
(1993) 05 P&H CK 0069
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5121 of 1990

Raghuvansh and Others

APPELLANT

Vs

The State of Haryana and Another

RESPONDENT

Date of Decision : 13-05-1993

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Land Acquisition Act, 1894 — Section 4, 6

Citation : (1993) 105 PLR 140

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : V.K. Jain and Ajay Aggarwal, for the Appellant; Jaswant Singh, for the Respondent

Judgement

Jawahar Lal Gupta, J.—The petitioners are aggrieved by the notifications dated July 22, 1988 and May 18, 1989 issued under Sections 4 and 6 of the Land Acquisition Act, 1894. A few facts may be noticed.

2. On July 9, 1973, the State of Haryana issued a notification u/s 4 of the Land Acquisition Act, 1894 (hereinafter to be referred to as the Act) indicating its intention to acquire land for development of residential area in Sector 37 of Ballabgarh-Faridabad Controlled Area, Faridabad. Petitioner No. 1 who was owner of the land comprised in rectangle No. 12 Khasra No. 26 measuring 2 Kanals filed objections u/s 5A of the Act. On September 19, 1973 the State Govt. issued the notification, u/s 6 of the Act. In that notification, the petitioner's land was not included. It is averred that thereafter petitioner No. 1 executed two sale-deeds. Vide sale-deed dated January 2, 1984, land measuring 166 square yards was sold to Mohinder Singh, petitioner No. 2. Vide another sale-deed he sold an area of 160 square yards to petitioner Nos. It is averred that even petitioner No. 2 and 3 constructed their residential houses on the land.

3. On July 22, 1988 the State of Haryana issued a notification u/s 4 of the Act notifying its intention to acquire 0.25 acres of land for the purpose of

development of residential Sector 37. The petitioners aver that they filed objections on August 12, 1988. However, on May 18, 1989, the State Govt. issued the notification u/s 6. Land measuring 1 kanal 10 marlas was acquired. However, an area of 10 Marlas was left out. Aggrieved by this action, the petitioners have approached this Court through the present writ petition. Notifications dated July 22, 1988 and May 18, 1989 (Annexures P-2 and P-4 with the writ petition) have been impugned inter-alia on the grounds that once the land had been released in the year 1973 and the petitioners had constructed houses thereon, the respondents were estopped from acquiring the land. It is further averred that the State Govt. has a policy not to acquire area under construction. Still further, the petitioners claim that the purpose of acquisition is to develop the land for residential purposes. This purpose has already been achieved inasmuch as the petitioners have already constructed their houses. There is no need to acquire the land and to take away their houses.

4. A written statement has been filed on behalf of the respondents by the Land Acquisition Collector, Urban Estates Haryana, Faridabad. It has been inter-alia averred that the notification u/s 4 was duly published and the notification u/s 6 was issued after considering the objections filed by the petitioners. It has been further averred that the constructed portion measuring 75" x 65" exists on the site and residential area measuring 10 marlas has been released from the acquisition. The respondents maintain that there is no bar under the Act against acquisition of constructed area. Accordingly, it is averred that the writ petition has no merit and it deserves to be dismissed.

5. I have heard Mr. V.K. Jain, learned counsel for the petitioners and Mr. Jaswant Singh for the respondents. Mr. Jain has contended that the land measuring 2 kanals belonging to the petitioners was released from acquisition in 1973. Presuming that it was not going to be acquired, the petitioners had constructed houses and acted to their detriment. On this premises, it is claimed that the respondents are now debarred from acquiring the land in question. It is further contended that the State Govt. has adopted a policy not to acquire any area which is under construction, as also to leave an equivalent area for proper use of the constructed area. On this premises, the learned counsel points out that 10 Marlas of land belonging to the petitioners has already been released. He prays that an equal amount of area deserves to be released for the purpose of permitting the petitioners to use the property properly. It is further contended that the purpose for which the land is being acquired has already been achieved inasmuch as the petitioners have already constructed their houses on the land in dispute. That having happened, the respondents should not insist on acquiring the land of the petitioners. Mr. Jaswant Singh appearing for the respondents has controverted the claim made on behalf of the petitioners and has also produced the record of the case to point out that the entire land of the petitioners cannot be released from acquisition.

