
(2013) 09 P&H CK 0489
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 21572 of 2011 (O and M)

Rohtas and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 04-09-2013

Acts Referred:

Citation : (2013) 09 P&H CK 0489

Hon'ble Judges : Surya Kant, J; Surinder Gupta, J

Bench : Division Bench

Judgement

Surya Kant, J.—This order shall dispose of C.W.P. Nos. 20909, 21572, 21858, 21956, 21724-31, 21734, 21752, 21762, 21764, 21856-57, 22959, 22964, 23225 of 2011 and 15845 of 2012 as counsel for the parties are ad-idem that the points in issue raised in these cases are common in nature. The petitioners impugn the notifications dated 11.02.2010 and 18.08.2011 issued under Sections 4 and 6 of the Land Acquisition Act, 1894, to the extent of acquisition of their land situated within the revenue estate of villages Mewka, Lakhnola, Shikohpur, Sikenderpur Badha, Hayatpur, Harsaru, Wazeerpur, Dhorka, Kakrola, Bhangrola, Badha, Navada Fatehpur, Naharpur Kasan and Naurangpur, respectively, Tehsil and District Gurgaon. The acquisition has been made for development and utilization of the land for Sector roads in Sectors 81 to 95 at Gurgaon, to be developed by Haryana Urban Development Authority ["HUDA"].

2. Amongst various pleas taken by the petitioners for assailing the subject acquisition, their foremost contentions are that:

[i] the purported "public purpose" of construction of sector roads is actually a "private purpose" to facilitate and benefit the private builders as none of the Sectors from 81 to 95; is being developed by the State or its agencies, like HUDA. To say it differently, the land falling within these Sectors is owned by private builders only and the proposed roads are to be constructed to promote their business;

[ii] out of the total land meant for planned area of these Sectors measuring 5500 acres, the Government agencies own only 340 acres in one of the sectors, hence the proposed roads would not serve any "public purpose";

[iii] The residential houses of most of the petitioners have been acquired and are to be demolished to construct the proposed roads contrary to the government policies like dated 26.10.2007 as modified on 24.01.2011;

[iv] those petitioners who own small size vacant plots/land are also dispossessed of their respective properties without having been rehabilitated in accordance with the government policy notified on 09.11.2010;

[v] the petitioners' objections u/s 5A of the Act have been either rejected mechanically or despite recommendations made by the Land Acquisition Collector to release their properties, acquisition has been made without any application of mind. The impugned action is thus termed as one in violation of Articles 14 and 300A of the Constitution of India.

3. The official as well as some of the private respondents have filed their respective written statements. Respondents No. 2 to 5 have averred that the subject acquisition would cater to a bona-fide public purpose like construction of 75 meter wide sector roads; the petitioners have concealed the material fact that their constructions fall in the alignment of the Sector road; they raised constructions in violation of Sections 6 and 7 of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963; the alignment of 75 meter wide sector road and 70 meter wide multi-utility corridor is strictly in accordance with the Final Development Plan of Gurgaon-Manesar Urban Complex-2021 and that there is no statutory bar against acquisition of existing structures.

4. That the land falling within Sectors 81 to 95 is owned by private builders-cum-developers, however, has been duly admitted in the reply/affidavit. It is maintained that population of Gurgaon City is likely to increase approximately to 37 lacs in the next ten to twelve years, therefore, the State is obligated to create requisite infrastructure to cater to the future public needs. Acquiring land for the roads too is a step in that direction.

5. The petitioners have filed rejoinders controverting the stand taken by the State and have reiterated that the impugned acquisition lacks bona-fide and is a colourable exercise of power to facilitate and enhance profitability of private builders.

6. We have heard learned counsel for the parties and gone through the record with their able assistance.

7. The cause and concern of the petitioners can be broadly divided into three categories, namely,:

[i] those petitioners whose residential houses/dwelling units have been acquired

for the construction of the subject roads;

[ii] those petitioners who have constructed non-residential buildings; and

[iii] the petitioners who own vacant plots/land meant for agricultural or other allied purposes as a source of their livelihood.

8. It may be noticed at the outset that counsel for the petitioners have not alleged any serious breach of mandatory procedure contemplated under the 1894 Act which appears to have been ostensibly complied with. As regard to the objections submitted u/s 5A, the Land Acquisition Collector though recommended for "rejection" or "acceptance" of the objections depending upon the facts of each case but his recommendations for the release of existing structures did not find favour with the State Government who went ahead to issue Section 6 notification and acquired the structures as well.

9. The first question that requires determination is whether the residential houses/structures which were found existing at the time of Section 4 notification deserve to be released? The answer to this question, in our considered view, lies in the Government policy dated 26.10.2007 as modified on 24.01.2011, the relevant extracts of which are as follows:--

After careful consideration of the facts and circumstances, the Government has felt the need to review the policy referred to above. The amended policy regarding release of land will be as under:--

1. Only those requests will be considered by the Government for release of land u/s 48(1) where objections u/s 5A were filed in following cases:--

a) Any request or application where structure has been constructed provided the structure existed prior to Section 4, is inhabited and is being used by the owner for his own residential purposes.

b) Any factory or commercial establishment which existed prior to section 4 provided it was functional at the time of Section 4 and is also functional at the moment.

c) Any religious institution or any building owned by community which is being used for community purposes.

