

(2008) 09 P&H CK 0067
In the Punjab And Haryana At Chandigarh

Periwal Enterprises (P) Ltd.	Vs	APPELLANT
State of Haryana and Another		RESPONDENT

Date of Decision : 29-09-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6

Citation : (2009) 154 PLR 276

Hon'ble Judges : Rajive Bhalla, J

Bench : Single Bench

Judgement

Rajive Bhalla, J.—The petitioner a private limited company, prays for issuance of a writ in the nature of certiorari for quashing the impugned notifications dated 26.12.1988 (Annexure P-1) and 22.12.1989 (Annexure P-2) issued by the respondent-State under Sections 4 and 6 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") as well as the award dated 19.12.1991 (Annexure P-4).

2. The petitioner alleges that it is owner in possession of 3 kanals 19 marlas of land comprised in Khasra No. 18 and 19/1, rectangle No. 29 situated in the revenue estate of Jharsantly, Hadbast No. 44, Tehsil Ballabgarh, District Faridabad and is running a saw mill. Pursuant to a notification dated 26.12.1988, issued u/s 4 of the Act, the State of Haryana proposed to acquire land detailed in the notification, including the petitioner's land, for a public purpose of development and utilization of land as an industrial area in Sector 58 Faridabad. This was followed by a notification issued u/s 6 of the Act. The award was thereafter pronounced on 19.12.1991.

3. Counsel for the petitioner submits that the proceedings for acquisition are arbitrary as they disclose an abject failure on the part of the respondents to apply their mind to the purpose for acquisition proceedings. The petitioner's land is to be used to carve out a greet belt. The site plan, Annexure P-5, however, discloses that the petitioner's land shown, in red, adjoins land shown in yellow, which has not been acquired. It is further submitted that the adjoining land

belonging to one Phool Chand was also acquired under the impugned notifications but in his case acquisition proceedings were quashed by the Lok Adalat. The order passed by the Lok Adalat has not been challenged by the State. It is, therefore, argued that it belies comprehension as to how the respondents could propose to carve out a green belt. It is, thus, submitted that as proceedings for acquisition are arbitrary and have been initiated without application of mind, the writ petition be allowed and the proceedings for acquisition be quashed.

4. Counsel for the State of Haryana, on the other hand submits that proceedings for acquisition are legal and valid and have concluded as the award was pronounced, before the filing of the writ petition. The petitioner therefore has no right, to impugn the notifications issued under Sections 4 and 6 of the Act. It is further submitted there was no saw mill in existence, over the land in dispute on the date of issuance of notification u/s 4. As regards the assertion, that the petitioner's land is to be used for carving a green belt, it is submitted that the right of the State to acquire land is absolute. The petitioner cannot dictate, to the State, the manner in which the land should be utilized. As regards Phool Chand's writ petition which was allowed by the Lok Adalat, it is submitted that the order passed by the Lok Adalat, is without jurisdiction and cannot form the basis for quashing acquisition proceedings.

5. I have heard counsel for the parties and perused the pleadings.

6. The power of the State to acquire land flows from doctrine of "eminent domain" duly incorporated in the Land Acquisition Act. With the deletion of the right to property from the list of fundamental rights, the only impediment, to the exercise of this all pervasive power are the provisions of Article 300-A of the Constitution of India, which postulate that no person shall be deprived of his property except in due course of law. The right to acquire land, in accordance with the procedure laid down under the Land Acquisition Act, though, absolute is not immune from judicial review. In the exercise of its powers under Article 226 of the Constitution a High Court may proceed to examine the legality of such proceedings but within the confines of its power of judicial review.

7. The sole point, pressed into service by counsel for the petitioner is that the petitioner's land has been acquired to carve out a green belt. Though the impugned notifications do not bear out this fact but it appears that this fact was accepted before the Lok Adalat. If this be the ultimate user to which the petitioners land is to be put, the respondents may not be able to achieve this object without acquiring the land shown in yellow and the land belonging to Phool Chand. A perusal of site plan Annexure P-5, correctness whereof has not been disputed by the respondents, discloses that the petitioner's land abuts a large chunk of land shown in yellow colour, which has not been acquired. Khasra No. 114, belonging to Phool Chand abuts the petitioner's land but acquisition proceedings in respect thereof have been quashed by the Lok Adalat and admittedly, the State of Haryana has not challenged the order passed by the Lok

Adalat. In view of above facts, this Court may have considered quashing of the acquisition proceedings, but for the fact that, it may involve an appraisal of disputed questions of fact and even otherwise before the writ petition could be filed, the collector pronounced his award, thus, bringing to a close a significant part of the proceedings for acquisition that commence with the issuance of a notification u/s 4 of the Act and more or less conclude with the pronouncement of an award.

8. These facts cannot be ignored altogether as the petitioner asserts that it is still in possession. The right, however, to determine the user to which acquired land may be put the mode and manner in which it may be utilized rests within the policy making domain of the State and this Court would not proceed to impose its own perception of the facts. As a result, the only course open, in view of the location of the land as reflected in the site plan, and the quashing of the acquisition proceedings by the Lok Adalat with respect to Khasra No. 114, would be to grant liberty to the petitioner to approach the State of Haryana by way of an application u/s 48 of the Act to consider whether the petitioner's land can be released from acquisition, in the light of its statutory powers u/s 48 of the Land Acquisition.

The writ petition is therefore disposed of with liberty to the petitioner to approach respondent No. 1 by way of an application u/s 48 of the Act, to consider whether the petitioner's land can be released from acquisition. The observations made herein before as to the merits of the petitioner's assertions shall not be construed to be an expression of opinion as to the merits of the case and Respondent No. 1 shall be free to decide the application in accordance with law. In case such an application is filed the authority concerned shall decide it within three months from the date of receipt of a certified copy of this order. In the meanwhile the petitioner's possession shall not be disturbed. No order as to costs.