
(2010) 08 P&H CK 0260
In the Punjab And Haryana At Chandigarh
Case No : Amended C.W.P. No. 2610 of 1984

Prem Lata and Ors.

APPELLANT

Vs

State of Haryana and Ors.

RESPONDENT

Date of Decision : 03-08-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 11A

Citation : (2011) 5 RCR(Civil) 859

Hon'ble Judges : Jasbir Singh, J and Augustine George Masih, J

Advocate : C.B.Goel, Advocate, For the Respondent: Kamal Sehgal, Addl.A.G., Mamit Kumar, Advocates., Advocates for appearing Parties

Judgement

Augustine George Masih, J.—Through this writ petition, the petitioners seek quashing of notification dated 21.1.1981 (Annexure P1) issued under Section 4 of the Land Acquisition Act (hereinafter referred to as "the Act") and declaration issued under Section 6 of the Act vide notification dated 14.8.1981 (Annexure P2) being not in accordance with law.

2. Counsel for the petitioners submits that the Government of Haryana issued notification dated 21.1.1981 for acquiring 28 acres 4 Kanals and 16 Marlas of land for establishment of new grain market, vegetable market, rest house, gadda shed, staff quarters and office building of the Market Committee, Chhachhrauli, Tehsil Jagadhari, District Ambala (now Yamuna Nagar). In pursuance of the provisions of Section 34 of the Punjab Agricultural Produce Market Act, 1961, Market Committee, Chhachhrauli at Chhachhrauli, requested the Government to acquire the land under the provisions of the Act on payment of compensation by the said Committee, to be awarded under the Act and all other charges incurred by the State Government on account of the acquisition. The Government accordingly issued the notification for the said public purpose. Petitioners No. 1 to 4 who are joint owners in possession as share holders in the land comprising khasra Nos.97/23,32,33 and 106113/2,4,9/1/1, 9/1/2 total measuring 31 Kanals 17 Marlas and petitioners No.5 and 6 being tenants in possession of land

comprising khasra No.97/31, measuring 15 Kanals 15 Marlas and petitioner No. 7, who was owner in possession of the land comprising in khasra Nos.97/25/2, 34, 98/21, 105/1, 2, 9, 10, 11/1,106/5,6/1 total measuring 42 Kanals 19 Marlas situated within the municipal limits of Chhachhrauli, Tehsil Jagadhari, District Ambala (now Yamuna Nagar) preferred objections under Section 5A of the Act, copies of which are appended as Annexures P3 to P6 respectively. No opportunity of hearing was granted to the petitioners. On consideration of the objections filed by the petitioners, the Land Acquisition Collector submitted a report to the State Government under Section 5 (2) of the Act recommending that the land measuring 5 Kanals 8 Marlas in khasra No.97/31 be exempted as there existed a small scale industry. The recommendation was not accepted by the Government and a declaration under Section 6 of the Act was issued vide notification dated 14.8.1981 (Annexure P2) and no land was exempted. He contends that the provisions as contained under Section 6(2) of the Act have not been complied with. After the issuance of the notification dated 14.8.1981, the Land Acquisition Collector proceeded to announce the Award dated 12.6.1984 (Annexure P7) for the year 1984-85. Sections 19 (1) and 19 (2) of the Act also have not been complied with as the requirement of issuing notice to the public at large and to be given at the convenient places has not been made by the respondents. He submits that no award with regard to the land of the petitioners was announced by the Land Acquisition Collector while giving award dated 12.6.1984 (Annexure P7). However, subsequently the Land Acquisition Collector announced another award dated 9.5.1986 (Annexure P8) qua the land of the petitioners. Again, the provisions as contained under Section 9 of the Act have not been complied with qua the petitioners as well. He vehemently contends that proviso to Section 11 of the Act provides that before the Award is announced by the Collector, he shall take prior approval of the State Government, which has not been done in the present case. In support of this contention, he relies upon the judgment of the Hon'ble Supreme Court in the case of State of U.P. & Ors. v. Rajiv Gupta and another, (1994) 5 SCC 686, as also a Division Bench judgment of this Court in the case of Suresh Chand and others v. State of Haryana and another, 2003 (2) PLJ 306.

3. Counsel for the petitioners submits that the notification under Section 6 of the Act was issued on 14.8.1981 whereas the Award qua the land of the petitioners has been announced on 9.5.1986 (Annexure P8) which is beyond the period as prescribed under Section 11A of the Act which provides for a period of two years from the issuance of declaration under Section 6 of the Act.