2. That the Government may also consider release of land belonging to individual applicants involving self inhabited structures, factory or commercial establishment or community or religious buildings, where the owner has approached the Hon"ble High Court and has obtained stay dispossession/status quo or any restraint order. In such cases, the decision will be taken on the merits of each individual case keeping in view the benefit to the development agency in terms of providing linkages, services and in the interest of planned development. However, this clause will not be invoked for grant of licence for development of colonies.

3. xxxx

[Emphasis applied]

10. The modified version of this policy dated 24.01.2011 says that:--

1. Only those requests will be considered by the Government for release of land u/s 48[1] where objections u/s 5A were filed in following cases:--

[a] Any request or application where structure has been constructed provided the structures existed prior to section 4, is inhabited and is being used by the owner for his own residential purposes.

[b] Any factory or commercial establishment which existed prior to Section 4 provided it was functional at the time of Section 4 and is also functional at the moment.

[c] Any religious institution or any building owned by community which is being used for community purposes;

2. xxxx

3. xxxx

[Emphasis applied]

11. These policies were considered by the Hon''ble Supreme Court in Patasi Devi Vs. State of Haryana and Others, and approved in the following passage:--

19. Before this Court it has been pleaded that on the date of issuance of preliminary notification the appellant's land was vacant, but this statement can not be relied upon for denying relief to her because no such averment was made in the counter affidavit filed before the High Court. The policy framed by the Government of Haryana clearly stipulates release of the land on which construction had been raised prior to issuance of Section 4 notification. The appellant's case is covered by that policy. Therefore, her land ought to have been released was done in the case of M/s. Sharad Farm and Holdings [P] Ltd....

[Emphasis applied].

12. The State Government having taken a conscious policy decision to exempt the structures/buildings found in existence at the time of Section 4 notification, we find no rhyme or reason for indiscriminate acquisition of such properties, more so when the recommendations made by LAC to release the constructions have been brushed aside without any rationale. The only plausible reason can possibly be that some of these structures fall in the midst of the road alignment and unless the road is re-aligned, the same can not be saved. Unfortunately, no such exercise or effort to save the existing structures has been undertaken by the respondents despite availability of a battery of experts like the Architects, Town Planners and Engineers who could have explored the possible feasibility of re-alignment of the road to minimize the demolition derive. If the Experts are of

the view that re-alignment of the road would not affect the object of "public purpose" of acquisition, such a drill not only rescues the petitioners from undue harassment but would lessen the burden on state exchequer too. We thus hold it imperative upon the respondents to undertake such an exercise in the instant case.

13. However, if the existing structures can be saved in no way and are to be demolished compulsorily for a vital public utility like the sector road, such reasons must be assigned and conveyed to the affected landowner[s].

14. In such like cases where existing structures can not be exempted and are required to be demolished for the purpose of road alignment as well as in the cases where the vacant land is being used by petitioners as a source of livelihood, it was incumbent upon the respondents to give effect to their Rehabilitation policy dated 09.11.2010 which is professed to be a great solace to the displaced landowners. It would be apposite to reproduce the relevant extracts of the policy decision dated 09.11.2010:--

D. Rehabilitation and Resettlement Policy:

5. Allotment of residential plots in cases where a self-occupied residential house is acquired for unavoidable reasons:

i) Recognising the sensitivity involved in acquisition of buildup residential houses/ structures for unavoidable reasons, the Government has decided to accord the highest priority to the resettlement of this category of persons. In the first instance, all efforts will be made by the acquiring departments to leave out the residential structures existing in the form of clusters from acquisition except where it becomes absolutely unavoidable either due to its standalone character or its location being within the Right of Way of infrastructure projects such as roads, canals, railway line etc.;

ii) Accordingly, it has been decided that wherever any self-occupied residential structure/house has to be acquired for unavoidable reasons in the process of acquisition of land by the Government for any purpose, such owners of built-up residential structures would be offered assured allotment of residential plots as per the following scale:

iii) As the affected persons would be entitled to compensation on account of acquisition of land and the structures constructed thereon, the price/cost of the plots to be allotted in favour of the affected persons as per above scale would be payable by the allottee;

iv) xxxx

v) xxxx

vi) Development and allotment of the residential plots under this part would be the responsibility of the acquiring Department/agency. Such plots, to the extent, possible, would be carved out in the area adjoining/in close vicinity of the village

abdi deh so that the displaced/rehabilitated persons continue to remain a part of their social milieu. While HUDA, H.S.I.I.D.C., and the H.S. A.M.B. would plan their residential blocks for this part as well as for the "oustee" category as one cluster, the other acquiring departments would have to acquire additional land specifically for this purpose also;

vii) xxxx.

viii) The affected landowner would be required to submit his claim in the prescribed Application Form-4.

