayed for the issuance of a writ, order or direction in the nature of certiorari, prohibition, mandamus etc. restraining the respondents from issuing any fresh Notification u/s 6 of the Land Acquisition Act, 1894, and for setting-aside any such notification, if already issued.

2. The facts of the case as have emerged from the record are as under :-

The State Government issued Notification No. 11/14-L-3, dated January 14, 1991 u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") for acquisition of land pertaining to village Saniana, Chamer Khera (18.34 Acres) and Pabra, Majra and Kinala (34.86 Acres), for a public purpose namely for constructing link channel from RD 9000-L Fatehabad Branch to RD 75,000 R Pabra Distributory for improvement of BML Barwala/Sira Branch for the purpose of irrigation of uncommand area and for improvement of the command area. The said notification was published in daily "Tribune dated January 29, 1991 (copy Ann. P1). The land owners/interested persons were asked to file objections within a period of "30 days from the publication of this notification. The

petitioners being persons interested filed stereo-type objections on February 27, 1991 in terms of Section 5-A of the Act. Copy of one of such objections filed on behalf of Sher Singh petitioner No. 11 is Annexure P2. According to the petitioners no action was taken on these objection petitions. However, from the perusal of the official file produced on the direction of the Court, it is found that these objections were rejected being barred by limitation on March 12, 1991. The land in question was acquired by subsequent notification dated February 18, 1991 u/s 6 of the Act published on 20.2.1991 and it was published in the "Tribune" on March 5, 1991. Thereafter one Raghbir Singh son of Shri Ganga Ram, who was also an interested person being the owner in possession of some of the land, approached this Court and challenged the acquisition proceedings by way of filing CWP No. 5620 of 1991. While issuing notice of motion, the Hon"ble Bench was pleased to observe as under: -

"Notification u/s 4 of the Land Acquisition Act was published in the official Gazette on 14th January, 1991 but it was published in the "Tribune" on 29th January, 1991. Notification u/s 6 of the Act has been published on 20th February, 1991 i.e. before the expiry period of 30 days provided for filing objections u/s 5-A of the Act."

In the above said writ petition, it was alleged that some of the land owners personally took the objection petitions to respondent No. 3 on February 28, 1991 but they later declined to accept the same. Raghbir Singh petitioner in the writ petition sent the objections by registered post A.D. which was infact received on February 28, 1991, but the same was received back with the remarks "refused delivery, Back to Sender". C.W.P. No. 5620 of 1991 was admitted on June 7, 1991. Instead of contesting the writ petition the respondents vide Notification dated July 8, 1991, published in official Gazette on July 9, 1991, copy whereof is Annexure P4, withdrew the impugned notification u/s 6 of the Act and the follow-up action thereon. On July 8, 1993, the aforesaid writ petition when came up for regular hearing, was disposed of as having rendered infructuous in view of the statement of the Deputy Advocate General, Haryana that notification u/s 6 has been withdrawn as intimated by respondent No. 2 vide his letter dated August 10, 1991. According to the petitioners the aforesaid writ petition was disposed of with a direction that any future notification u/s 6 can be issued only after hearing objections u/s 5-A and deciding the same in accordance with law. Further, it is the case of the petitioners that a reference was made to respondent No. 3, on August 16, 1993 to which he furnished reply vide Memo. No. 499/LAC, dated August 20, 1993, copy whereof is Annexure P6. The petitioners have disputed the correctness of this reply wherein it was mentioned that the petitioners had filed fresh objections on September 3, 1991 which had been passed on by respondent No. 3 to the Government with his comments. Thereafter, the then Chief Engineer Canal vide Memo, dated January 13, 1992, intimated that the objections had been considered at his level and the same were found to be without any weight and were disposed of as such. This has however been misconstrued by respondent No. 3 as rejection of the petitioners" objections at

the hand of the Government. It is further the case of the petitioners that there has been non-compliance of the mandatory provisions of Section 5-A of the Act and that the order dated January 13, 1992 of the Chief Engineer is totally without jurisdiction. Even if the version given out in Annexure P6 is taken to be true, it does not construe compliance with the order of the High Court dated July 8, 1993 (copy Ann. P5), passed in C.W.P. No. 5620 of 1991. They further challenged the notification that the respondents had no legal authority to issue notification u/s 6 of the Act and is liable to be quashed being barred by limitation and that it was issued for extraneous considerations.

