
(2014) 08 P&H CK 0156
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 16044 of 2014

Prem Lata

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 13-08-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 5-A, 6

Citation : (2014) 08 P&H CK 0156

Hon'ble Judges : Ashutosh Mohunta, Acting C.J.; Harinder Singh Sidhu, J

Bench : Division Bench

Advocate : Akshay Bhan, Sr. Advocate and Alok Mittal, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Harinder Singh Sidhu, J.—This petition has been filed praying for direction for setting aside the order dated 21.11.2013 (Annexure P-20) and order dated 01.07.2014 (Annexure P-21) whereby the prayer of the petitioners for release of their land has been declined. The petitioners have also impugned the notification dated 07.01.2008 (Annexure P-3) issued u/s 4 of the Land Acquisition Act, 1894 (for short "the Act") and notification dated 06.01.2009 issued u/s 6 of the Act as also the award dated 04.01.2011 (Annexure P-9) passed in relation thereto.

2. The petitioners state that they are joint owners and in actual physical possession of a Mandir and surrounding land, which is part of the land measuring 990 sq. yards situated in Kila No. 101/2, Village Sunaria Kalan, Tehsil and District Rohtak (Haryana). They had purchased the said plot through a registered sale deed dated 22.07.2005. They have stated that they are carrying on their business of trade in wood and have a godown for storage of wood on the said land.

3. The State of Haryana issued notification dated 07.01.2008 u/s 4 of the Act for acquiring the land measuring 3.24 acres, Hadbast No. 101 at Village Sunaria

Kalan; 153.76 acres, Hadbast No. 80 at Village Kanheli and 48.50 acres, Hadbast No. 72 at Village Meena, Tehsil and District Rohtak for development of Sector 25, Rohtak residential, commercial, open spaces and public utilities under the Haryana Urban Development Authority (HUDA). The petitioners' land was also a part of this land. The petitioners filed their objections u/s 5-A of the Act stating that they had set up a business of wood on the said land. The Land Acquisition Collector in his report referred to the existence of sheds measuring "63 x 41", 30" 60", 31" x 11", store measuring 26" x 7", 18" x 18", Baranda Office, wooden godown and Mandir on the land. In his recommendation, he noted that this area falls in green belt and has been found to be closed on inspection so it is appropriate to acquire this land. Thereafter, notification u/s 6 of the Act was issued for acquisition of this land together with other land mentioned in Section 4 notification. The petitioners moved representation dated 19.02.2009 (Annexure P-7) requesting for release of land on the ground that there is a running factory and residential area on the said land. But no decision was taken on this representation.

4. The petitioners, thereafter, filed CWP No. 17076 of 2009, challenging notifications issued u/s 4 and 6 of the Act. However, the said writ petition was dismissed as withdrawn with liberty to the petitioners to approach the respondent authorities on the administrative side. Thereafter, the petitioners made various representations to the authorities including to the Chief Minister for release of their land but no action appears to have been taken on the said representations. It is stated that during the pendency of the said representations, the respondent authorities demolished the structures of the petitioners existing on the said land and only a Mandir was left intact, which is still standing at the site.

5. The petitioners, thereafter, filed CWP No. 11644 of 2013, which was disposed of vide order dated 30.05.2013 with a direction to the authorities to consider the pending representation of the petitioners and dispose of the same in accordance with law/Government Policy by passing a speaking order.

6. Pursuant to the directions of this Court, the petitioners were granted opportunity of hearing and their representation was rejected vide order dated 21.11.2013 (Annexure P-20). A revision petition filed by the petitioners against the aforesaid order, was also dismissed vide order dated 01.07.2014 (Annexure P-21). It is primarily these two orders that the petitioners have impugned in the present writ petition.

7. Heard learned counsel for the petitioners.

8. Learned Counsel for the petitioners has assailed the aforesaid orders on the ground that in an arbitrary and discriminatory manner, the lands of other similarly situated persons had been recommended to be released but case of the petitioners for release of the land has been declined. He has further contended that the respondents have wrongly held that the factory at the site is closed and

that the orders suffer from total non application of mind.

9. We have gone through the impugned orders. In compliance with the direction of this Court passed in CWP No. 11644 of 2013, an opportunity of hearing was given to the petitioners. The petitioners through their Advocate appeared. The Advocate of the petitioners submitted a coloured shazra plan showing the location of the land in question and also showing the lands of persons, which had been released and which were stated to be similarly situated as the land of the petitioners. In order to verify the submission of the petitioners, the Additional Director, Urban Estates was instructed to check the record and LAO, Rohtak was instructed to prepare the shazra plan indicating details of the construction, if any of the petitioners, and that of the released structures so that claims of the petitioners in their representation could be verified. Thereafter, the order makes a reference to each of the lands released. In regard to the case of the petitioners, it was noted that the site of the petitioners is falling in commercial Sector 25, Rohtak and is abutting Rohtak-Jhajjar Road and is within 60 meters wide green belt. The location of the site shows that it is across the development plan road of Sectors 24 and 25. As per report of LAO, Rohtak at the time of notification u/s 4 of the Act, a factory was in existence but it was closed. The objections of the petitioners filed u/s 5-A of the Act have been overruled on the ground that the site is in the green belt and the industry was lying closed. The land in respect of Sr. No. 1 had not been released but in respect of Sr. Nos. 2 to 9 had been released. As a matter of fact, it was noted that the construction was existing in all pieces of land given at Sr. Nos. 2 and 5 to 10. However, one difference was that the land of the petitioners was having a factory, which was closed whereas structures on other similarly situated lands were being used and they were on that account released in terms of the Government Policy. Further after acquisition, the structures existing on the land of the petitioners had been demolished by HUDA and only small temple was in existence. Thus, claim of the petitioner that they were similarly situated to the others whose lands were released was not found tenable on the ground that the factory existing on the land of the petitioners was lying closed at the time of issuance of notification u/s 4 of the Act whereas the structures in case of others whose lands have been released were being used at the relevant time. The contention of the petitioners that the factory having been constructed before issuance of notification u/s 4 of the Act deserves to be released in terms of Government Policy, was held to be not tenable on the ground that a building becomes a factory or house only if it is used for that purpose otherwise it is merely a structure.

10. In the light of the aforesaid factual position, the allegations of the petitioner regarding discrimination and arbitrariness in release of the land is not substantiated and the order passed by Director General Urban Estates, Haryana, Panchkula declining the representation of the petitioners for release of the land cannot be faulted.

11. Thus, there appears to be no merit in the writ petition and the same is

dismissed.