
(2003) 07 P&H CK 0069
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1347 of 1993

Roshan Lal and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 16-07-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 5A

Citation : (2003) 135 PLR 199 : (2003) 4 RCR(Civil) 220

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Advocate : Anil Khetarpal, Raghubir Chaudhary, Vandana Malhotra, for the Appellant;

Final Decision : Allowed

Judgement

Satish Kumar Mittal, J.—The instant writ petition has been filed by the petitioners for quashing the Notifications dated 6.3.1990 (Annexure P-6) and 28.2.1991 (Annexure P-8) issued by the State of Haryana under Sections 4 and 6 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") respectively, for acquisition of the land of the petitioners for a public purpose, namely for development of residential, commercial and institutional area in Sector 21. Kaithal, by the Haryana Urban Development Authority (for short, "HUDA"); and further for issuance of a direction to the respondents to exempt their land from acquisition.

2. In the year 1981, the petitioners and their predecessors purchased 8 Kanals of agricultural land comprising in Rect. No. 105, Killa Nos. 28/I/I(7-0) and 23(1-0) situated at Patti Kaist Seth, Kaithal vide two registered sale deeds dated 20.11.1981 and 27.11.1981. The aforesaid land was purchased by them for establishing a residential colony to be named as "Teachers Colony". For that purpose, these persons formed an association. After purchase of the land, the plots were carved out and were allotted to the members of that association, after having the provision of streets and other necessary requirements of a colony.

The site-plan showing the situation of the plots and the streets has been annexed with this petition as Annexure P-1. After allotment of plots to the individual members, some of the petitioners raised construction on the plots allotted to them and some of the petitioners raised the boundary walls to their plots.

3. In the year 1982, the State Government issued a Notification dated 14.7.1982 (Annexure P-2) u/s 4 of the Act for acquisition of the land measuring 471.79 acres, including the aforesaid land of the petitioners, for establishing residential and commercial area of Sectors 19 and 20 at Kaithal by the HUDA. The petitioners or their predecessors-in-interest filed objections to the aforesaid acquisition u/s 5-A of the Act. Later on, those objections were accepted by the Land Acquisition Collector and approved by the State Government, and it was decided to exempt the land of the petitioners measuring 8 Kanals from the said acquisition. In this regard, a communication dated 1.3.1984 (Annexure P-4) was issued by the Director, Urban Estate, Haryana, Chandigarh to the Estate Officer, HUDA, Karnal in which it was stated that the Government had decided to release the land measuring 8 Kanals in which the residential houses were proposed to be constructed. The aforesaid release order was passed subject to the condition that the petitioners or their predecessors-in-interest will execute the agreement accepting the terms and conditions of the release. In pursuance of the said release order, most of the petitioners or their predecessors-in-interest executed an agreement (Annexure P-5) according to which, the aforesaid land in question was released on the following terms and conditions:-

"(a) That the promise shall pay proportionate development charges which shall be a first charge on said land as and when required and as determined by the Director in respect of external development works which may be carried out in the area for the benefit of the said land.

(b) That the promisee shall be responsible for making arrangements for the disposal of affluent to the satisfaction of the Director.

(c) That the "promisee" shall get the plan approved from the Director, before commencing any construction on the said land."

4. After release of the land, the petitioners started raising construction on their houses and started living thereon and some of the petitioners raised boundary walls and made small construction. In the year 1990, the State of Haryana issued Notification u/s 4 of the Act on 6.3.1990 (Annexure P-6) for acquisition of 26.58 acres land by the Urban Estate Department for establishing residential, commercial and institutional area for Sector 21, Kaithal, by the HUDA. In the said Notification, the land in question measuring 8 Kanals, which was earlier released from acquisition by the respondents, was again acquired. On coming to know about the aforesaid Notification, the petitioners immediately filed objections u/s 5-A of the Act against the aforesaid proposed acquisition. It was submitted in those objections that the land was earlier released from acquisition by the State

Government and most of the petitioners raised construction on the same. It was submitted that the land is being used by the petitioners for residential purposes and no useful purpose will be served to acquire the land for the very same purpose. The objections raised by the petitioners did not find favour with the respondents and it was decided to acquire the land belonging to the petitioners. Consequently, a declaration u/s 6 of the Act was issued by the State Government vide Notification dated 28.2.1991 (Annexure P-8). The petitioners have challenged the aforesaid Notifications dated 6.5.1990 and 28.2.1991 in the present writ petition.