3. The respondents filed the written statement and pleaded that the earlier notification u/s 6 published on February 20, 1991, was withdrawn and a new notification u/s 6 was issued on January 13, 1992 which was published in the Haryana Government Gazette on the same date.

4. The objections raised by the land owners were heard by respondent No. 3 and disposed of in accordance with law. The writ petition filed by Raghbir Singh was finally disposed of on July 8, 1993 in view of the fact that earlier notification u/s 6 had already been withdrawn.

5. When the matter came up for hearing before H.S. Bedi, J., it was felt that from the written statement filed by the respondents, there was some confusion of facts and the documents annexed do not bear out the facts in the written statement. Thereafter on the request of Shri N.S. Bhinder, time was allowed to file a better affidavit giving full details. Reply to the affidavit was also directed, to be filed, if any. The affidavit of Shri R.K. Sharma, Executive Engineer, dated May 10, 1997 was filed. Another affidavit of Shri R.K. Sharma, dated July 10, 1997 was filed by the respondents alongwith the documents because the counsel for the petitioners had not filed reply to the earlier additional affidavit on the ground that the orders passed were not placed on record and therefore, he was not in a position to file reply to the additional affidavit filed on May 27, 1997. On the direction of the Court, the State Government filed the affidavit dated May 27, 1997 of Shri R.K. Sharma to the effect that the petitioners had filed objections through their counsel and the same were disposed of. Alongwith this affidavit, the respondents produced documents Annexures R.20 to R.38, copies of the objections filed by the petitioners through their counsel Shri Mohan Lal Aggarwal. Copies of the Vakalatnamas were also placed on record. From the written statement and the additional affidavits referred to above, the case set up by the respondents is that since there were certain discrepancies in the acquisition proceedings and these were required to be suitably rectified, therefore, on the advice of the office of the Advocate General, Haryana, the notification dated July 9, 1991 was issued by the Government of Haryana whereby the earlier notification dated February 18, 1991 u/s 6 of the Act issued by the State Government and published in Haryana Gazette (Extraordinary) dated February 20, 1991, was ordered to be withdrawn. The Superintending Engineer Bhakhra Canal Circle, Hisar, vide letter dated July 9, 1991 wrote to respondent No. 3 that

