

(2003) 10 P&H CK 0119
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 13997 of 2000

Ram Phal and Another

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 16-10-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6

Citation : (2004) 136 PLR 365 : (2004) 1 RCR(Civil) 131

Hon'ble Judges : V.K. Bali, J; Jasbir Singh, J

Bench : Division Bench

Advocate : Ashu M. Punchhi, for the Appellant; Raghbir Chaudhary, D.A.G. and Puneet Gupta, for the Respondent

Judgement

V.K. Bali, J.—Challenge in the present petition is to the land acquisition proceedings initiated vide notification issued u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") on 22.10.1997, Annexure P1, followed by declaration issued u/s 6 of the Act on 16.10.1998, Annexure P2. The only ground seeking setting aside of the notification issued u/s 4 and follow up declaration, as referred to above is that the petitioners, who are the brothers, owned only 400 sq. yards land. On the land, subject matter of acquisition, they have made pucca construction of residential houses along with a temple, where hundreds of devotees come and pay their obeisance and the authorities of Haryana Urban Development Authority (hereinafter referred to as "the HUDA"), for the benefit of which the land was to be acquired, has clearly mentioned that this small piece of land would not interfere in the development plan and may be, only a small portion, out of the land, would be acquired for a small road and despite such recommendation, the State Government has ultimately acquired the land as, the petitioners received notice u/s 9 of the Act on 27.9.2000, even though earlier to it, the petitioners had made number of representations seeking exemption of the land from the acquisition on the basis that a construction had since already been raised and a recommendation had been made by the appropriate authorities to exempt the same.

2. Pleadings pertaining to the construction have been made in paragraph 2 of the writ petition wherein, it has been stated that the petitioners are co-owners in possession of 400 sq. yards of land, comprised in Khewat No. 236/251, Khasra No. 22//3/3/10 and 3/3/11, situated in village Certerpuri, District Gurgaon and both the petitioners, who are the brothers, have constructed their houses in the land, subject matter of acquisition, since the year 1992 and are living in the said houses ever since 1992. It is then pleaded that in the year 1995-96, the petitioners constructed a small temple, which is existing in their land. Insofar as pleadings with regard to the recommendations made by the HUDA authorities are concerned, same are in paragraphs 6 and 7 of the writ petition, which read thus:-

"That accordingly, the Administrator, H.U.D.A., Gurgaon, issued a communication dated 21.03.2000, bearing No. 3436 to the Chief Administrator, H.U.D.A., Panchkula, indicating therein the position relating to the land of the petitioners and also recorded therein that the small piece of land of the petitioners, would not, interfere in the development plan, which had been prepared by H.U.D.A. The petitioners have personally read the aforesaid letter in the records of the respondents, but were not made available a copy of this communication, since it was an internal matter of the officials. The respondents may kindly be directed to produce the relevant records, which would bear out the aforesaid assertion to the effect that the Administrator, HUDA, Gurgaon, was clearly of the opinion that the land of the petitioners does not interfere or cause any obstruction in the development plan of H.U.D.A.

That the petitioners once again made a detailed representation to the Chief Minister, Haryana, the Minister concerned, Commissioner and Secretary, Town and Country Planning as also the Chief Administrator, H.U.D.A., requesting for the release of the land. A copy of this representation dated 28.7.2000, is being annexed herewith as Annexure P4. A communication dated 18.8.2000 was addressed by the Director, Urban Estates, Panchkula to the Administrator, H.U.D.A. Gurgaon, inviting his reference to letter dated 17.7.2000, addressed by District Town Planner, Gurgaon as also the representation of the petitioners dated 28.7.2000, requesting the Administrator, to submit his report in the matter. A copy of the said letter dated 18.8.2000, is being annexed herewith as Annexure P5. In response to this letter, the Administrator, H.U.D.A., Gurgaon, had written to the Chief Administrator, H.U.D.A., Panchkula, vide letter No. 12948 dated 31.8.2000 reiterating the position indicating in the letter dated 21.3.2000. This letter is also not available with the petitioners and the respondents may be directed to produce the same. The petitioners submitted another representation on 29.8.2000, again requesting for release of their land. A copy of this representation is being annexed herewith as Annexure P6 and its true translation as Annexure P6/T. It seems that the recommendations made by the Administrator, H.U.D.A., Gurgaon, were not received by the officials of the State Government and it is, therefore, that another letter dated 8.9.2000, a copy of which is being annexed herewith as Annexure P7, true translation thereof as Annexure P7/T by the Director, Urban Estates to the Administrator, H.U.D.A.,

Gurgaon, requesting to send the report, as earlier requested. The petitioners are not aware as to whether any correspondence thereafter has ensued between the Administrator, H.U.D.A., Gurgaon and the Department of Urban Estates, Haryana or the Town and Country Planning Department."