5. Pursuant to the notice issued, respondents No. 1 to 3 filed written statement in which they have admitted the release of the land of the petitioners from acquisition in the year 1982. However, it has been stated that there is no restriction under the Act not to acquire the land for public purposes if the same has already been released from acquisition. It was further submitted that the constructions raised by the petitioners on the land in question were of "C" class, therefore, the same could not be exempted from acquisition as the respondents had only exempted "A" and "B" class constructions which were in existence at the time of issuance of Notification u/s 4 of the Act.

6. Shri Anil Khetarpal, learned counsel for the petitioners raised three contentions . while assailing the acquisition of 8 Kanals land of the petitioners by the aforesaid Notifications. Firstly, it was submitted by the learned counsel that once the land in question was exempted from acquisition at the earlier point of time by the respondents, the same now cannot be acquired for the same purpose. The respondents exempted the land in question at the earlier point of time on the ground that the land in question was being used for residential purpose. The said purpose has not changed and the land in question is still being used for residential purposes. Therefore, there is no change in the circumstances. In these circumstances, the principle of estoppel will be applicable against the respondents and now they are estopped from acquiring the land in question, particularly when after the exemption, the petitioners have raised construction on the land in question. Secondly, the learned counsel for the petitioners submitted that the petitioners or their predecessors-in-interest purchased the land in question only for the purpose of developing the same in a residential colony. All the petitioners are teachers and they belong to lower middle class. After carving out the plots from the land in question, they are utilising the same for the purpose of construction of residential houses. In such a situation, it will not be justified and reasonable for the State Government to acquire the land in question for the very same purpose for which it was being developed long back. In support of this contention, learned counsel for the petitioners relied upon a decision of the Hon"ble Supreme Court in Ghaziabad Sheromani Sahkari Avas Samiti Ltd. and another etc. Vs. State of U.P. and others etc., ; a decision of this Court in 965822--> and The Panipat Cooperative House Building Society Ltd. Panipat through its President Shri S.C. Gupta v. The State of Haryana and Ors. (C.W.P. No. 7548 of 1990, decided on 26.3.2003). Thirdly,

learned counsel for the petitioners submitted that the stand taken by the respondents that they have not exempted the land of the petitioners from acquisition as the construction raised by them was of "C" class, is not tenable being unreasonable, arbitrary and discriminatory, as held by the Hon"ble Supreme Court in Sube Singh and Others Vs. State of Haryana and Others, .

7. On the contrary, learned counsel fro the respondents reiterated the same point which was taken by the respondents in the written statement. He submitted that merely because the land of the petitioners was exempted from acquisition at the earlier point of time, the Government is not debarred from acquiring the same for the same purpose. There cannot be estoppel against the statutory power. He further submitted that most of the constructions raised by the petitioners on the acquired land were of "C" class, therefore, the same were not liable to be exempted from acquisition as per the policy of the State Government under which only the constructions of "A" and "B" class raised before the issuance of Notification u/s 4 of the Act, were liable to be exempted.

8. After considering the rival contentions raised by the learned counsel for the parties and perusing the record of the case, I am of the opinion that the respondents have acted illegally, arbitrarily and discriminately while acquiring the land in question belonging to the petitioners. The respondents have not disputed in their written statement that after purchase of the land in question in 1981, the petitioners or their predecessors-in-interest developed the land for residential purposes by carving out the plots. It was also not denied that most of the petitioners are teachers and they have established a teachers colony on the land in question and have raised constructions on the plots allotted to them for residential purposes. The respondents have also not disputed that in the year 1982, the land in question was acquired by the respondents for establishing residential, commercial and institutional area for Sectors 19 and 20 at Kaithal by the HUDA and on the objections filed by the petitioners, the land in question was exempted from acquisition by the respondents. It is also not disputed that after release from acquisition, some of the petitioners further raised construction on the land in question. It is also admitted by the respondents that they have exempted the land of some other owners from acquisition on which they raised the constructions of "A" and "B" class. The State Government has a policy to release the land from acquisition if the constructions of "A" and "B" class were being raised prior to the issuance of the Notification u/s 4 of the Act. In view of the aforesaid factual position, I am of the opinion that the respondents cannot acquire land of the petitioners for the purpose of establishing residential, commercial and institutional area by the HUDA when their land was released/ exempted from acquisition in the year 1982 when it was sought to be acquired for the very same purpose. At that time, the land was released because the petitioners had developed the land in question for residential purposes. The said decision was taken by the Land Acquisition Collector and the State Government on consideration of the objections filed by the petitioners u/s 5-A of the Act. After considering the said objections, a conscious decision was taken and the