since the notification under Sections 6 and 7 with regard to Pabra Link Channel Canal, having since been de-notified, further follow up action be taken. The D.R.O.-cum-Land Acquisition Collector notified the contents of the notification in the concerned villages" on August 2, 1991 and Munadi was also got done for filing objections under Sections 5 and 5-A of the Act. The petitioners then filed objections, on September 3, 1991 since the last date for filing the objections was September 2, 1991. That being a holiday, the objections were treated to have been filed within the prescribed period of limitation of 30 days beginning from August 2, 1991. The objections were submitted by the petitioners through their counsel Shri Mohan Lal Aggarwal, Advocate Hisar. The objections raised by the petitioners were disposed of after hearing their counsel in accordance with law. The D.R.O.-cum-Land Acquisition Collector, after considering the objections sent his recommendation to the Commissioner and Secretary to Government, Haryana, Irrigation Department, Haryana, vide letter dated October 15, 1991 with a copy to the Engineer-in-Chief, Irrigation Department, Haryana. The Government of Haryana authorised the Engineer-in-Chief vide Memo No. 36/24/91-1, dated January 13, 1992, to take decision on the objections on behalf of the State Govt. The Chief Engineer considered all the objections and the recommendation of the D.R.O.-cum-Land Acquisition Collector, Hisar, and vide letter dated January 13, 1992 informed the D.R.O.-cum-Land Acquisition Collector, Hisar, that the objections of the land owners have no weight except obstructions in natural drainage for which the Superintending Engineer Bhakra Canal Circle, Hisar has already issued directions to provide suitable siphons at suitable sites to meet with the demand of the villagers. Thereafter, notification u/s 6 of the Act was published in the official Gazette on the same date i.e. January 13, 1992. It was also published in daily "Tribune" and "Indian Express". An order u/s 7 of the Act was issued by the Government of Haryana on January 26, 1992 and was published in the official Gazette on January 27, 1992, whereby respondent No. 3 was directed to take orders for further necessary action towards the acquisition of the land described in the declaration. It was further averred by the respondents that in the earlier C.W.P. No. 5620 of 1991, filed by Raghbir Singh, the interim stay granted on May 1, 1991, was vacated by the Division Bench of this Court on June 7, 1991 as the respondents had taken possession of the land on April 18, 1991. The writ petition filed by Raghbir Singh, was rendered infructuous in view of the statement made by the State counsel that the notification u/s 6 of the Act had already been withdrawn. Raghbir Singh petitioner in the earlier writ petition did not choose to file the writ petition afresh against the fresh notification dated January 13, 1992. Therefore, the present petitioners cannot take any benefit from the orders dated July 8, 1993, passed in C.W.P. No. 5620 of 1991. It was further averred that the present writ petition is nothing but only misuse of the process of the Court to deprive the State Government from land in question on frivolous grounds and the petition liable to be dismissed.

6. Counsel for the parties have been heard.

7. In the first instance Mr. K.K. Jagia, learned counsel for the petitioners has contended that the respondents have not complied with the orders dated July 8, 1993, passed by V.K. Bali, J. The respondents were directed to issue fresh notice to the petitioners. No fresh notices were issued by the respondents.

8. This contention has no force. The earlier notice u/s 6 of the Act dated February 18, 1991 and published in the official Gazette on February 20, 1991, was withdrawn. The Land Acquisition Collector notified the contents of the notification in all the concerned villages on August 2, 1991 and Munadi was also got done for filing the objections u/s 5 and 5-A of the Act. The petitioners then filed objections on September 3, 1991 since the last date for filing of the objections was September 2, 1991. This fact is evident from the additional affidavit of Shri R.K. Sharma. According to the official file dealing with the objections wherein attested copies of the Vakalatnamas and objections are attached. The D.R.O.-cum-Land Acquisition Collector after considering the objections jointly filed by the petitioners with other persons, sent his recommendation to the Commissioner and Secretary to Government, Haryana, Irrigation Department, on October 15, 1991. It is pertinent to mention here that no fresh objections were filed by Shri Raghbir Singh. Petitioner in the earlier writ petition i.e. C.W.P. No. 5620 of 1991. Therefore, consideration of his objections afresh, if any, did not arise. As per the orders passed by V.K. Bali, J, he could only be heard if he had chosen to file fresh objections.

9. After disposal of the objections, fresh notification u/s 6 of the Act was published in the official Gazette on January 13, 1992. Fresh awards were announced on March 27, 1992 i.e. much prior to the decision of C.W.P. No. 5620 of 1991 in Raghbir Singh's case. As is apparent from the order Annexure P5, Mr. Jagia, counsel for Shri Raghbir Singh pointed out that no notice was received by his client and as such, it was ordered by the learned Judge that if that be so, notification u/s 6 of the Act would not be issued till such time notice is issued to the petitioner and he is heard in the matter with regard to objections if the same have been filed and in case the impugned notification was issued without considering objections u/s 5-A or the objections were returned, the Collector would entertain fresh objections. Admittedly, Raghbir Singh did not choose to file any fresh objections, therefore the question of deciding the same does not arise. So much so, Raghbir Singh in that case has not become a party as petitioner in the present writ petition. In view of the clear cut direction of the Court in the Judgment Annexure P5, the objections by the previous objector if any in the earlier writ petition, were required to be heard if they filed fresh objections in response to the fresh notification and the objections which were called for by way of proper publication and Munadi. The earlier writ petition was filed by Raghbir Singh. The petitioners as is apparent on the record, had filed fresh objections within limitation and these were considered and disposed of there and then. The petitioners cannot place reliance on the previous judgment in Raghbir Singh's case as they had already filed objections before the disposal of C.W.P. No. 5620 of 1991.