4. On the other hand, counsel for the respondents submits that the petitioners had not disputed that the acquisition of the land was for a public purpose and thus, notification under Section 4 of the Act was as per law. He submits that petitioners No. 1 to 3 have sold out their land and, therefore, challenge to the acquisition proceedings by them is unsustainable. Petitioners No.5 and 6 are admittedly the tenants and therefore, they also cannot lay challenge to the acquisition proceedings. At the most, they would be entitled to apportionment of

compensation. Petitioner No.7 had already moved an application i.e. C.M.No.3437 of 1985 in the writ petition for deletion of his name from the array of petitioners which was accepted by this Court and an order dated 6.12.1985 in this regard had already been passed. He, on this basis, contends that petition qua only petitioner No.4 survives.

5. As per the norms fixed by respondent No.2 Haryana State Agriculture Marketing Board (hereinafter referred to as the Board), the area in which the grain market and vegetable market is to be established is dependent upon the arrival of foodgrains and vegetables in the Market. As per those norms, 30 acres of land is required for setting up of the new grain and vegetable market at Chhachhrauli. The objections as preferred by the petitioners under Section 5A of the Act were considered and the recommendations so made by the Land Acquisition Collector were also taken into consideration but the same were rejected by the State Government as the land was required for the purpose for which the acquisition was proposed and could not be exempted. Counsel disputes the contention of the petitioners that they were not given an opportunity of hearing by the Land Acquisition Collector while deciding their objections under Section 5A of the Act. He refers to the reply of respondent No. 3 (Land Acquisition Collector) and in para 4 thereof, it has been specifically stated that petitioners No. 1, 4, 5 and 6 were present on the date of hearing and their statements were recorded. It would not be out of way to mention here that petitioners No.2 and 3 are minors and petitioner No. 1 being their mother is their natural guardian. No replication has been filed by the petitioners contradicting this factual assertion made by the respondents. He has further submitted that the land owner of petitioners No.5 and 6, namely, Faquir Chand and Ram Kumar respectively, on whose land they are tenants, has received the amount of compensation as per law and, therefore, they cannot raise any plea and they would only be entitled to submit their claims under the Act.

As regards the objections raised by the counsel for the petitioners to the noncompliance of the provisions of Section 6 of the Act, he submits that the same have been duly complied with and no prejudice has been caused to the petitioners. Section 9 of the Act also has been complied with by the respondents and while referring to para 10 of the amended written, statement filed by respondent No. 2 the Board, he submits that petitioner No. 5 Faquir Chand had filed his claim under Section 9 of the Act on 19.4.1982 and, therefore, the provisions as contained under Section 9 of the Act have been duly complied with. Before the announcement of the Award, prior approval of the State Government was taken by the Land Acquisition Collector which has specifically been so stated in reply to para 14 of the writ petition by him. The petitioners approached this Court by filing writ petition challenging the notifications under Sections 4 and 6 of the Act on 31.5.1984, which came up for hearing on 1.6.1984 when the dispossession of the petitioners was stayed by this Court and, therefore, the period as prescribed under Section 11A of the Act would not be applicable to the case in hand in view of the explanation in this Section. In any case, he submits

that proviso to Section 11A of the Act would save the award dated 9.5.1986 (Annexure P8) passed by the respondents as the said award has been passed within a period of two years from the commencement of Land Acquisition (Amendment) Act, 1984 which came into effect on 24.9.1984. He further submits that because of the stay of dispossession granted by this Court on 1.6.1984, the land of the petitioners was not included in the award passed by the Land Acquisition Collector on 12.6.1984 vide Annexure P7. He, on this basis, submits that the writ petition is without any merit and deserves to be dismissed.

6. Counsel for the petitioners responding to the arguments as raised by the counsel for the respondents, submits that petitioners No. 1 to 3 had sold out 10 Kanals and 14 Marlas of land to an outsider despite they being cosharers in the land because of which petitioner No.4 had preferred a suit for preemption on the said land. The suit of petitioner No.4 was decreed on 31.8.1982 and thereafter the said land has been sold by petitioners No. 1 to 3 to petitioner No.4 and, thus, he is now the owner of the share of petitioners No. 1 to 3 also. This assertion as made by the counsel for the petitioners has not been disputed by the counsel for the respondents.

7. We have heard counsel for the parties and gone through the records of the case.

8. Firstly, with regard to maintainability of the present writ petition by the petitioners, it is clear that name of petitioner No.7 has been struck off from the array of petitioners in the light of application i.e. C.M. No. 3437 of 1985 preferred by him, which has been allowed by this Court vide order dated 6.12.1985. Petition qua petitioners No.5 and 6 would not be maintainable in the light of the admitted fact that they are tenants and the owner of the land under whom these petitioners are tenants, has received the compensation.