3. Pursuant to the notice issued by this Court, respondents have filed two sets of written statements, one on behalf of respondents 1, 2 and 3 and another on behalf of respondents 4 and 5. In the written statement filed on behalf of respondents 1, 2 and 3, insofar as construction is concerned, it has, inter-alia, been pleaded that the petitioners have made unauthorised construction in contravention of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (hereinafter referred to as "the Act of 1963") and had been using the construction as Cement Godown at the time of issuance of notification u/s 4 of the Act. It has been asserted that the petitioners were not residing over the land in question the year 1992 and so far as temple is concerned, same was constructed after issuance of declaration u/s 6 of the Act and the same was also made in contravention of the Act of 1963. It has also been pleaded that even though all acquisition proceedings were carried out in accordance with law and substance of the notification was also published in the daily news papers, no objections u/s 5-A of the Act were filed.

4. Insofar as, thus, construction of the petitioners is concerned, the same is stated to be of a godown, which was being used for storing cement. Insofar as, temple is concerned, the same, according to even the pleadings made in the writ petition, is made on a small piece of land and as per the written statement, same was constructed after declaration u/s 6 of the Act was issued. During the course of arguments, Mr. Punchhi, learned counsel representing the petitioners, has shown us photographs of the construction. The construction is of a room only which too appears to be in dilapidated condition, which would fortify the averments made in the written statement that the same was used as a godown for storing the cement. The photographs of the temple would also clearly demonstrate that the same is in a very very small area and once again, the averments made in the written statement appear to be correct that the same came about after declaration u/s 6 of the Act was made. The first ground that has been pressed into service for quashing the notification, namely, that there did exist construction in the shape of residential houses and a temple at the time of issuance of notification u/s 4 of the Act, thus, needs to be repelled. Insofar as, however, the contention raised on the basis of exemption granted by the HUDA authorities is concerned, the pleadings with regard to which have been mentioned in paragraphs 6 and 7 and which we have reproduced in earlier part of this judgment, no proper reply was forthcoming to the same in the written statement filed on behalf of respondents 1, 2 and 3 and, inasmuch as, the averments made in the written statement filed on behalf of respondents 4 and 5 were also not conveying much sense, the respondents were asked to file additional affidavit. Before we may advert to the contents of the additional affidavit, we would like to mention that insofar as, the petitioners are concerned,

no report or orders exempting the land from the array of acquisition have been brought on record even though, averments have been made that reports favouring exemption were made by the HUDA authorities. In the additional affidavit of the Land Acquisition Collector, Urban Estate, Haryana, Gurgaon, dated 7.5.2003, which has since now been filed, it has been averred that even though, on filing of affidavit by the petitioners, the deponent made an enquiry from the office of respondent No. 5 from where, it was learnt that the land-owners had made re-presentation to the Government for releasing their land and the Government had asked for report from the HUDA, Gurgaon on their representation. It has been averred that the Administrator, HUDA, Gurgaon, obtained the report of the District Town Planner, Gurgaon, in this regard, who recommended release of the land on give and take basis as, the same was affecting one 10 meter wide proposed service road. However, recommendation dated 21.3.2000 was not accepted by the Government as, the same was affecting the service road.

From the records of this case, it would be clear that though some authorities might have recommended exemption of the land but the same was not ultimately accepted by the Government on the ground that it would effect the service road. It is too well settled that the recommendation made either by the authorities, like the one before us, namely, HUDA, for the benefit of which the land, subject matter of acquisition, was acquired or for that matter, the Land Acquisition Collector, may have persuasive value but the same are not binding upon the Government. The recommendations made by the HUDA authorities in the present case were not accepted by the Government, as mentioned above, on the ground that the same would affect the proposed service road. It is significant to mention that the District Town Planner, Gurgaon, too recommended the release of the land on give and take basis as, the same was affecting one 10 meter wide proposed service road. Report of the District Town Planner, Gurgaon, appears to be absolutely vague as, we do not find the facts of the case to be such where the petitioners could give some other area for the proposed service road. How, therefore, the District Town Planner, Gurgaon, mentioned "give and take basis" is not understandable. Being a fact that the petitioners could give nothing for the proposed service road and that there was, indeed, a need for a service road, the proposal or recommendation made by the District Town Planner, Gurgaon, seems to have been rightly rejected by the Government. The two fold contentions raised by learned counsel representing the petitioners seeking quashing of notification issued u/s 4 and declaration issued u/s 6 of the Act appear to be devoid of any merit. The writ petition, in our view, deserves to be dismissed. So ordered. The parties are however, left to bear their own costs.

Sd/-

Jasbir Singh, J.