10. The learned counsel for the petitioners has then argued that the petitioners were not given hearing with regard to the objections raised by them as required u/s 5-A of the Act and as such, the notification under Sections 6 and 7 of the Act are required to be quashed being illegal. In support of his contention Mr. Jagia relied upon the decision rendered by the Supreme Court in *Shri Farid Ahmed Abdul Samad and Another Vs. The Municipal Corporation of the City of Ahmedabad and Another*, wherein the Supreme Court has held as under :-

"The heart of Section 5-A of the Land Acquisition Act is the hearing of objections and under sub-section (2) of that section is mandatorily provided for. Section 5-A does not rest on a person's demand for personal hearing. The matter may be different if a person whose property is acquired abandons the right to a personal hearing. Provision of appeal is also not a substitute for personal hearing provided for u/s 5-A of the Land Acquisition Act."

He further relied upon the decision of the Supreme Court rendered in *Shri Mandir Sita Ramji Vs. Lt. Governor of Delhi and Others*, wherein their Lordships observed as under :-

"A decision by the Government on the objection, when the Collector afforded no opportunity of being heard to the objector, would not be proper. The power to hear the objection u/s 5-A is that of the Collector and not of the appropriate Government. It is no doubt true that the recommendation of the Land Acquisition Collector is not binding on the Government. The Government may choose either to accept the recommendation or to reject it; but the mandatory requirement of the section is that when a person's property is proposed to be acquired, he must be given an opportunity to show cause against it. The fact that the Collector is not the authority to decide the objection does not exonerate him from his duty to hear the objector on the objection and make the recommendation."

There is no dispute with the proposition that personal hearing and disposal of the objections are two different things. The question to be determined in this case is whether from the facts and circumstances of the case, the petitioners were given hearing before sending the recommendation by the D.R.O.-cum-Land Acquisition Collector to the Government?

11. The respondents by way of filing the additional affidavit of Shri R.K. Sharma averred that proper hearing was given to the petitioners, before disposing of the objections. By way of filing another additional affidavit of Sh. R.K. Sharma, Executive Engineer, Hisar, it was averred that all the petitioners now before this Court filed their objections through their counsel duly instructed namely, Sh. Mohan Lal Aggarwal, Advocate, Hisar. Copies of 18 objection petitions filed on behalf of 34 persons, have been placed on record as Annexures R20 to R38 alongwith Vakalatnamas filed by Shri Mohan Lal Aggarwal, Advocate, Hisar. By way of filing another additional affidavit, it was averred that the objections raised by the petitioners were disposed of after hearing the learned counsel in accordance with law. After considering the objections, and then land Acquisition