6. It is no doubt correct that in the notification dated July 9, 1973, the land

which now belongs to the three petitioners was included. Some how this area was not included in the notification issued u/s 6 on September 19, 1973. It may also be correct that thereafter petitioner No. 1 sold two plots out of his land to petitioners Nos. 2 and 3. It may even be assumed for the sake of argument that petitioners Nos. 2 and 3 have constructed the houses thereon. However, this is of no consequence so far as the right of the State to acquire land is concerned. On July 22, 1988, the Govt. had notified its intention to acquire 2 Kanals of land belonging to the petitioners. They had filed objections. These were considered. The petitioners were heard and thereafter 10 Marlas of land was released. The remaining land was not released. Mr. Jain contends that after the release of the land in the year 1973, the petitioners had acted to their detriment by constructing the houses. He does not appear to be right in saying so. In the Act there is no provision which debars the State from acquiring land on which construction exists. No policy decision to release such an area of land has either been produced with the writ petition or shown at the time of hearing. In fact, in the written statement filed on behalf of the respondents, it has been categorically averred in paragraph 10(III) that "the State of Haryana has not (taken) any policy decision to exempt from acquisition any land on which there is any construction". This statement of fact has not been controverted. Even otherwise, there is no rule or law which provides that an area under construction cannot be acquired.

7. Land has been acquired by the State Govt. for the planned development of residential area. Plots of a uniform size have been carved out. Such area as could be adjusted viz. 10 Marlas has been adjusted. If the respondents are unable to adjust the remaining area, it could not be held that they are bound to release the land merely because the petitioners have raised certain construction thereon. When the State acquires the land for construction thereon, it is bound to pay compensation not only for the land but "for the structure thereon also. Consequently, I am unable to accept that the petitioners acted to their detriment by constructing houses or that the respondents are estopped from acquiring the land. It is not impossible to imagine that initially the State may propose to acquire a large area of land. At a later stage, it may decide to acquire only a small portion. Once a part of the area notified u/s 4 is not included in the notification u/s 6, it cannot be said that the State Govt. is estopped from issuing a fresh notification in respect of the land which was initially released from acquisition. Economic strains, non-availability of resources or other factors may weigh with the Govt. to acquire land in stages. If the argument of the learned counsel for the petitioners is accepted it would create an anomalous situation. It would mean that once some area included in notification u/s 4 is released from acquisition, the State Govt. for all times to come may be debarred from acquiring it. There seems to be no provision in the Act or any principle of law which may persuade me to sustain this plea.

8. Equally untenable is the contention that there is a policy decision not to acquire any area which is covered by a structure. Normally, it is understandable

that the State may release a constructed portion from acquisition for the obvious reason that no one gains by the destruction of existing property. However, that is subject to over-riding consideration of ensuring planned development. Such areas as can be adjusted may be left out of acquisition. However, if it is found that the area cannot be adjusted in the sector sought to be developed by the respondents, the petitioners cannot contend that the State Govt. has no jurisdiction to acquire it. Furthermore, the respondents have categorically averred in the written statement that there is no policy decision as suggested by the petitioners. No rejoinder has been filed to controvert this position. No document has been produced to show any policy decision. In such a situation, I am unable to accept the position.

9. Mr. Jain submits that the declared purpose of acquisition viz. development of residential area has already been achieved as the petitioners have actually constructed residential houses on the land in dispute. It may be so. However, if the authorities find that the constructed portion cannot be adjusted in the lay-out plan as prepared by the experts, the court cannot intervene to annul the acquisition. Mr. Jain relying on the record produced by Mr. Jaswant Singh contends that the lay out plan had actually been prepared in the year 1979 while the notification u/s 4 regarding the acquisition of the land of the petitioners was issued in the year 1988. He submits that if the respondents had acted diligently, the petitioners would not have constructed houses. It is not impossible that the State prepares a lay out plan but does not proceed to acquire the land on account of certain administrative exigencies. It may not issue a notification even if there is a proposal on the file. It can proceed to issue a notification for acquisition of land at a later stage. Mere delay in the issue of the notification cannot result in vitiating the proceedings for acquisition of land. So far as the petitioners are concerned, they having constructed their houses would be entitled to the compensation therefore in case the land has been acquired. One cannot lose sight of the fact that if construction exists and the State Govt. is required to pay compensation therefore, neither the tax-payer nor any body else would gain by destroying the already existing property.

10. Accordingly, I am unable to accept the contention raised on behalf of the petitioners. I find no merit in this petition. It is accordingly dismissed. However, it is clarified that it will be open to the petitioners to make a representation to the respondents pointing out the factual position at site. The respondents would consider that representation and if they find that the land of the petitioners or part thereof including the construction thereon can be adjusted in the lay-out plan without interfering with the concept of planned development, then they may give such relief to the petitioners as may be reasonably possible. In the circumstances of the case, there will be no order as to costs.