9. It is by now settled proposition of law that the tenants have no right to challenge the land acquisition proceedings and they are only entitled to claim apportionment in compensation as per law.

10. As regards petitioners No. 1 to 4, suffice it to say that in the light of the decree dated 31.8.1992 on a preemption Suit preferred by petitioner No.4, petitioners No.1 to 3 have sold their share in the land measuring 10 Kanals and 14 Marlas to petitioner No.4 and, therefore, petitioner No.4 has stepped into their shoes which fact has not been disputed by the respondents. Thus, the present writ petition is maintainable.

11. 28 acres, 4 Kanals and 16 Marlas of land was sought to be acquired by the State of Haryana for establishment of a new grain market, vegetable market, rest house, gadda shed, staff quarters and office building of the Market Committee, Chhachhrauli at Chhachhrauli, Tehsil Jagadhari. Accordingly, notification under Section 4 of the Act was issued on 21.1.1981 vide Annexure P1. Objections were preferred by the petitioners and they were heard by him and their statements were also recorded, On consideration of the said objections,

report was forwarded by him under Section 5 (2) of the Act to the competent Authority wherein he recommended for the release of some land of the petitioners measuring 5 Kanals and 8 Marlas in khasra No. 92/31. On consideration of the same, the Government sought the comments of the Board respondent No.2. As per the norms fixed by the Board, land required for the purpose of setting up a new grain market and vegetable market catering to the inflow of food grains and vegetables etc. at Chhachhrauli was 30 acres. The land sought to be acquired was 28 acres, 4 Kanals and 16 Marlas. Therefore, there was no possibility for release of the land. The Government considered the report of the Land Acquisition Officer and the comments of the Board. On due consideration, the objections preferred by the petitioners were not accepted and declaration under Section 6 of the Act was issued vide notification dated 14.8.1981 (Annexure P2). No land was exempted from acquisition. The requirements of law as mandated under Section 6(2) of the Act were duly complied with. Other provisions of the Act were also complied with. Objections raised with regard to Section 9 also cannot be accepted for the reason that one of the petitioners, namely, Faquir Chand (petitioner No.5) filed his claim under Section 9 of the Act on 19.4.1982. After the issuance of the notification under Section 6 on 14.8.1981, the petitioners kept quiet and did not approach this Court. Notice under Section 9 of the Act was duly served upon the petitioners in April 1982, as is demonstrated from the fact that petitioner No.5 Faquir Chand filed his claim under Section 9 of the Act on 19.4.1982, When the petitioners came to know that the award was about to be pronounced, they approached this Court on 31.5.1984 by preferring the present writ petition which came up for hearing on 1.6.1984 when dispossession of the petitioners was stayed by this Court.

12. Award of 128 Kanals 12 Marlas of the land of the other land owners, except the petitioners and land measuring 9 Kanals and 2 Marlas of Field No. 179 min. West which fell under pacca road was announced by the Land Acquisition Collector on 12.6.1984 (Annexure P7) and possession was also taken. This was done for the reason that the dispossession of the petitioners was stayed by this Court vide order dated 1.6.1984. Thereafter, award dated 9 5.1986 (Annexure P8) qua the land of the petitioners measuring 91 Kanals and 2 Marlas was announced by the Land Acquisition Collector.

13. The present writ petition was amended by the petitioners on 14.9.2001 as the award qua the land of the petitioners was announced during its pendency. Prayer made in the amended writ petition is as follows:

i] records of the case be called for;

ii] a writ of certiorari or any other appropriate, writ order or direction, which this Hon"ble Court may deem fit in the circumstances of the case quashing the impugned notifications, Annexure P/1 and Annexure P/2;

iii] a writ, order of direction in the nature of mandamus directing the respondents

not to announce the award and to take possession of the petitioners' land during the pendency of the writ petition;

iv] any other appropriate writ, order or direction, which this Hon'ble Court may deem fit in the facts and circumstances of the case quashing the impugned notifications Annexure P/1 and Annexure P/2;

v] condition of issuance of advance notice upon the respondents may kindly be dispensed with;

vi] costs of the writ petition may also be awarded to the petitioners;

vii] during the pendency of the writ petition, the dispossession of the petitioners from the land in dispute may kindly be stayed.

viii] filing of certified copies of Annexures may kindly be dispensed with.?

