
(1999) 04 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4789 of 1999

Payare Lal and Others

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 19-04-1999

Acts Referred:

Land Acquisition Act, 1894 — Section 4(2)

Citation : (2000) 2 CivCC 486 : (1999) 122 PLR 496 : (1999) 3 RCR(Criminal) 195

Hon'ble Judges : N.K. Agrawal, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : R.K. Jain, for the Appellant;

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—The petitioners claim to be owners in possession of 42 biswas of land in village Wazirabad, District Gurgaon. They claim to have constructed a residential house on this land. On September 8, 1997, the State Government issued a notification u/s 4 of the Land Acquisition Act, 1894 indicating its intention to acquire land for the development of residential, commercial, institutional and open spaces in various sectors of Gurgaon. Besides other villages, land measuring 309.30 acres in Wazirabad was also proposed to be acquired. The petitioners claim to have filed objections u/s 5A. A copy of the objections dated July 23, 1998 has been produced as Annexure P.4 with the writ petition. They were called upon to appear for personal hearing. Ultimately, on September 7, 1998, a notification u/s 6 was issued. Instead of land measuring 309.30 acres, an area of 267.11 acres was acquired. Aggrieved by the action of the State Government, the petitioners have filed the present writ petition. It is alleged that the respondents have not conducted a survey as required u/s 3A of the Act. Still further, the petitioners allege that the seven day's notice as contemplated u/s 4(2) of the Act had not been given.

2. Section 3-A primarily authorises the concerned authority to survey the land

with the object of marking the level etc. and to determine its suitability for the public purpose for which it is required. It even authorises the authority to "cut down and clear away any part of any standing crop, fence or jungle." According to the Proviso, no person can enter "into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof), without previously giving such occupier at least seven days's notice in writing of his intention to do so." A similar provision has also been made in Section 4(2). The petitioners complain that the land is going to be utilised for the benefit of M/s Ansal Properties. No survey had been conducted. No notice as contemplated under the law had been given to the petitioners. Thus, the entire acquisition proceedings are vitiated.

3. We have heard Mr. R.K. Jain, counsel for the petitioners.

4. Admittedly, the petitioners had filed written objections before the Land Acquisition Officer. A copy of the written objections has been produced as Annexure P.4. There is not even a suggestion that a survey had not been conducted or that the provisions of law had been violated. Still further, we find nothing on the record which may even remotely indicate that the land was sought to be acquired without conducting any survey. On a perusal of the notifications, we find that specific details of land which was proposed to be acquired had been given. It would not have been possible to do so without conducting some survey. Even in the petition, a very guarded statement has been made. It has been submitted that "no body had made any survey on behalf of the respondents in accordance with the provisions of Section 3-A". What was the violation of Section 3-A? Learned counsel could not indicate anything. On a consideration of the matter, we find that if the petitioners had any objection with regard to the violation of the provisions of Section 3-A, they would have raised it. They did not do so. Even in the writ petition, nothing has been pointed out to show that the provisions of Section 3-A had not been complied with or that any actual prejudice had been caused to the petitioners. Thus, the first contention raised on their behalf is rejected.

5. As for the contention that seven days' notice was not given to the petitioners, it may be observed that such a notice has to be given only when a person has to enter into any building or "upon any enclosed court or the garden attached to a dwelling house . . ." It is not the case of the petitioners that any one had entered into their building. It is not the claim of the petitioners that they have a garden or a court attached to their dwelling house and that some body had entered upon that area. In such a situation, no notice was required to be given to the petitioners. Thus, the respondents can not be said to have acted in violation of law.

6. Mr. Jain referred to the decision of their Lordships of the Supreme Court in *Khub Chand and Others Vs. State of Rajasthan and Others*, . In this case, it was *inter alia* held that according to Section 4(2) "it was absolutely necessary that before such officer can enter the land of another, the owner thereof should have

a clear notice of the intended entry." (Pr.6). There is no quarrel with this proposition. However the question is - Did any of the respondents enter upon the petitioners' land? There is nothing to show that they did. As such, no notice was required.

7. No other point has been raised.

8. In view of the above, we find no merit in this writ petition. It was dismissed by our order of April 8, 1999. We have now recorded the reasons for our decision.