15. The above stated policy decision came into force well before issuance of Section 6 notification in the instant case on 18.08.2011. The authorities of a welfare State were expected to give effect to such a conscious policy decision simultaneously at the time of issue of Section 6 notification. The exercise to identity the eligible landowners whose residential houses, structures or vacant lands are acquired for a public purpose and to give simultaneous rehabilitation package as per the above policy, is sine-qua-non for robbing and dispossessing an owner. We strongly deprecate the illogical malpractice of giving posthumous awards to the farmers and underprivileged sections of society to whom the actual benefit under the rehabilitation policy is denied for years. The paltry sum of compensation assessed by LAC invariably is far below the actual market value and can not wipe out the tears of silent victims of "eminent domain".

16. We must take judicial notice of the fact that in several cases landowners are struggling hard through execution proceedings to recover the compensation amount in respect of acquisitions at Gurgaon and their legitimate dues are not paid for years despite adopting one or the other lawful means. In such like affairs, the respondents can not be permitted to unilaterally acquire the land, utilize it for a public purpose and then leave the displaced persons in lurch to run from pillar to post for the recovery of compensation or for rehabilitation in terms of the Government's own policy. The least that can be expected is that the authorities shall in respect of the acquisition proceedings carried out after issue of above stated policies, grant the rehabilitation package to the landowners simultaneously. We order accordingly.

17. The petitioners are un-disputably small level owners, most of whom do not have any secured income to sustain them. The respondents no where say that the petitioners own more than one residential house. In today's time of high-rise prices when the petitioners do not even receive fair and just compensation for their acquired land, they can not be thrown out on the roads with an unending hope that some day, in future, a plot or a house would be allotted to them under the policy. Such an unjust, arbitrary and insensitive action must be curbed with iron hands.

18. There is no gain saying that the right to shelter is a vibrant component of right to live with dignity and is one of the most sacroscent fundamental right guaranteed under Article 21 of the Constitution. We may in this regard usefully

rely upon the decisions in [i] U.P. Avas Evam Vikas Parishad and another Vs. Friends Co-op. Housing Society Ltd. and another, ; [ii] People's Union for Civil Liberties v. Union of India 2011(5) R.C.R.(Civil) 573 : [2010] 13 SCC 63 and [hi] Chameli Singh and others etc. Vs. State of U.P. and another, It may be equally true that acquisition of land by State exercising its power of eminent domain per se does not offend right to livelihood or right to shelter as ruled in New Riviera Coop. Housing Society and Another Vs. Special Land Acquisition Officer and Others, , nonetheless exercise of such a power to acquire solitary dwelling units must always be subservient to the "right to life".

19. As the subject acquisition is meant for a vital public utility, namely, construction of sector roads which would benefit the public at large and their utility would not be limited to the residents of sectors to be developed by private builders only and such like roads are the life-line of regulated urbanization, we uphold the "public purpose" of acquisition. Similarly, in the absence of any procedural lapse required to be followed under the Act, we do not find fault with the impugned acquisition.

20. However, the petitioners can not be dispossessed of their residential houses/ structures or vacant land unless the State Government exhibits its bona-fide and grants them the actual benefits under the policies dated 26.10.2007/24.01.2011 and 09.11.2010, as the case may be. In other words, before dispossessing the petitioners from their respective properties it is obligatory on the respondents [i] to reconsider the desirability of releasing the existing structures after conducting a fresh survey and/or re-demarcation of the subject area; [ii] to re-examine the possibility of realignment of the road to save the existing structures to the extent possible; [iii] however, if any structure/residential house or vacant land is still needed for the notified public purpose, the petitioners shall not be dispossessed unless alternative sites are allotted to them in accordance with the policy decision dated 09.11.2010.

21. The official respondents hue and cry that the constructions raised by the petitioners are illegal, same being in violation of the provisions contained in the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 merits outright rejection. We say so for the reason that there is not an iota of proof on record that any notice was ever served of action taken against the petitioners under the 1963 Act. Hundreds of houses can not spring up over-night. Why the District Administration or the Local Authorities failed to take any action against the wrong doers when the alleged unauthorised constructions were being raised is conspicuously missing from the written statement. What action has been taken against the officers who gave implied or tacit consent to the subject constructions is also not disclosed. On the other hand, it is an admitted fact that most of the constructions fall within the revenue area of different villages mentioned in Para No. 2 of this order. No notification applying the provisions of 1963 Act in respect of the constructions made within the rural areas has been brought on record.

22. As the petitioners whose residential houses are acquired do not have any other measure of social shelter for them or their families, we further direct that after allotment of alternative sites along with the physical possession, they shall be granted some reasonable period, to be determined by the authorities, for the construction of their houses before vacating the acquired houses.

23. Since in terms of the above directions, the petitioners can not be dispossessed unless their claims in terms of the policies dated 26.10.2007/24.01.2011 and 09.11.2011 are considered and determined, it is not necessary for us to fix any time frame for the respondents for compliance of these directions. Disposed of. Dasti.