14. A perusal of the above prayer(s) would show that challenge is merely to the notification dated 21.1.1981 (Annexure P1) issued under Section 4 of the Act and declaration issued under Section 6 vide notification dated 14.8.1981 (Annexure P2). There is no challenge to the award dated 9.5.1986 (Annexure P8). No illegality appears to have been committed by the respondents while issuing the impugned notifications. The provisions as contained under Sections 4 and 6 of the Act have been duly complied with. The objections as preferred by the petitioners have been duly considered and they were given personal hearing and the recommendations made by the Land Acquisition Collector were duly taken into consideration by the State Government but did not find favour and accordingly, the same were not accepted. The provisions as contained in the Statute were duly complied with.

15. The award although not under challenge, is found to be in accordance with law. A question was raised by the petitioners in the writ petition that proviso to Section 11 of the Act has not been complied with as before announcement of the award by the Land Acquisition Collector he was mandated to take prior approval of the State Government. This averment has been specifically answered to by the Land Acquisition Collector in his reply to para 14 of the writ by stating that prior approval of the State Government was taken by him before the announcement of the award. No replication to the written statement filed by the respondents has been filed by the petitioners and accordingly, the contention as raised by the petitioners cannot be accepted. The judgments in Rajiv Gupta's case (supra) and Suresh Chand's case (supra) would not be of any help to the petitioners as the fact as asserted by the respondents that the prior approval of the State Government was obtained before the announcement of the award by the Land Acquisition Collector has not been controverted by the petitioners.

16. Another ground pressed into service by the counsel for the petitioners for attacking the legality of the Award is that the same has not been made within the time stipulated under the Act, for testing the force of this contention the relevant provision would be Section 11A of the Act, which reads as follows:

11A. Period within which an award shall be made

(1) The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), the award shall be made within a period of two years from such commencement,

Explanation. In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded,"

17. Before the insertion of Section 11A in the Land Acquisition Act, 1894, there was no period prescribed for announcement of award by the Land Acquisition Collector after the issuance of declaration under Section 6 of the Act. It was for the first time that such period was prescribed by the enactment of Land Acquisition (Amendment) Act, 1984 (Act 68 of 1984) (hereinafter referred to as Amendment Act, 1984). In the present case, notification under Section 4 of the Act was issued on 21.1.1981 and declaration under Section 6 of the Act was on 14.8.1981. The acquisition, thus, was under the unamended Act. As per the proviso to Section 11A of the Act, where declaration had been published before the commencement of the Amendment Act, 1984, the award was required to be made within a period of two years from the commencement of the said Amendment Act. The Amendment Act, 1984, came into force on 24.9.1984 and, therefore, in cases where declaration had been published before the commencement of this Amendment Act, the award had to be made on or before 23.9.1986. In the case in hand, award qua the land of the petitioners was made by the Land Acquisition Collector on 9.5.1986 which is well within the period prescribed under Section 11A of the Act and, therefore, is in accordance with law.

18. Further, explanation to Section 11 A of the Act provides that where any action or proceedings to be taken in pursuance of the declaration under Section 6 is stayed by the order of the Court that period, when the stay is in operation, shall be excluded in computing the period of two years referred to in Section 11A of the Act. The Hon"ble Supreme Court in the cases of Government of Tamil Nadu v. Vasantha Bai, (1995) 2 SCC (Supp.) 423, L.N. Venkatesan v. State of Tamil Nadu, AIR 199 7 SC 2426 and Municipal Corporation of Delhi v. Lichho Devi, AIR 1997SC 3474 has held that stay of dispossession passed by the High Court would tantamount to stay of further proceedings being taken under Section 11 of the Act and the entire period of stay has to be excluded in computing the period of two years prescribed under Section 11A of the Act. In this case dispossession of the petitioners were stayed by this Court on 1.6.1984 and till date the same is continuing. Accordingly, the contention of the counsel for the petitioners that the award has been passed by the Land Acquisition Collector

beyond the period prescribed under Section 11A of the Act is rejected.

19. After the passing of the Award dated 12.6.1984 and taking of the possession of the land measuring 128 Kanals and 12 Marlas, when petitioner No.7, Inder son of Jai Ram who was owner of 42 Kanals 19 Marlas, withdrew his challenge to the acquisition in the writ on 6.12.1985 possession of this land was also taken. New Grain and Vegetable Market has been developed around, the land of the petitioners and is in use but not as it was planned to be. Counsel for the respondents has submitted that the remaking 48 Kanals 3 Marlas land qua which stay is in operation is very much required and cannot be left out as It is essential for making the New Grain and Vegetable Market fully operational and for deriving proper/optimum benefits out of the project which is one planned compact unit, with each earmarked area catering to a particular aspect and need of the users of the Market. The purpose of Acquisition would be defeated to a great extent. We are in agreement with the counsel for the respondents on this score.

20. In view of the above, the present writ petition being without any merit is hereby dismissed.