land in question was released from acquisition on certain terms and conditions. It is not the case of the respondents that the petitioners have violated those terms and conditions. The respondents have taken the stand in the instant case that there is no bar under the Act to acquire the land for the same purpose which released/exempted by the State Government at the time of earlier acquisition. This contention of the respondents cannot be accepted. Once a conscious decision was taken under the Act while deciding the objections of the petitioners and their predecessors-in-interest u/s 5-A of the Act and the land was released from acquisition, the same cannot be subsequently acquired for the very same purpose, particularly when there is no change in any circumstances nor there is any change in the use of the land and the purpose for which it is proposed to be acquired. In the instant case, after the release of the land, the petitioners not only executed the agreement as per the terms and conditions of the release but they have also raised some construction on the land in question. In these circumstances, certainly the State Government is estopped from acquiring the land of the petitioners for the very same purpose. Secondly, the acquisition of the land of the petitioners by the respondents-State for establishing residential, commercial and institutional area will be unreasonable and unfair, particularly when the land in question is being developed and use for the very same purpose by the petitioners, who are the teachers, after purchasing the land, the petitions or their predecessors-in-interest took an effective step to develop the area for the purpose of providing residential accommodation to the members of their association. In similar situation, the Hon'ble Supreme Court in Ghaziabad Sheromani Sahkari Avas Samiti Ltd (supra) and this Court in National Fertilizers Employees Co-operative Housing Society Ltd (supra), has held that the acquisition of the land of such Society or association will be unreasonable and arbitrary and it will amount to depriving the members of the association/society from the residential accommodation which they have established on the acquired land. Thirdly, the action of the respondents is also discriminatory. It has been admitted in the written statement that the respondents have released 8 Kanals of land belonging to the Radha Swami Satsang Bhawan which was adjoining to the land of the petitioners. According to the respondents, the said land was released from acquisition as on the same "A" and "B" class constructions were existing. However, the land of the petitioners could not be released from acquisition as their construction was of "C" class. In Sube Singh's case (supra), the Apex Court while holding that the classification of existing constructions made by the respondents in "A", "B" and "C" class for the purpose of exempting the land of the land owners from acquisition is not only unreasonable but is arbitrary and discriminatory and is violative of Articles 14 and 21 of the Constitution of India, has observed as under:-

"Question is: Whether the purported classification of existing structures into "A", "B" and "C" Classes is a reasonable classification having an intelligible differentia and a rational basis germane to the purpose. If the State Government fails to support its action on the touchstone of the above principle, then this decision has

to be held as arbitrary and discriminatory.

Since the acquisition of the land is for the purpose of planned development of the area which includes both residential and commercial purposes, it is difficult to accept the case of the State Government that certain types of structures which according to its own classification are of "A" Class can be allowed to remain while other structures situated in close vicinity and being used for same purposes (residential or commercial) should be demolished. There is no averment in the pleadings of the respondents stating the basis of classification of structures as "A", "B" and "C" Class, nor is it stated how the amalgamation of all "A" Class structures was feasible and possible while those of "B" and "C" Class Structures was not possible. It is not the case of the State Government and also not argued before the Court that there is no policy decision of the Government for excluding the lands having structures thereon from acquisition under the Act."

9. In view of the aforesaid dictum of law, the action of the respondents in not releasing the land of the petitioners from acquisition on the ground that their construction was of "C" class category is wholly arbitrary, unreasonable and discriminately.

10. For the reasons mentioned above, the writ petition is allowed. The acquisition of 8 Kanals land of the petitioners comprising in Rect. No. 105, Killa Nos. 28/1/1(7-0) and 23(1-0) situated at Patti Kaist Seth, Kaithal, by the impugned Notifications dated 6.3.1990 and 28.2.1991, are hereby quashed and the respondents are directed to exempt the aforesaid land of the petitioners from acquisition,

No order as to costs.