Collector sent his recommendations to the Commissioner and Secretary to Government Haryana, Irrigation Department vide his letter dated October 15, 1991. It is pertinent to mention here that the second notification u/s 6 of the Act was published in the official Gazette on January 13, 1992 and also in daily "Tribune" and "Indian Express". Admittedly, all the petitioners before his Court, had filed objections after the withdrawal of the notification u/s 6 of the Act. I have perused the official file which also contains the photostatocopies of the objection petitions and Vakalatnamas filed on September 3, 1991. They choose to file for objections. They filed the present writ petition on December 8, 1993 i.e. after a period of more than one year. It is again pertinent to note here that the petitioners have placed on record Annexure P6. A copy of the reply of the Land Acquisition Collector, Hisar to the Executive Engineer, Bhakhra Canal Circle, Hisar on August 20, 1993. In the relevant portion of the reply it is mentioned that "as many as four villagers of village Saniana and 14 land owners of village Chamar Khera submitted objections on September 3, 1991, instead of September 2, 1991 being a public holiday, the objections u/s 5-A of the Land Acquisition Act, 1894 so received in this office on September 3, 1991, were considered then and there as per requirement of the Act." No specific word of "hearing" has been mentioned therein but it stands proved on record that the objections were filed by Shri Mohan Lal Aggarwal, counsel for the petitioners. Thus under the facts and circumstances, the objections were heard on the same day when these were presented before the Land Acquisition Collector i.e. on September 3, 1991 and thereafter these were dealt with and taken into consideration while making recommendation on October 15, 1991. Thus hearing was given to the petitioners through their counsel Shri Mohan Lal Aggarwal. No affidavit of Shri Mohan Lal Aggarwal, Advocate has been filed by the petitioners that the objections were not filed on behalf of the petitioners or he was not heard on September 3, 1991. So much so, the petitioners themselves did not make any mention in the present writ petition that they ever filed written objections themselves or through counsel before the Land Acquisition Collector on September 3, 1991. Since the petitioners were represented through counsel before the report was submitted to the Government, therefore, the requirement of hearing for the purpose of enquiry u/s 5-A of the Act has been fully complied with.

12. Shri Jagia, learned counsel for the petitioners then contended that no authorisation can be made by the Government to take further necessary action for the decision of the case as has been done in the present case while entrusting the matter to the Engineer-in-Chief.

13. The learned State counsel controverted these submissions of Mr. Jagia. He has placed reliance on the decision rendered in *Ambatipudi Rama Brahmin v. State of Andhra Pradesh* AIR 1957 A.P. 450 wherein it has been inter alia held that Government may direct the concerned official to issue notification and dispense with the provisions of Section 4 and 5-A of the Act. The Government of Haryana has authorised the Engineer-in-Chief vide Annexure R8 to take

necessary action in the matter and to decide the objections on its behalf.

14. Learned counsel for the petitioners further contended that the land in question was not acquired for public purpose but for extraneous political reasons. This argument is also without any basis. No material has been brought on record in support of his contention that the land has been acquired not for constructing link channel from RD 9000-L Fatehabad Branch to RD 75,000R Pabra Distributory for Improvement of BML Barwala/Sirsa Branch for the purpose of irrigation of uncommand area and for improvement of the command area, to provide irrigation facilities to the people of the area. The acquisition of land for construction of a canal channel is certainly a public purpose. This Court was informed during arguments that the entire process for taking out possession of the land, has been completed. Compensation in terms of three separate awards has been determined and the amount of compensation has been deposited. The petitioners are not interested in withdrawing the amount but are interested to prolong the matter. It was further argued that the petitioners are guilty of concealment of material facts from the Court. In the earlier writ petition, i.e. C.W.P. No. 5620 of 1991 filed by Raghbir Singh, the stay granted in favour of Raghbir Singh was vacated on June 7, 1991 by a Division bench of this Court because the respondents had taken possession on April 18, 1991. The petitioners did not make any mention of this fact in the present writ petition. They also did not make any mention that they had filed objections through Shri Mohan Lal Aggarwal, Advocate before the Land Acquisition Collector, Hisar. Thus, they are guilty of concealment of facts from this Court.

15. After perusal of the pleadings and documents placed on record it appears that with a view to prolong the proceedings by way of filing the present writ petition after dismissal of the first writ petition filed by Raghbir Singh, the conduct of the petitioners tantamount to misuse of the process of the Court.

16. In view of the above discussions, the petitioners are not entitled to the relief prayed for. Consequently, the writ petition is dismissed. However, the parties are left to bear their own costs.